

S&E/ARO

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Decision 95-11-021 November 8, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the East Bay Regional Park District for the Construction of a Pedestrian/Bicycle Trail Undercrossing at the Right-of-Way of the Atchison, Topeka, and Santa Fe Railway Company, at crossing No. 1145.0.	}	Application 95-03-065 (Filed March 31, 1995)
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O P I N I O N

The East Bay Regional Park District (EBRPD) requests authority to construct the Marsh Creek Trail, at separated grades, under the main line tracks of the Atchison, Topeka, and Santa Fe Railway Company (ATSF) in Contra Costa County.

The proposed trail would connect an existing pedestrian/bicycle path at Cypress Road to the San Joaquin River at Big Break. The trail would parallel Marsh Creek to the east. At milepost 1145.0 of the ATSF main line, the trail would pass under the Marsh Creek Bridge with a vertical clearance of eight (8) feet.

EBRPD is the lead agency for the project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code Sections 21000, et. seq. EBRPD has determined that the project is categorically exempt from CEQA under Title 14, Division 6, Chapter 3, Article 19, Section 15304 (d) of the California Code of Regulations. Said section applies to minor alterations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production.

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The Commission is a responsible agency for the project under CEQA and has reviewed and considered the lead agency's Notice of Exemption.

ATSF filed a protest to Application 95-03-065 on May 5, 1995 stating that ATSF and applicant were not yet in agreement over the method of construction and the terms pursuant to which such construction should be undertaken. ATSF withdrew its protest by filing dated July 26, 1995.

The site of the proposed project has been inspected by the Commission's Safety and Enforcement Division Traffic Engineering staff. The staff examined the need for and safety of the proposed crossing and recommends that the sought authority be granted. EBRPD has expressed the desire to begin construction at the earliest possible date, therefore, this order should be effective immediately.

Application 95-03-065 meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38 which relates to the construction of a public road, highway, or street across a railroad. A sketch of the crossing project area is set forth as Appendix A.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on April 18, 1995. A protest filed by ATSF on May 5, 1995, was withdrawn on July 26, 1995. No further protests have been filed.
2. EBRPD requests authority, under Public Utilities Code Sections 1201-1205, to construct the Marsh Creek Trail at separated grades under the main line track of ATSF in Contra Costa County.
3. EBRPD is the lead agency for this project under CEQA, as amended.
4. Public convenience, necessity, and safety require construction of the proposed trail at separated grades.

5. The Commission is a responsible agency for the project and has reviewed and considered the lead agency's Notice of Exemption.

Conclusions of Law

1. There are no unresolved protests, and a public hearing is not necessary.

2. The activity is not covered by the requirements set forth in CEQA and, therefore, the Guidelines (Title 14 California Code of Regulations - Division 6) concerning the evaluation of projects and the preparation and review of environmental documents do not apply.

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

O R D E R

IT IS ORDERED that:

1. The East Bay Regional Park District (EBRPD) is authorized to construct the Marsh Creek Trail, at separated grades, under the main line tracks of the Atchison, Topeka, and Santa Fe Railway Company (ATSF) in Contra Costa County, at the location and substantially as shown on plans attached to the application and Appendix A of this order, to be identified as Crossing 002-1145.0-BD.

2. Clearances shall be in accordance with General Order (GO) 26-D.

3. 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.

4. Construction plans of the proposed crossing, approved by ATSF, together with a copy of the agreement entered into between the parties, shall be filed by EBRPD with the Commission's Safety and Enforcement Division prior to commencing construction.

5. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between the parties. A copy of the agreement shall be filed with the Commission's Safety and Enforcement Division prior to commencing construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

6. Within thirty (30) days after completion of the work under this order, EBRPD shall advise the Commission's Safety and Enforcement Division in writing that the authorized work has been completed.

7. This authorization shall expire if not exercised within three (3) 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.

8. The application is granted as set forth above.

This order is effective today.

Dated November 8, 1995, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

