

Decision \_\_\_\_\_

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

In the matter of the Application of the City of Emeryville for an order authorizing construction of the South Bayfront Pedestrian Bicycle Bridge over nine rail tracks owned by the Union Pacific Railroad Company in the City of Emeryville in the County of Alameda, State of California.

Application 17-03-006

**DECISION GRANTING THE APPLICATION OF THE CITY OF EMERYVILLE TO CONSTRUCT THE SOUTH BAYFRONT PEDESTRIAN BICYCLE BRIDGE**

**1. Summary**

This decision approves the unopposed application of the City of Emeryville for authority to construct the South Bayfront Pedestrian Bicycle Bridge across nine rail tracks owned by the Union Pacific Railroad Company. Application 17-03-006 is closed.

**2. Factual and Procedural Background**

The City of Emeryville (City or Applicant) is a California municipality located on the east shore of San Francisco Bay, north of the City of Oakland and south of the City of Berkeley.

On March 10, 2017, the City filed an application to construct the South Bayfront Pedestrian Bicycle Bridge (Project), a pedestrian and bicycle bridge

above the tracks of Union Pacific Railroad (UPRR). There were no protests or objections filed to the Application.

A telephonic prehearing conference (PHC) was held on April 28, 2017 with participation by the City's Public Works Director, outside counsel for the City and two members of the Commission's Safety and Enforcement Division's Rail Crossing Engineering Branch (RCEB).<sup>1</sup>

UPRR did not participate in the PHC. RCEB staff informed the judge that RCEB staff had contacted UPRR, and were informed that UPRR had knowledge of the application and were aware of the project, but did not receive notice of the PHC.<sup>2</sup> By Ruling dated April 28, 2017, the Administrative Law Judge (ALJ) ordered counsel for the City to provide contact information for UPRR so that they would receive a copy of the Scoping Memorandum and would have an opportunity to join the proceeding as a party should they file a motion to do so.<sup>3</sup>

On May 15, 2017, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo),<sup>4</sup> which set forth the procedural schedule and addressed the scope of the proceeding. The Scoping Memo determined the following issues to be within the scope of this proceeding:

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<sup>1</sup> See PHC Transcript at 3. Maurice Kaufman serves as Public Works Director and City Engineer for the City. Michael Conneran, a partner with Hanson, Bridgett, LLP is outside counsel to the City. Sia Mozaffari and Anton Garbetian are with RCEB.

<sup>2</sup> Transcript at 8, line 18 to page 9, line 5.

<sup>3</sup> Counsel for the City provided contact information on April 28, 2016 for three UPRR representatives - Danielle Allen, Senior Manager of Real Estate; Kevin Yoder, Manager of Industry and Public Projects, and David Pickett, Senior General Attorney. The individuals were added to the address list for the proceeding on May 1, 2017.

<sup>4</sup> The Scoping Memo was served on the City and its outside counsel, UPRR representatives and others on the official address list.

1. Whether the City should be authorized to construct the South Bayfront Pedestrian Bicycle Bridge above UPRR's tracks in Emeryville?
2. Whether the bridge design proposed by the City is in compliance with the Commission's GO-26-D?
3. Whether the project is exempt from CEQA?

The Scoping Memo concluded that there were no disputed issues of material fact requiring an evidentiary hearing.

On June 22, 2017, the ALJ issued further ruling ordering RCEB to file a summary of its review of the Project, confirmation of its conclusion that the Project complies with Commission General Order (GO) 26-D requirements, written confirmation that UPRR has no objections to the design and construction of the Project, and confirmation that the City and UPRR have reached agreement on terms of a construction and maintenance agreement. On June 23, 2017, RCEB filed its response to the Application to address the ALJ's ruling. RCEB is in support of authorizing construction.

The City and UPRR filed a joint statement on August 8, 2017, indicating that, while they have not yet finalized negotiation of their construction and maintenance agreement, they are in agreement regarding the design and construction. They further indicate that they will finalize the construction and maintenance agreement before construction commences.

### 3. Discussion

#### 3.1. The Project

The Project consists of a bridge that bicycles and pedestrians may use to travel between Horton Landing Park on the east side of the UPRR tracks and the Bay Street shopping development on the west side.<sup>5</sup>

The bridge will be a grade separated bridge over the UPRR tracks with fencing to reduce the potential for trespassing onto the railroad right-of-way. The City states that this Project is in the public interest as it facilitates safe crossing by pedestrians and bicyclists across the railroad tracks and is part of the City's long-term plan to link up its Bay Street shopping development and an existing network of pedestrian paths in the City with the Regional Bay Trail.<sup>6</sup> If approved, construction would begin in late 2017 and would take approximately two years to complete.

The City indicates that it also has met and conferred with UPRR on the Project and that UPRR has approved the design of the bridge. The Commission's RCEB staff informed the judge that it met with UPRR and that UPRR has no objections about the design of the South Bayfront pedestrian bicycle bridge project.<sup>7</sup> RCEB states that it is familiar with this type of project because in late 2008, a very similar project was completed nearby at the Oakland, Jack London Square Amtrak station. The City previously applied for and received

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<sup>5</sup> The application includes exhibits depicting the project site: **Exhibit 1A** – aerial photo of the areas north of the project site; **Exhibit 1B** – aerial photo of the areas south of the project site; **Exhibit 1C** – aerial photo of the project site; **Exhibit 2** – project plans depicting the elevation and cross section of the bridge; **Exhibit 3** – UPRR agreement legal description, and **Exhibit 4** – UPRR agreement plat.

<sup>6</sup> Application at 4.

<sup>7</sup> Transcript at 9, lines 6-10.

Commission approval for similar rail crossing projects across UPRR lines at Powell Street and Shellmound Street.<sup>8</sup>

### **3.2. Compliance with GO 26-D**

GO 26-D contains the Commission's regulations governing Clearances on Railroads and Street Railroads with Reference to Side and Overhead Structures, Parallel Tracks, Crossings of Public Roads, Highways and Streets.

The proposed bridge design is comprised of a steel-tied arch bridge with concrete ramp and stair structures at each end which connect the elevated bridge deck to the adjacent grade-level pathways. The bridge will provide a minimum vertical clearance of 23 feet and four inches above the top of the railroad tracks. GO 26-D sets forth a minimum vertical clearance of 22 feet and six inches.

The above ground structural supports at each end of the bridge will provide a minimum one foot horizontal clearance to the outside of the railroad right of way, and a minimum horizontal clearance from the centerline track of 30 feet and five inches. GO 26-D requires a minimum horizontal clearance of 9 feet and six inches.

In its June 23, 2017 response, RCEB informs the Commission that it made a visit to the Project site on April 4, 2016 to complete a safety review. It expresses its approval of the bridge design, and confirms that the bridge design is in compliance with GO 26-D. RCEB also concludes that no warning devices are needed on the Project due to the grade separation.

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<sup>8</sup> Application at 5. The Powell Street Overhead Crossing identification Number is CPUC #001A-4.20-A and the Shellmound Street Overhead Crossing identification Number is CPUC #001A-3.52-A.

### 3.3. Environmental Review

The California Environmental Quality Act (CEQA)<sup>9</sup> 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 the potential significant environmental effects of the proposed activities.”<sup>10</sup> CEQA requires the Commission to consider the Lead Agency’s environmental documents and findings before acting upon or approving a project.<sup>11</sup>

As an exhibit to its Application, the City filed an environmental declaration dated September 18, 2008, providing Notice of Exemption as required by the California Environmental Quality Act (CEQA, Public Resources Code Section 2100 et seq.) pursuant to Section 15332 of the CEQA Guidelines (14 Cal. Code Regs., § 15000 et seq.).<sup>12</sup> The City of Emeryville is designated as the lead agency. The exempt status noted is “Categorical Exemption” under Section 15332. The reason given for exemption is that “the project is located in an urban area, is consistent with all land use policies, and is part of the Emeryville Greenway. The project will avoid any work in Temescal Creek, a concrete-lined channel. There are no sensitive biological resources present. No significant effects related to traffic, noise, air quality or water quality will occur.”

CEQA requires the Commission to consider the Lead Agency’s environmental documents and findings before acting upon or approving the

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<sup>9</sup> Public Resources Code Section 21000, *et seq.*

<sup>10</sup> Title 14 of the California Code of Regulations (hereafter, CEQA Guidelines), Section 15002.

<sup>11</sup> CEQA Guidelines, Section 15050(b). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines, Section 15096.

<sup>12</sup> See Exhibit 5 to the Application.

Project.<sup>13</sup> The Commission has reviewed the City's environmental documents and finds them adequate for our decision-making purposes. We also find that the City reasonably concluded that the planned uses of the site will not have an adverse impact on the environment.

For all of the foregoing reasons, we adopt the City of Emeryville's environmental exemption for the purpose of our approval of the construction of the Project, and we grant the City of Emeryville's application for an order authorizing the Project.

### **Categorization and Need for Hearing**

In Resolution ALJ 176-3394 dated May 23, 2017, the Commission preliminarily determined that this proceeding should be categorized as ratesetting and that hearings were required. The Scoping Memo issued on May 15, 2017 confirmed the ratesetting categorization, but concluded that there were no issues of disputed facts requiring evidentiary hearing. Accordingly, we formally change the preliminary determination to find that no hearings are required.

### **Waiver of Comment Period**

This is an uncontested matter. Accordingly, pursuant to Pub. Util Code § 311(g)(3), the 30-day period for public review and comment period does not apply.

### **Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

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<sup>13</sup> CEQA Guidelines, Section 15050(b). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines, Section 15096.

**Findings of Fact**

1. The City of Emeryville's application to construct the South Bayfront Pedestrian Bicycle Bridge, a pedestrian and bicycle bridge above the tracks of Union Pacific Railroad (Project), was filed on March 10, 2017. There were no protests or objections filed to the application.
2. Notice of the application was published in the Commission's Daily Calendar on March 14, 2017.
3. On June 23, 2017, the Commission's Safety and Enforcement Division's RCEB filed a response in support of authorizing the Project.
4. The City of Emeryville is the Lead Agency and the Commission is a Responsible Agency for the Project under CEQA.
5. The Project was granted a categorical exemption under CEQA by the City of Emeryville.
6. The application provides sufficient justification of the need for the Project, and the plans and specifications set forth in the exhibits to the application are acceptable.
7. There are no safety considerations with respect to the Project generally, as it will not have any adverse impacts on the environment.
8. RCEB reviewed the Project's compliance with GO 26-D and does not identify any safety concerns with respect to the Project.

**Conclusions of Law**

1. The application of the City of Emeryville, for approval of the Project should be granted as set forth in the following order.
2. No hearings are required.

3. The City's environmental documents, including the Notice of Exemption granting a categorical exemption to the Project, are acceptable and are adequate for the Commission's decisionmaking purposes under CEQA.

4. The Project is in the public interest for the reasons stated in Section 3.1 of this proposed decision.

5. The Project complies with GO 26-D.

## O R D E R

### IT IS ORDERED that:

1. The City of Emeryville is authorized to construct the South Bayfront Pedestrian Bicycle Bridge over nine rail tracks owned by the Union Pacific Railroad Company in the City of Emeryville in the County of Alameda, to be identified as California Public Utilities Commission Crossing Number 001A-3.93-AD, DOT No.440640N.

2. The new pedestrian bicycle bridge shall have the configuration and specifications detailed in the City of Emeryville's application and exhibits to its application.

3. The City of Emeryville shall notify the California Public Utilities Commission's Safety and Enforcement Division's Rail Crossing Engineering Branch at least five (5) business days prior to opening the pedestrian bicycle bridge. Notification shall be made to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

4. Within 30 days after completion of the work under this order, the City of Emeryville shall notify the California Public Utilities Commission's Safety and Enforcement Division's Rail Crossing Engineering Branch, in writing, by submitting a completed 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 website Form G page at <http://www.cpuc.ca.gov/formg>. This report may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov) as outlined on the web page.

5. Within 30 days after completion of the work under this order, Union Pacific Railroad shall notify the Federal Railroad Administration of the existence of the road over track crossing by submitting a U.S. DOT CROSSING INVENTORY FORM, form FRA F6180.71. Concurrently, Union Pacific Railroad shall provide a copy of the inventory form to the California Public Utilities Commission's Safety and Enforcement Division's Rail Crossing Engineering Branch. This copy of the form may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

6. The City of Emeryville shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

7. 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.

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

9. The application is granted as set forth above.
10. Application 17-03-006 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.