

Mailed: 10/15/97

Decision 97-10-014 October 9, 1997

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Santa Clara County )  
 Transit District (CIS 410.45.5) for an )  
 order authorizing construction of an at-) )  
 grade street crossing across the )  
 westbound and eastbound LRT tracks on )  
 Tasman Drive of the Tasman Corridor )  
 Project at the Adobe Wells Mobile Home )  
 Park intersection in the City of )  
 Sunnyvale, County of Santa Clara. )

Application 96-12-069  
(Filed December 5, 1996)

O P I N I O N

As part of the project to construct a 12-mile extension to its existing Light Rail Transit (LRT) system, the Santa Clara Valley Transportation Authority (VTA), formerly the Santa Clara County Transit District, requests authority to construct its track along Tasman Drive at grade across the entrance to Adobe Wells Mobile Home Park in Sunnyvale, Santa Clara County.

The extension, known as the Tasman Corridor Project (project), is a proposed double track line constructed for much of its length in the median of existing arterial streets between Mountain View and East San Jose. The project is to be completed in two phases. Phase 1 will construct the West Extension through Sunnyvale to Downtown Mountain View, and Phase 2 will construct the East Extension and items deferred in the West Extension.

VTA is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code Sections 21000, et seq. After preparation and review of a Final Environmental Impact Statement (FEIS), VTA filed a Notice of Determination with the Santa Clara County Clerk on January 12, 1993, which found that "The project will have a significant effect on the environment," and "Mitigation measures

were made a condition of approval of the project."

Major impacts include elimination of bicycle lanes and landscape trees on some portions of the route, increased traffic noise, and disturbance of two National Historic Place sites. Mitigation measures include implementation of an alternative route bike path, tree replacement, construction of noise walls, and Historic Properties Data recovery.

The Commission is a responsible agency for this project under CEQA and has reviewed and considered the lead agency's FEIS.

The site of the proposed project has been inspected by the Traffic Engineering Section (staff) of the Commission's Rail Safety and Carriers Division. Staff examined the need for and safety of the proposed grade crossing, and recommends issuance of an ex parte order authorizing construction as requested.

The proposed crossing will be located approximately 200 feet east of the Birchwood Drive crossing (PUC No. 82B-7.20). Because of their proximity to each other, traffic signals at both crossings will be coordinated and preempted by LRT.

The application meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 40, which relates to the construction of a railroad track across a public street. A sketch of the project vicinity is included as Appendix A.

Due to the large scope of the Tasman Corridor project, VTA requests that the time authorization be extended to four (4) years to facilitate its construction schedule.

#### Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on January 13, 1997. No protests have been filed.

2. VTA requests authority under Public Utilities Code Sections 1201-1205 to construct its light rail tracks across the

Adobe Wells Mobile Home Park intersection in Sunnyvale, Santa Clara County.

3. The crossing is an essential element of the Tasman Corridor Project extension of the VTA LRT system.

4. Public convenience, necessity, and safety require construction of the proposed crossing.

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

6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIS.

7. The project will have a significant impact on the environment; however, the adopted mitigation measures will reduce the severity of the adverse impacts to acceptable levels.

Conclusions of Law

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

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

O R D E R

IT IS ORDERED that:

1. Santa Clara Valley Transportation Authority (VTA) is authorized to construct its tracks at grade across the entrance to Adobe Wells Mobile Home Park in Sunnyvale, Santa Clara County, at the location and substantially as shown by plans attached to the application, to be identified as Crossing No. 82B-7.17.

2. Construction of the crossing shall be equal or superior to Standard No. 1 of General Order (GO) 72-B.

3. Maintenance of the crossing shall conform to GO 72-B.

4. Clearances shall be in accordance with GO 143-A.

5. Protection at the crossing shall be vehicular and pedestrian traffic signals and signage. Traffic signals shall be coordinated with the Birchwood Drive crossing (PUC No. 82B-7.20) and shall be pre-empted by train movements to avoid conflicting aspects. The movement of Light Rail Vehicles (LRV) at this crossing shall be controlled by signals which are for the exclusive use of LRV's. There shall be no "U" turns for eastbound traffic along Tasman Drive at the crossing.

6. Walkways shall conform to GO 118.

7. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between VTA and the City of Sunnyvale (City). A copy of the agreement, together with plans of the crossing approved by City shall be filed by VTA with the Commission's Rail Safety and Carriers Division prior to commencing construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

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

9. This authorization shall expire if not exercised within four (4) 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.

10. The application is granted as set forth above.

11. Application 96-12-069 is closed.

This order becomes effective 30 days from today.

Dated OCT 9, 1997, at San Francisco, California.

P. GREGORY CONLON

President

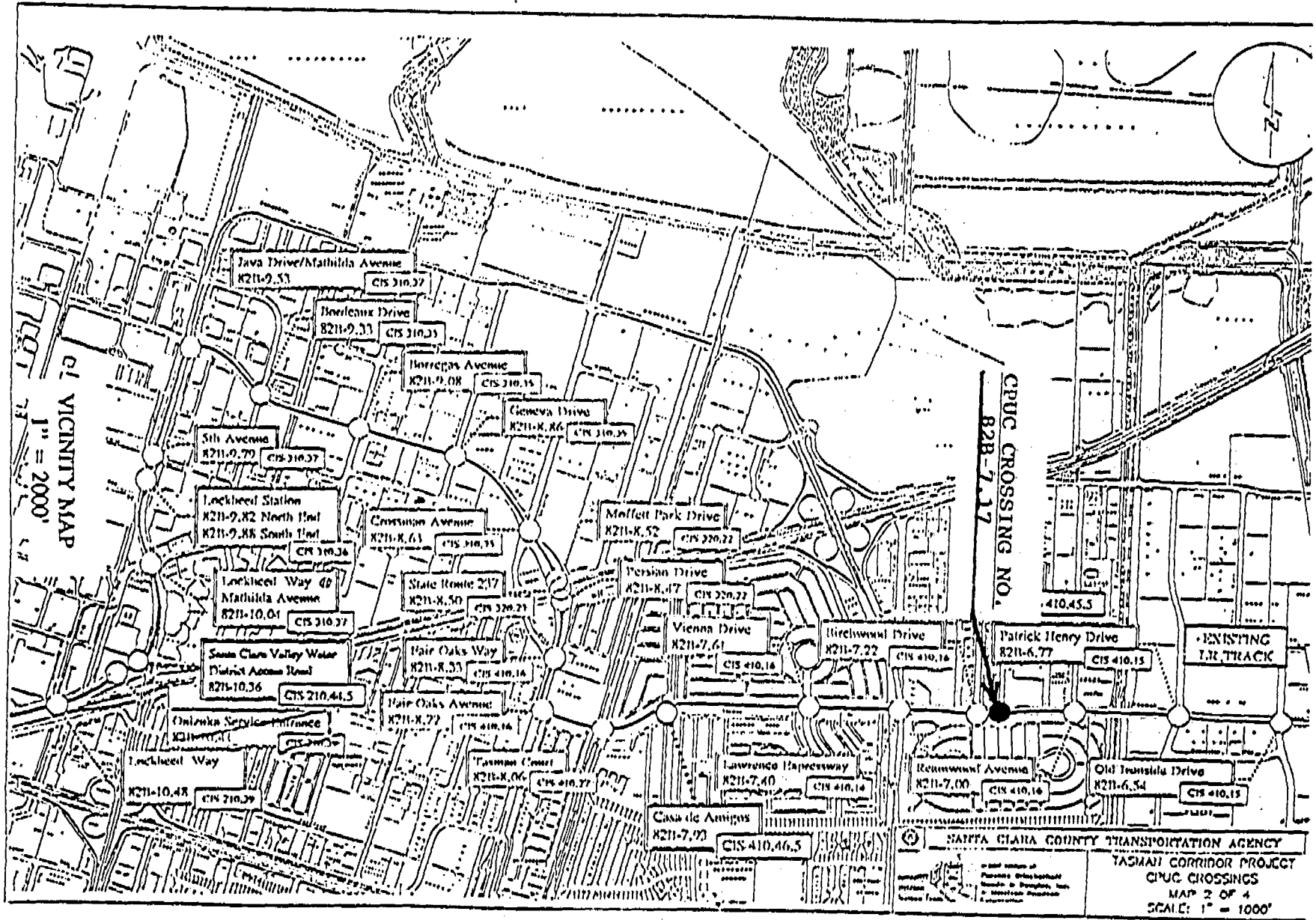
JESSIE J. KNIGHT, JR.

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JOSIAH L. NZEPER

RICHARD A. BILAS

Commissioners



Decision 97-10-015 October 9, 1997

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

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority Lease Available Land at the Merced Substation Site to SSD, LLC.

Application 97-07-010  
(Filed July 11, 1997)

**ORIGINAL**

**O P I N I O N**

**1. Summary**

Southern California Edison Company (Edison) seeks authority to lease 2.43 acres of land it owns at the Merced Substation site in the City of West Covina to a self-storage firm in a manner that will not interfere with Edison's use of the property for transmission facilities. The application is granted.

**2. Background**

Edison's Merced Substation is located on a 4.58-acre site in the City of West Covina.<sup>1</sup> Edison acquired portions of the land in 1959 and the rest in 1971. The 66-kilovolt Merced Substation is used in transmission of electricity to homes and businesses in West Covina and Covina.

Edison proposes to lease 2.43 acres of land at the substation to SSD, LLC, for development and operation of a self-storage facility. Secondary uses of the 2.43 acres of utility property adjacent to the substation facilities are limited by access restrictions. Throughout the lease period, Edison would continue to own and operate the substation, and it would retain unobstructed access to the facilities. Edison states that revenue from the lease would be shared with Edison's ratepayers.

<sup>1</sup> The property is located at the southeast corner of Azusa Avenue and Francisquito Avenue. It is bounded on the north and east by residential properties, to the south by commercial properties and to the west by Azusa Avenue.

**3. Terms of the Lease**

The lease agreement grants SSD an option to license the property for the development and operation of a self-storage facility. The initial term of the license is 30 years, beginning on the date SSD exercises the option. SSD can renew the license for two additional 10-year terms. SSD would pay an annual base license fee of \$24,000 in the first year; \$36,000 in the second year, and \$50,000 in the third through tenth year of the license term. The base license fee would be adjusted at the end of the tenth and twentieth years and upon exercise of the two renewal options, based on the then-current fair market value of the property. In no event, however, would the adjusted base license fee be less than the amount of the fee payable in the year immediately prior to the adjustment. As an additional fee, at the end of each year beginning with the fourth year of the license, SSD would pay the excess of 20% of its gross revenues over the base license fee for the same year.

The agreement provides that SSD's activities must not interfere with the operation of the Merced Substation. SSD would not be permitted to use any area directly underneath electrical towers, and it would be required to maintain a 50-foot radius around all tower legs and a 10-foot radius around all steel and wood poles. SSD would provide and maintain access roads on the property. The lessee would be responsible for obtaining all permits and approvals for construction, as well as any zoning changes or use permits required for the operation of a self-storage facility.

Under the lease, SSD would be responsible for all personal property taxes and fees levied against the property and improvements, and would maintain comprehensive liability insurance. SSD would indemnify Edison against all liability for damages or injury to persons or property not caused by Edison's negligent or willful misconduct.



**4. Determination of Best Secondary Use**

Edison states that its objective in selecting secondary uses for utility property is to find those uses that will provide the greatest revenue consistent with the utility's obligation to maintain the safety and reliability of its facilities. To evaluate secondary uses for this type of property, Edison in 1990 conducted a survey of the secondary use policies of nine utilities across the nation. Edison states that the survey showed four appropriate uses for the unused portions of similar properties: auto parking, recreation vehicle storage, equipment storage, and self-storage. Of those uses, Edison states that a self-storage facility offered the highest level of revenue for the Merced Substation site.

To evaluate the rental value for the site, Edison's financial analyst reviewed the rent paid by comparable self-storage facilities in Southern California. According to Edison, the annual base license fee that Edison will receive from SSD (approximately 20% of projected gross revenues) falls within the acceptable market range established by the analysis of similar uses.

**5. Selection of Developer**

Edison, in January 1996, mailed a request for proposal to prospective developers. The request was not limited to self-storage developers. Edison received two responses, both for self-storage facilities. Edison states that it selected SSD because of its proposed use of the property and the background and financial position of the company.

SSD, formerly Power Storage LLC, was formed by Cook Properties, Inc., and EJW Development Group to design, construct and manage self-storage facilities. Glenn Cook is the founder and president of Cook Properties, and EJW Development is comprised of Eitel-Wade, Inc., and Jordan-Valli Architects, Inc. SSD was established in June 1996. The companies that formed SSD are Cook Properties, a Utah limited liability company that has been in existence since March 1994; EJW Development Group, Inc., which consists of two firms, Jordan-Valli Architects, a full-service design firm specializing in self-storage projects,

and Eitel-Wade, Inc., a firm specializing in self-storage facilities throughout the United States. During the last four years, Eitel-Wade has constructed 21 self-storage facilities.

**6. Treatment of Revenues**

In its application, Edison states that all of the revenues from the proposed lease will be treated as Other Operating Revenue. Under presently authorized ratemaking treatment for Other Operating Revenue, Edison will record 50% of the revenues from the SSD lease in a Secondary Land Use Revenue Memorandum Account pending a final disposition on the ratepayers' share of such revenues.

Edison is raising the issue of disposition of Secondary Land Use Memorandum Account revenue in Edison's Application (A.) 97-06-021, filed on June 12, 1997. That application seeks approval of a new sharing mechanism for gross revenues received from enhanced utilization of utility assets, including leases of available land. A.97-06-021 is in the early stages of deliberation. Accordingly, until the Commission rules on the sharing mechanism issue, Edison proposes to file an advice letter adding the SSD lease to the Secondary Land Use Revenue Memorandum Account, with final disposition of revenue sharing subject to a Commission decision. In the meantime, Edison and SSD could proceed with development of the Merced Substation property.

**7. Comments by Advocacy Staff**

On August 14, 1997, the Commission's Office of Ratepayer Advocates (ORA) submitted comments supporting Edison's application on the condition that ratepayers share in the revenues realized by the proposed secondary use. ORA notes that it is participating in the proceedings in A.97-06-021, and it does not oppose temporary placement of 50% of lease revenues in the Secondary Land Use Revenue Memorandum Account subject to a Commission decision on the accounting treatment to be accorded in transactions of this nature. ORA states that it will review applications of this nature on a case-by-case basis, and its

support of this application does not imply its approval of other Section 851 applications.

**8. Discussion**

Section 851 of the Public Utilities Code (PU Code) provides that no public utility "shall...lease...[property] necessary or useful in the performance of its duties to the public...without first having secured from the [C]ommission an order authorizing it so to do." The relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is "adverse to the public interest." (See, e.g., Universal Marine Corporation (1984) 14 CPUC2d 644.)

The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect the utility's operation of the Merced Substation facilities in West Covina. Indeed, the Commission has determined that the public interest is served when utility property is used for other productive purposes without interfering with the utility's operation.<sup>2</sup> Because the proposed agreement will increase the level of revenues Edison can obtain from secondary use of the land in question, with no additional ratepayer risk, the application should be approved.

There remains the issue of ratemaking treatment to be accorded the revenues from the lease. In the past, revenues received prior to January 1, 1995, have been treated as a direct credit to Edison's electric revenue adjustment mechanism (ERAM) balancing account for disposition and ratepayer accrual in Edison's test year general rate case. As we changed to Performance-Based Ratemaking, we recognized that there might be no opportunity in the future to recognize lease revenues not included in the forecasts. Accordingly, in D.96-07-058, issued on July 17, 1996, we adopted an interim mechanism that would not only benefit ratepayers but would give Edison an incentive to

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<sup>2</sup> In D.93-04-019, we observed: "Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers."

negotiate sensible and lucrative lease agreements. We directed Edison to use a sharing mechanism for revenue, providing for a 50/50 split between Edison's shareholders and its ratepayers, with the ratepayers' share to be treated as a direct credit to the ERAM account.

In D.96-09-092, issued on September 20, 1996, we adopted a Performance-Based Ratemaking mechanism for Edison beginning January 1, 1997. That decision eliminated the ERAM balancing account as a ratemaking tool.

On December 9, 1996, in approving a lease application similar to this one, the Commission in D.96-12-024 directed Edison to preserve a 50/50 sharing of revenue between the utility and ratepayers. All of the revenues from the lease in D.96-12-024 were credited to Edison's Other Operating Revenue Account 454.611 (Secondary Land Use), with Edison's 50% to be credited to the utility, and the ratepayers' 50% placed in a Memorandum Account until further order by the Commission.

We are considering this ratemaking treatment in Edison's application (A.97-06-021) filed in June 1997. Pending further Commission action on the ratemaking issue, our order today directs Edison to deal with the revenue from the Merced Substation lease in the same manner that we directed in D.96-12-024.

#### **Findings of Fact**

1. Edison is an electric public utility subject to the jurisdiction and regulation of this Commission.
2. Edison has property at the Merced Substation in the City of West Covina available for secondary use, and it seeks to obtain revenue for ratepayers and shareholders through a secondary use lease.
3. Subject to Commission authorization required under PU Code Section 851, Edison has negotiated a long-term lease proposal for the available property to provide lease revenues with no interference with the operation of the Merced Substation.

4. The proposed lessee, SSD, is a newly formed, limited-liability company, the management of which is experienced in the design, construction and management of self-storage facilities throughout the United States.

5. SSD will finance, construct and maintain a self-storage facility at the Merced Substation site, bearing the costs and making payments to Edison.

6. Revenue will be shared 50/50 between the utility and ratepayers, by crediting all revenue, with appropriate workpapers, through Edison's Other Operating Revenue Account 454.611 (Secondary Land Use), with Edison's 50% credited to the utility, and the ratepayers' 50% held in a Memorandum Account until further order by the Commission.

7. It can be seen with reasonable certainty that the proposed use will produce no significant effect on the environment.

8. ORA does not oppose this application, and it does not oppose the proposed method of dealing with revenue pending a final Commission decision on secondary land use revenue.

#### **Conclusions of Law**

1. No public hearing is necessary.

2. Joint use of utility property should be encouraged in appropriate cases because of the obvious economic and environmental benefits.

3. Our approval of this application is exempt from provisions of the California Environmental Quality Act.

4. Edison should be authorized pursuant to PU Code Section 851 to lease the designated 2.43 acres of available land at its Merced Substation site to SSD on the terms and conditions set forth in the application.

5. The proposed 50/50 split of the revenues to be derived from the lease is consistent with the division determined to be applicable to license/lease agreements not involving incremental costs, as adopted in D.96-07-058.

6. Because of the benefits of this lease agreement for the utility and for ratepayers, approval of this application should be made effective immediately.

**O R D E R**

**IT IS ORDERED that:**

1. Southern California Edison Company (Edison) is authorized to enter into a lease of 2.43 acres of its Merced Substation site in the City of West Covina to SSD, LLC, under the terms and conditions set forth in this application.

2. As received, all revenues from the lease authorized shall be credited to Edison's Other Operating Revenue Account 454.611 (Secondary Land Use) with workpapers showing the calculation of this credit. Fifty percent of this credit shall accrue to the utility, and 50% to the ratepayers, with the ratepayers' portion to be held in a separate Memorandum Account until further order by the Commission as to its disposition.

3. Edison shall notify the Director of the Energy Division, in writing, of any substantial amendments to, extension of, or termination of the lease agreement, within 30 days following the execution of such amendments, extensions or termination.

4. Application 97-07-010 is closed.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
Commissioners