

Decision 08-12-040 December 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the San Francisco Bay Area Rapid Transit for an order authorizing construction of an underground subway structure crossing under the Union Pacific Railroad Company's realigned Warm Springs Subdivision Mainline in the City of Fremont, County of Alameda.

Application 08-09-006
(Filed September 5, 2008;
amended October 10, 2008)

**DECISION GRANTING SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT AUTHORITY TO CONSTRUCT
AN UNDERGROUND SUBWAY STRUCTURE CROSSING
UNDER THE UNION PACIFIC RAILROAD COMPANY'S
WARM SPRINGS SUBDIVISION MAINLINE TRACK**

Summary

This decision grants the request of the San Francisco Bay Area Rapid Transit District (BART) to construct an underground subway structure crossing under Union Pacific Railroad Company's (UPRR) realigned Warm Springs Subdivision mainline track in the City of Fremont, County of Alameda. The subway structure will cross beneath the UPRR track at a location 2300 feet north of Paseo Padre Parkway, and is to be identified as CPUC Crossing No. 001DA-31.60-BT. The underground subway structure is part of BART's Warm Springs Extension (WSX) Project which plans to extend the BART system 5.4 miles south from the current terminus at BART's Fremont Station.

Discussion

BART is the duly constituted political subdivision of the State of California organized and existing under the laws of the State of California and which has

jurisdiction over all BART functions, including engineering, construction, operation and maintenance of a rapid transit system.

BART proposes to construct an underground subway structure crossing under the UPRR Warm Springs Subdivision mainline track in the City of Fremont, County of Alameda as part of BART's WSX Project. BART amended its initial application by filing its environmental findings documentation on October 10, 2008.

In Resolution ST-80 dated October 27, 2005, the Public Utilities Commission granted approval of BART's Safety Certification Plan for the WSX Project. As proposed, the system will be a 5.4-mile extension of the BART system from the existing Fremont Station to a new station in the Warm Springs district of the City of Fremont. Commission staff reviewed the Safety Certification Plan and found it in accordance with Commission General Order 164-C.

The alignment for BART's WSX Project begins on an embankment at the south end of the Fremont Station, passes over Walnut Avenue on an aerial structure and descends into a cut-and-cover subway north of Stevenson Boulevard. The subway structure continues under Fremont Central Park and the eastern arm of Lake Elizabeth, crosses under the UPRR track, and surfaces to run at ground level north of Paseo Padre Parkway. The alignment passes over Paseo Padre Parkway on a bridge structure, continues southward at ground level, passes Washington Boulevard under a grade-separated road structure, and continues at ground level to a terminus station near Warm Springs and South Grimmer Boulevards.

BART proposes to construct the underground subway structure as UPRR trains are detoured on an interim track alignment previously constructed by the City of Fremont. Construction will stay clear of the interim railroad track

alignment while the subway is constructed in the area of the permanent railroad track alignment, and as the permanent track alignment is restored on top of the new subway structure. UPRR will then resume operating trains on the permanent railroad track alignment. Once the final track alignment is accepted by UPRR, BART will remove the interim railroad track and continue its subway construction south of this subway crossing.

BART requests an authorization period of six years to complete this construction. Due to the complex nature of public transit system projects, including obtaining agreements with political subdivisions and other parties, securing funding elements, final design approvals, and the other project components that must precede construction, the request is reasonable.

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 since the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission must approve the project pursuant to Sections 1201-1205, and 99152 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 the public agency with the greatest responsibility for supervising or approving the project as a whole.¹ Here, BART is the lead agency for the WSX Project under CEQA, and the Commission is a responsible agency.

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

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.²

An initial Environmental Impact Report had been prepared in 1992, but due to a number of changes in the proposed alignment in subsequent years, a Supplemental Environmental Impact Report was prepared. Regarding construction near the UPRR track north of Paseo Padre Parkway, the major change made to the proposed WSX alignment was to construct a subway under Lake Elizabeth and under the UPRR Warm Springs Subdivision track, rather than construct an aerial WSX track structure.

The state environmental review process was concluded according to the requirements of CEQA, when on June 26, 2003, the BART Board of Directors certified the final Supplemental Environmental Impact Report (SEIR). The Notice of Determination (NOD) was filed with the County of Alameda on June 27, 2003. The NOD states that 1) the project would have a significant effect on the environment; 2) an Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA; 3) mitigation measures were made a condition of approval of the project; 4) a Statement of Overriding Considerations was adopted for the project; and 5) findings were made pursuant to the provisions of CEQA.

The federal environmental review process was concluded according to the requirements of the National Environmental Protection Act (NEPA),³ when on October 24, 2006, the Federal Transit Administration (FTA) issued a Record of

² CEQA Guidelines, Sections 15050 (b) and 15096.

³ 42 USC 4332 (2)(c) of 1969 as amended. Projects undertaken in California that utilize federal funds, require discretionary federal approval or are undertaken by federal agencies are subject to both NEPA and CEQA.

Decision (ROD) finding “that all reasonable alternatives and significant impacts on the environment associated with the WSX Project have been evaluated and mitigation measures are described in the Final Environmental Impact Statement (FEIS) that are to be incorporated into the proposed action.”

Traffic and noise impacts are within the scope of the Commission’s permitting process. Regarding most potentially significant noise and transportation impacts identified in the SEIR, the Commission finds that BART adopted feasible mitigation measures to either eliminate or substantially lessen those impacts to less-than-significant levels.⁴ BART adopted a Statement of Overriding Considerations to address unavoidable impacts, including traffic and noise impacts,⁵ that could not be feasibly mitigated to less-than-significant levels. As part of the CEQA environmental decision process, a Mitigation Monitoring and Reporting Plan (MMRP) was adopted by BART.⁶ We will adopt BART’s environmental findings and mitigations for purposes of our approval.

The coordination and relocation procedures outlined in the FEIS prepared by BART reduce any impact to UPRR operations during construction. When BART operations begin, BART and UPRR will operate trains independently on separate tracks.⁷

Filing Requirements and Staff Recommendation

The application is in compliance with the Commission's filing requirements, including Rule 3.11 of the Rules of Practice and Procedure, which relates to the construction of light-rail transit system crossings.

⁴ See e.g. Draft SEIR, Table ES-2.

⁵ See e.g. Draft SEIR, Page ES-9.

⁶ See e.g. FEIS, Appendix B.

⁷ See e.g. FEIS, p. 4.2-16

The Commission's Consumer Protection and Safety Division – Rail Transit and Crossings Branch reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant BART's request.

Categorization and Need for Hearings

In Resolution ALJ 176-3221 dated September 18, 2008, and published in the Commission Daily Calendar on September 19, 2008, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3221.

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

Richard Clark is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on September 19, 2008. There are no unresolved matters or protests. A public hearing is not necessary.
2. BART requests authority, under Public Utilities Code Sections 1201-1205, and Section 99152, to construct a subway track beneath UPRR's Warm Springs Subdivision mainline track in the City of Fremont, County of Alameda.
3. BART requests authority to complete the subway crossing within a period of six (6) years.

4. BART is the lead agency for this project under CEQA, as amended. On June 26, 2003, the BART Board of Directors certified the SEIR for the entire project and on June 27, 2003, BART filed a NOD approving the project, finding that the WSX Project would have a significant impact on the environment and adopting mitigation measures as a condition of project approval. A Statement of Overriding Considerations was adopted for this project.

5. The FTA and BART are joint lead agencies for this project under NEPA. On October 24, 2006, the FTA issued a ROD regarding the FEIS.

6. The Commission is a responsible agency for this project.

7. The Commission has reviewed and considered the lead agency's SEIR and NOD and the joint lead agencies' FEIS and ROD.

Conclusions of Law

1. The final SEIR prepared by BART has the documentation required by CEQA for the project and is adequate for our decision-making purposes.

2. We adopt BART's findings and mitigation measures.

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

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

O R D E R

IT IS ORDERED that:

1. San Francisco Bay Area Rapid Transit (BART) is authorized to construct the underground subway structure under the Union Pacific Railroad (UPRR) mainline track located approximately 2300 feet north of Paseo Padre Parkway at the location as shown on the plans attached to the application, to be identified as CPUC Crossing No. 001DA-31.60-BT.

2. Clearances shall conform to General Order (GO) 26-D.

3. Walkways shall conform to GO 118.

4. Construction and maintenance costs shall be borne in accordance with an agreement between BART and UPRR (parties). A copy of the agreement shall be filed with to the Commission's Rail Crossings Engineering Section staff (RCES) prior to starting construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

5. Within 30 days after completion, BART shall notify the Commission's Consumer Protection and Safety Division-Rail Transit and Crossing Branch in writing by submitting a completed Standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations) that the authorized work is completed.

6. This authorization shall expire if not exercised within six years unless time is extended or if the above conditions are not satisfied. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

7. A request for extension of the six-year authorization must be submitted to RCES at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

8. The application is granted as set forth above.

9. Application 08-09-006 is closed.

This order becomes effective today.

Dated December 18, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners