

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of American Canyon for Approval to Construct a Public At-Grade Crossing of the California Northern Railroad Track, Located in Napa County, State of California.

Application 01-09-021
(Filed September 13, 2001)

And Related Matter.

Application 05-05-014

**DECISION GRANTING EXTENSION OF TIME FOR
CONSTRUCTION OF AN AT-GRADE CROSSING**

Summary

Today's decision grants the petition of the City of American Canyon (City) for modification of Decision 13-04-003. By granting the petition, today's decision extends for two years the time within which the City is authorized to construct a specific at-grade crossing, and describes those tasks and reporting milestones that City must accomplish before the end of the two-year extension.

1. Historical Background

Since 2001, the City of American Canyon (City) has been planning to construct a public at-grade crossing at South Napa Junction Road (Crossing). The City asserts that the construction of the Crossing is a mandatory duty of the City as the City is required, pursuant to Government Code § 65103(b), to implement its General Plan through its actions and approval. The City asserts that not only is the Crossing required by the City's General Plan Circulation Element, but that it is also essential to the Specific Plan being prepared for the

Watson Ranch. Per the City's Notice of Preparation of an Environmental Impact Report (EIR) for the Watson Ranch Specific Plan, the Crossing is also a key part of the Watson Ranch/Town Center Project (Project).

2. Procedural Background

2.1. Application 01-09-021 and Decision 02-06-059

Application (A.) 01-09-021, submitted on September 13, 2001, asked the Commission for authority to construct a public at-grade crossing of the California Northern Railroad track, located in Napa County. Decision (D.) 02-06-059, issued on June 27, 2002, granted the City the authority to do the following:

- Replace the existing unprotected private at-grade crossing, at Frisby Lane, and construct a new, protected, public at-grade crossing at the same location; the new public crossing would be identified as Donaldson Way, Public Utilities Commission Crossing No. 108AAB-62.72.
- Create a new public crossing at Donaldson Way to be protected with an active warning system and standard roadway markings and signage for railroad-highway grade crossings.
- Directed the City and Union Pacific Railroad Company to jointly assume the construction and maintenance costs in accordance with an agreement entered into between parties.
- Set the City's authorization to expire within two years (until 2004).

2.2. Application 05-05-014 and Decision 06-09-016

In 2005, the City filed A.05-05-014 seeking authority to replace an existing private crossing over the California Northern Railroad at South Napa Junction Road in Napa County with the Crossing. The City also requested modification of D.02-06-059 to extend for two years its authority to establish a public crossing at Donaldson Way. Authority to establish the Donaldson Way crossing was

granted D.02-06-059, but that authority had lapsed under the terms of the Commission's order. Both railroad crossings were included in the City's General Plan, as part of an extensive redevelopment project.

On September 7, 2006, the Commission issued D.06-09-016 which, among other things:

- Adopted a Settlement agreement without modification entered into on April 6, 2006 between the City, parties, and selected non-parties.
- Granted the City's request to extend the authority granted in D.02-06-059 or two years (until 2008).

The Donaldson Way crossing was constructed within the two-year extension granted by D.06-09-016 but the Crossing was not.

2.3. The Extension Letter

The City sent a letter to the Commission's Executive Director in 2008 requesting a two-year extension. On August 11, 2008, the Executive Director granted an extension until September 7, 2010, and noted that, if the City needed time beyond September 7, 2010, to complete its projects, it would have to file a petition for modification.

2.4. The Petition for Modification of D.06-09-016

On July 23, 2010, the City filed a petition for modification of D.06-09-016 to provide a further two-year extension beyond that allowed by the Executive Director. On November 19, 2010, the Commission issued D.10-11-004 which, among other things:

- Extended for two years the authority conferred by D.06-09-016 to construct the Crossing.
- Directed the City to file a new application for authority to construct the Crossing if it was unable to complete the crossing

within the time provided for in the Order or by November 19, 2012.

2.5. The Petition for Modification of D.10-11-004

On November 6, 2012, the City filed a petition for modification of D.10-11-004 to request another two-year extension. On April 4, 2013, the Commission issued D.13-04-003, which among other things:

- Granted the City's request for an additional two-year extension (until April 2015) to construct the Crossing.
- Directed the City to file, within 120 days before the expiration of the extension, a report on the status of the Project to the Commission's Director of Safety and Enforcement Division; as well as a Project site visit with the Commission's railroad crossing staff.
- Closed A.01-09-021 and A.05-05-014.

2.6. The Instant Petition for Modification

On April 1, 2015, the City filed a petition for modification of D.13-04-003, requesting among other things, that the Commission:

- Grant a two-year extension to construct the Crossing;
- Hold in abeyance any action on the subject request for extension until the City (1) completes its environmental review; (2) informs the Commission about the specific crossing alternative it has approved; and (3) provides supplemental information that the approved crossing is endorsed by the City (Council by vote) and is consistent with the public interest and all considerations related to public safety.

The City explains that it had accomplished the following tasks:

- The review of the second Administrative Draft Specific Plan was performed from January to March 2015;
- The Project Description for the EIR was completed in March 2015;

- The City Planning Commission and City Council held a Study Session on the Specific Plan on January 27, 2015;
- The Notice of Preparation was issued and the 30 day comment period ended on March 9, 2015;
- The City approved Water Demand Assumptions Analysis;
- An Updated Hydrologic Study was completed and presented to the City Council on March 31, 2015;
- The City adopted a new General Plan Housing element on March 17, 2015;
- The City met in February and March 2015 with the Project Applicant to perform a Fiscal Analysis with the Project; and
- Several Community Workshops occurred.

No opposition to the petition has been filed.

3. Discussion

Construction of the Crossing has experienced significant delays including, but not limited to, new state requirements for land use and planning,¹ an ongoing drought and an earthquake. The City must complete and vote on a Final Environmental Impact Report considering two project alternatives for the Crossing: a two-lane or four-lane crossing at South Napa Junction Road.

Given the length of time that has elapsed since the City's original application was approved, there are concerns about the City's ability to complete this Crossing in the next two years. However, in light of the City's progress to

¹ Relevant statutes include the California Global Warming Solutions Act of 2006 (Ch. 488 of Stats, 2006) and the California Complete Streets Act (Ch. 657 of Stats. 2008). Regarding the latter statute, the City has adopted a "Complete Streets Policy" and is in the environmental review process of its "Bicycle Master Plan."

date and the need for the Project and the Crossing, approval of the extension as requested by the City is reasonable but with conditions, as discussed below.

D.13-04-003 noted that when the Commission grants authority to construct a project, it does so with the expectation that there is a public need and that the project will be completed in a reasonable time. We reiterate that general approach and the fact that we should not extend deadlines for project authorization without considering the impact the extension has on the public need and safety, and on Commission resources.

As discussed in D.13-04-003, the Crossing is an essential element of the City's development plan and the Project. Expeditious construction of the Crossing will improve public safety.

We acknowledge that the causes for many of the delays associated with this Project have been varied and in some instances outside of the City's control.²

D.02-06-059 authorized construction of the Crossing more than 13 years ago. Given all the delays in constructing this Crossing, one possible approach is to dismiss the current petition and direct the City to submit a new application when it is ready to proceed.

However, the City asks that the application not be dismissed because it and Watson Ranch have already expended over \$2.28 million in connection with the environmental analyses and report, legal work and staff time.³ Therefore,

² The delay has been due to: (1) the instability of the housing market and overall economic climate; (2) the need to revise the City's General Plan; (3) the need to update the General Plan's Housing Elements; and (4) the current drought.

³ City's response to the August 4, 2015 Administrative Law Judge (ALJ) Ruling at 6-7.

submitting a new application would require extensive duplicative expenditures of funds.

However, we must be satisfied that the City is expeditiously moving this Project forward. To that end, the August 4, 2015 ALJ ruling directed the City to provide status on several Project-related activities. We have reviewed this information and conclude that the City has made substantial progress toward completing the tasks required for the Crossing. The City should be able to complete all the tasks addressed in the August 4, 2015 ALJ ruling by the end of 2015. Barring unforeseen events beyond the City's control, this Crossing can be completed within the time that the City requests an extension.

We expect the City to take all necessary steps to ensure that the remaining milestones are completed within the time frames identified in the City's response to the August 4, 2015 ALJ ruling, and will monitor its progress. To that end, no later than February 1, 2016, the City must submit a status report to the Commission's Director of the Safety and Enforcement Division, with a copy served on California Northern Railroad Company and Union Pacific Railroad, that:

- Addresses the status of all the items identified in its response to the August 4, 2015 ALJ ruling;
- Identifies any incremental task(s) associated with the Crossing;
- Informs the Commission about the vote for approval of the Crossing; and
- Provides the Commission with a schedule for the completion of the Crossing within the two-year extension granted by this decision.

We also require the City to submit progress reports to the Director of the Safety and Enforcement Division on August 1, 2016, December 1, 2016, and August 1, 2017, regarding the status of the construction of the Crossing.

Commission staff should discuss with the City any concerns about the City's progress reports, and work with the City and Watson Ranch to address any safety concerns with the construction of this Crossing.

4. Categorization and Need for Hearing

Resolution ALJ 176- 3072, dated October 2, 2001, preliminarily categorized Application 01-09-021 as "ratesetting," and preliminarily determined that evidentiary hearings were not necessary. Resolution ALJ 176- 3153, dated May 26, 2005, preliminarily categorized Application 01-09-021 as "ratesetting," and preliminarily determined that evidentiary hearings were necessary but D.06-09-016 subsequently determined that no hearing was necessary. The petition for modification does not affect the category. The petition is unopposed. Therefore, no hearing is necessary.

5. Comments on Proposed Decision

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), the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Decision 02-06-059 in A. 01-09-021 granted the City the authority to replace the existing unprotected private at-grade crossing, at Frisby Lane, and construct

a new, protected, public at-grade crossing at the same location identified as Donaldson Way.

2. D.06-09-016 in A.05-05-014 authorized the City to replace an existing private crossing over the California Northern Railroad at South Napa Junction Road in Napa County with the Crossing, and extended for two years the authority granted by D.02-06-059 to establish a public crossing at Donaldson Way.

3. The Donaldson Way crossing was constructed within the two-year extension granted by D.06-09-016 but construction of the Crossing authorized in D.06-09-016 was delayed.

4. The City sent a letter to the Commission's Executive Director in 2008 requesting a two-year extension of time to construct the Crossing authorized in D.06-09-016. On August 11, 2008, the Executive Director granted an extension until September 7, 2010, and noted that, if the City needed time beyond September 7, 2010, to complete its projects, it would have to file a petition for modification.

5. On July 23, 2010, the City filed a petition for modification of D.06-09-016 to provide a further two-year extension beyond that granted by the Executive Director. D.10-11-004, among other things, extended for two years the authority granted by D.06-09-016 to construct the Crossing, and directed the City to file a new application for authority to construct the Crossing if it was unable to complete the crossing by November 19, 2012.

6. On November 6, 2012, the City filed a petition for modification of D.10-11-004 to request another two-year extension. D.13-04-003 granted an additional two-year extension until April 2015, to construct the Crossing, and directed the City to file, within 120 days before the expiration of the extension, a

report on the status of the Project to the Commission's Director of Safety and Enforcement Division, and a Project site visit with the Commission's railroad crossing staff.

7. On April 1, 2015, the City filed a petition for modification of D.13-04-003, requesting, among other things, another a two-year extension to construct the Crossing, and that the Commission hold in abeyance any action on the subject request for extension until the City completes its environmental review, informs the Commission about the specific crossing alternative it has approved, and provides supplemental information that the approved crossing is endorsed by the City (Council by vote) and is consistent with the public interest and all considerations related to public safety.

8. The South Napa Junction Road Crossing is an essential element of the City's development plan.

9. The City and Watson Ranch have collectively expended approximately \$2.28 million for environmental analyses, legal work and staff costs.

10. The Commission has spent considerable staff time and resources responding to the City's applications and petitions.

11. The City has made substantial progress toward completing the tasks required for completion of the Crossing.

12. Factors beyond the City's control, including prevailing economic conditions, have caused further delays of the construction of the Crossing.

13. Despite the passage of time since the City first sought authority to construct the proposed Crossing, the need for that Crossing and the relevant engineering plans and other studies remain valid. The need for the crossing is premised on future development consistent with the City's General Plan. This

future public need continues to exist exactly as it did at the time we first approved construction of this crossing.

14. Granting an extension to construct the Crossing does not compromise public safety or any current public need.

Conclusions of Law

1. The City's request for an extension of time to construct the South Napa Junction Road Crossing is reasonable. The Commission should not terminate the authority but should impose reporting requirements on the City.

2. Construction of the South Napa Junction Road Crossing will promote the public health, safety, comfort, and convenience, consistent with Pub. Util. Code §§ 451 and 1202 *et seq.*

3. Today's order should be made effective immediately.

4. The City should be able to start and/or complete Construction of the Crossing within the time period specified in this decision.

O R D E R

IT IS ORDERED that:

1. The City of American Canyon's petition to modify Decision 13-04-003 to extend, for two calendar years beginning on the effective date of this decision, its existing authority to construct the South Napa Junction Road Crossing, is granted.

2. No later than February 1, 2016, the City of American Canyon shall submit a status report to the Commission's Safety and Enforcement Division which:

- a. Addresses the status of all the items identified in its response to the Administrative Law Judge's August 4, 2015 Ruling, including the Final Administrative Draft Environmental Impact Report, the Final Environmental Impact Report Schedule for

Peer Review, the Final Traffic Impact Analysis, the Storm Water Runoff Management Plan, and the Final Water Supply Assessment.

- b. Identifies all upcoming remaining task(s) associated with the South Napa Junction road Crossing (Crossing) and the Watson Ranch/Town Center Project and provides a timeline for their completion;
- c. Confirms or informs the Commission about the vote for approval of the Crossing plan; and
- d. Provides the Commission with a schedule for the completion of the Crossing within the two-year extension granted by this decision.

3. The City of American Canyon shall communicate with staff in the Commission's Safety and Enforcement Division to address all public safety concerns related to the construction of the South Napa Junction Road Crossing.

4. The City of American Canyon shall submit to the Director of the Commission's Safety and Enforcement Division progress reports no later than August 1, 2016, December 1, 2016, and August 1, 2017 providing the status of the completion of the South Napa Junction Road Crossing.

5. The City of American Canyon and Watson Ranch shall provide any additional information that staff requests about the South Napa Junction Road Crossing and the Watson Ranch/Town Center Project.

6. Application (A.) 01-09-021 and A.05-05-014 are closed.

This order is effective today.

Dated _____, at Sacramento, California.