

Decision_____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the East Bay Regional Park District for an Order Authorizing Construction of a new grade separated pedestrian/bike crossing (001A-19.80-AD, DOT No. 441041W) over the Union Pacific Railroad Company's mainline tracks at milepost 19.79 in the City of Pinole in the County of Contra Costa.

Application 15-08-011
(Filed August 12, 2015)

DECISION AUTHORIZING THE EAST BAY REGIONAL PARK DISTRICT TO CONSTRUCT A GRADE-SEPARATED PEDESTRIAN CROSSING OVER THE UNION PACIFIC RAILROAD COMPANY MARTINEZ SUBDIVISION TRACKS IN THE CITY OF PINOLE, COUNTY OF CONTRA COSTA

Summary

This decision grants the East Bay Regional Park District authorization to construct a new grade-separated pedestrian-rail crossing at the Bayfront Park over the Union Pacific Railroad Company Martinez Subdivision tracks in the City of Pinole, County of Contra Costa. The crossing will be identified as California Public Utilities Commission Crossing Number 001A-19.80-AD and United States Department of Transportation Number 441041W.

This proceeding is closed.

Discussion

The East Bay Regional Park District (Park District) requests authority to construct a new grade-separated pedestrian crossing (crossing) over the Union

Pacific Railroad Company (UPRR) Martinez Subdivision mainline track. The Park District will construct the crossing, as part of and continuation of the San Francisco Bay Class I trail (trail) project, to run a total of 0.50 miles from Pinole Shores Park to Bayfront Park and provide a bridge over the UPRR tracks.

The crossing will provide safe public access between the Pinole Shores and Bayfront Parks for pedestrians and bicyclists. The trail will run along a separate dedicated pedestrian/bike path alignment along UPRR's Martinez Subdivision track for approximately 1,500 feet, sweep north and east over the crossing, traverse wetlands and marsh lands of the San Pablo Bay, and connect to the existing pathway within Bayfront Park. The trail alignment will be located at the southerly edge and parallel to UPRR's Martinez Subdivision tracks and northerly outside of the BNSF Railway Company right-of-way.

Rail operations include approximately ten freight trains per day traveling 30 miles per hour and 42 National Railroad Passenger Corporation (Amtrak) passenger trains per day traveling 40 miles per hour at the crossing.

The Park District will include the following features in the construction of the Bayfront Park Bicycle/Pedestrian Overpass:

- The design and construction of the crossing structure (structure) will comply with all minimum clearance requirements set forth in California Public Utilities Commission (Commission/CPUC) General Order (GO) 26-D, as well as all UPRR design standards;
- The crossing will have a temporary impaired vertical clearance of 21 feet, 6 inches during construction. UPRR will notify all operating railroads of the temporary impaired vertical clearance.
- The structure will be approximately 1,060 feet long and 14 feet wide;

- The Park District will install 9 feet, 6 inch tall fencing with ornamental railing at both sides of the overhead structure; and
- The structure will be compliant with the Americans with Disabilities Act (ADA) requirements.

The crossing will be identified as CPUC No. 001A-19.80-AD, and United States Department of Transportation (DOT) No. 441041W.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (as amended, Public Resources Code Section 21000, et seq.) (CEQA) 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, the Park District is the lead agency for this project under CEQA because it is constructing the project, and the project is 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 is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.⁴

On August 16, 2010, the Park District issued a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Pinole Shores to Bayfront Park Segment of the San Francisco Bay Trail project.

On July 19, 2011, the Park District issued a Draft Environmental Impact Report (DEIR) for the project.

On January 10, 2012, the Park District certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation, Monitoring and Reporting Program for the project. The CEQA documentation demonstrates that the

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).

project will not have a significant effect on the environment. Mitigation measures were also made a condition of approval for the project and a Statement of Overriding Considerations was not adopted for the project.

Impacts identified under CEQA relating to the rail crossing are within the scope of the Commission's jurisdiction. The FEIR identified multiple impacts as less than significant or less than significant with mitigation measures incorporated. Environmental impacts considered to be less than significant with the incorporation of mitigation measures that may be related to the rail crossing are impacts to biological resources, geology, soils and seismicity resources, hydrology and water quality resources, and noise. The Park District determined that the project would not have a significant effect on the environment because all identified impacts can be mitigated to a less-than-significant level.

Biological impacts include potentially adverse effect on tidal marsh rails, salt marsh harvest mice, native trees protected under the City of Pinole Municipal Code, and temporary impacts to brackish marsh wetlands. Mitigation measures for the tidal marsh rails impacts consist of conducting construction activity between the UPRR tracks and tidal marsh fragments only when high tides are not at their winter or summer extremes, posting a qualified biological monitor during construction activities between the UPRR tracks and tidal marsh to ensure avoidance and minimization measures and construction limits are enforced, and obtaining the required authorization from the United States Fish and Wildlife Service (USFWS).

Mitigation measures for salt marsh harvest mice impacts consist of conducting construction activity between the UPRR tracks and tidal marsh fragments only when high tides are not at their winter or summer extremes,

having a qualified biologist prepare a salt marsh harvest mouse avoidance plan, and obtaining the required authorization from the USFWS.

Mitigation measures for native tree impacts consist of conducting a formal tree inventory by an International Society of Arboriculture certified arborist, identifying protected trees, and planting new trees at a value equal to the amount of removed trees or paying an in-lieu fee to the City of Pinole in the amount equivalent to the value of the removed trees.

Mitigation measures for brackish marsh wetlands impacts consist of preparing a Stormwater Pollution Prevention Plan in consultation with the Regional Water Quality Control Board (RWQCB), obtaining a Section 404 permit from the Corps of Engineers and Section 401 water quality certification from the RWQCB, and restoring the marsh if disturbed during construction.

Geology, soils, and seismicity impacts include ground settlement which could result in structural damage to proposed site improvements and shrink-swell potential of project soils which could result in damage to structures. Mitigation measures for ground settlement impacts consist of ensuring all structures are designed and constructed in conformance with the California Department of Transportation (Caltrans) Seismic Design Criteria and preparing a final design-level geotechnical investigation report. Mitigation measures for shrink-swell potentials of project soils consist of preparing a final design-level geotechnical investigation report and removal of problematic soils.

Hydrology and water quality impacts include potential to generate stormwater runoff that could cause or contribute to a violation of water quality standards or waste discharge requirements or otherwise substantially degrade water quality of the San Pablo Bay. Mitigation measures consist of filing a Notice of Intent to comply with the statewide General Permit for Discharges of

Storm Water Associated with Construction Activities and preparing a Storm Water Pollution Prevention Plan.

Noise impacts include increased noise during construction. Mitigation measures consist of maintaining construction equipment, placement of stationary construction equipment directed away from sensitive receptors, using existing features to act as shielding between construction noise sources and sensitive receptors, restricting the hours of construction, prohibiting unnecessary idling, and using quieter pile installation methods.

The Park District found that these impacts will be less than significant after adopted mitigation measures are implemented. The Commission reviewed and considered the Park District's NOP and FEIR as these documents relate to this grade-separated pedestrian-rail structure and finds these documents adequate for our decision-making purposes.

Response of the Union Pacific Railroad Company

On September 10, 2015, UPRR filed a response to the Park District's application, stating that construction of facilities that encroach upon or cross UPRR's property - such as the crossing here - requires the execution of a construction and maintenance agreement that describes the rights and responsibilities of the parties. The Park District acknowledges that it must reach agreement with UPRR and execute such as agreement in the application.

UPRR asks that, in order "to acknowledge the state of discussions and to avoid any questions about the legal effect of Commission action," the Commission include a requirement in its decision authorizing the crossing stating that:

The Park District may not begin construction until the Park

District and UPRR have executed a construction and maintenance agreement and the Park District has obtained any property rights necessary to build the project on UPRR's property.

Further, UPRR asks that the Commission include in its findings of fact that "this project is of no material benefit to UPRR and that therefore the project is to be built and maintained at no cost to UPRR."

The Park District did not file a response to UPRR. Both parties acknowledge that a construction and maintenance agreement must be executed prior to implementation of the project. As such, the Commission sees no issue with including UPRR's requested language stating as such herein. However, as UPRR acknowledges, such an agreement will also determine "allocation of the costs of the project." Therefore, while the Commission does have authority to allocate project costs, it does not appear to be necessary to order a specific cost allocation here where both parties are in agreement that they must jointly agree on and execute a construction and maintenance agreement that includes allocation of the costs of the project.

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 and Engineering Branch has inspected the site of the crossing, reviewed, and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject crossing be granted for a period of three years.

Categorization and Need for Hearings

In Resolution ALJ 176-3362, dated August 27, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. One response by UPRR was 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

Elizaveta Malashenko is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on August 28, 2015.
2. The Park District requests authority, under Public Utilities Code Sections 1201-1205, to construct a new grade-separated pedestrian crossing over mainline track owned by UPRR in the City of Pinole, County of Contra Costa. The crossing will be identified as CPUC Crossing Number 001A-19.80-AD, and DOT No. 441041W.
3. The crossing design and construction will conform to ADA requirements.
4. The crossing will comply with all minimum clearance requirements set forth in Commission GO 26-D.

5. The Park District is the lead agency for this project under CEQA.
6. On August 16, 2010, the Park District issued the NOP for the Pinole Shores to Bayfront Park Segment of the San Francisco Bay Trail project.
7. On July 19, 2011, the Park District issued the DEIR for the project.
8. On January 10, 2012, the Park District issued the FEIR for the project.
9. The environmental findings of the FEIR indicate that the grade-separated rail crossing will not have significant effects on the environment. Environmental impacts related to the crossing include biological resources impacts, geology, soils and seismicity resources, hydrology and water quality resource, and noise impacts. All impacts will be reduced to a less-than-significant level by adopting mitigation measures.
10. Regarding biological impacts, the Park District proposes to limit construction activity during high tides, post a qualified biological monitor on site, obtain required authorization from the USFWS, prepare a salt marsh harvest mouse avoidance plan, conduct a tree inventory, identify protected trees, plant new trees at a value equal to the amount of removed trees, prepare a Stormwater Pollution Prevention Plan, obtain a Section 404 permit from the Corps of Engineers, and restore marsh if disturbed. The Park District's FEIR found that these impacts will be reduced to less-than-significant levels by the adopted mitigation measures.
11. Regarding geology, soils, and seismicity impacts, the Park District proposes to ensure all structures are designed and constructed in conformance with the Caltrans Seismic Design Criteria, prepare a final design-level geotechnical investigation report, and remove problematic soils. The Park District's FEIR found that these impacts will be reduced to less-than-significant levels by the adopted mitigation measures.

12. Regarding the hydrology and water quality impacts, the Park District will file a Notice of Intent to comply with statewide General Permit for Discharges of Storm Water Associated with Construction Activities and prepare a Storm Water Pollution Prevention Plan. The Park District's FEIR found that these impacts will be reduced to less-than-significant levels by the adopted mitigation measures.

13. Regarding noise impacts, the Park District will maintain construction equipment, place stationary construction equipment directed away from sensitive receptors, use existing features to act as shielding between construction noise sources and sensitive receptors, restrict the hours of construction, prohibit unnecessary idling, and use quieter pile installation methods. The Park District's FEIR found that these impacts will be less than significant after adopted mitigation measures are implemented.

14. The crossing, part of the San Francisco Bay Trail project, will provide safe public access between the Pinole Shores and Bayfront Parks for pedestrians and bicyclists.

Conclusions of Law

1. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's NOP and FEIR.

2. Impacts identified under CEQA relating to the rail crossing such as safety, traffic/transportation, and noise impacts are areas within the scope of the Commission's permitting process.

3. The design features selected by the Park District for the crossing are consistent with GO 26-D requirements.

4. The NOP and FEIR reflect the Commission's independent judgment and analysis.

5. The NOP and FEIR, titled *Pinole Shores to Bayfront Park Segment of the San Francisco Bay Trail Project*, dated August 16, 2010 and January 10, 2012, respectively, and prepared by the Park District as the documentation required by CEQA for the project are adequate for our decision-making purposes.

6. The NOP and FEIR were completed in compliance with CEQA.

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

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

9. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The East Bay Regional Park District is authorized to construct a new grade-separated pedestrian-rail crossing over the Union Pacific Railroad Company's Martinez Subdivision mainline tracks, in the City of Pinole, County of Contra Costa, as described in the East Bay Regional Park District's application.

2. The grade-separated pedestrian-rail crossing shall be identified as California Public Utilities Commission Crossing Number 001A-19.80-AD and United States Department of Transportation Number 441041W.

3. The grade-separated pedestrian-rail crossing shall have the crossing treatments and configuration described above and specified in the application and attachments.

4. The East Bay Regional Park District 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.

5. The East Bay Regional Park District (Park District) may not begin construction until the Park District and Union Pacific Railroad Company (UPRR) have executed a construction and maintenance agreement and the Park District has obtained any property rights necessary to build the project on UPRR's property.

6. The East Bay Regional Park District shall notify the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least five (5) business days prior to opening the grade-separated pedestrian path structure. Notification must be made to rceb@cpuc.ca.gov.

7. Within 30 days after completion of the work under this order, the East Bay Regional Park District shall notify the California Public Utilities Commission's Safety and Enforcement Division - Rail Crossings and Engineering Branch 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/Crossings>. This report may be submitted electronically to rceb@cpuc.ca.gov.

8. Within 30 days after completion of the work under this order, the Union Pacific Railroad Company shall notify the Federal Railroad Administration of the existence of the crossing by submitting a U.S. DOT CROSSING INVENTORY FORM, form FRA F6180.71. Concurrently the Union Pacific Railroad Company shall provide a copy of the inventory form to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering

Branch. This copy of the form may be submitted electronically to rceb@cpuc.ca.gov.

9. This authorization shall expire if the above conditions specified in Ordering Paragraphs 2 through 7 are not exercised within three years, unless time is extended. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so requires.

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 and Engineering Branch 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 15-08-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.