

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of the County of Santa Cruz for an Order authorizing County to construct roadway improvements, a traffic signal with railroad pre-emption, and railroad crossing gates at an existing at-grade public crossing at Trout Gulch Road (CPUC No. 017B-12.50) at the tracks of Sierra Northern Railway (MP 12.50) in the County of Santa Cruz, State of California.

Application No. A1110012

**SIERRA NORTHERN RAILWAY'S PROTEST TO THE COUNTY OF SANTA CRUZ'S
APPLICATION TO EXPAND A PUBLIC CROSSING AT TROUT GULCH ROAD**

In accordance with Rule 2.6 of the Commission's Rules of Practice and Procedure, Sierra Northern Railway ("Sierra") protests the Application (A1110012) of the County of Santa Cruz ("County"). Sierra's Protest is timely as the notice of the Application's filing first appeared in the Daily Calendar on October 14, 2011.¹ This proceeding should be categorized as adjudicatory. Sierra has nothing to add to the County's request for hearings and proposed schedule. Notices to Sierra should be addressed to counsel as follows:

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¹ Daily Cal., dated Oct. 14, 2011, *available at* http://docs.cpuc.ca.gov/WORD_PDF/DAILY_CALENDAR/145430.PDF

I. INTRODUCTION

The County plans to develop Aptos Village from an underdeveloped and underused area into a dense retail, office, and residential area with a skate or bicycle park and community open space for hosting social and civic events of up to 1,000 people.² The County's plans call for a new at-grade railroad crossing, and two greatly expanded at-grade crossings nearby, to serve as the development's "primary vehicular spine."³ And as if these plans will not generate enough new cross-traffic, the County plans to highlight the expanded crossing at Aptos Creek Road as the official "gateway" to Nisene Marks State Park, a "very popular," and "extensively" used wilderness area with picnic areas and "many miles" of hiking and biking trails.⁴

The County asked Sierra to support its plans, presumably to help overcome the presumption against at-grade crossings. Though the County's traffic study revealed that its plans will double motor vehicle cross-traffic,⁵ greatly increasing Sierra's operational costs and risks, Sierra agreed to support the County's plans if the County agreed that its crossings: (1) would incorporate adequate drainage; (2) would incorporate up-to-date equipment and materials and comply with good railroad practices and applicable Federal Railroad Administration ("FRA") and Commission standards; and (3) would not burden Sierra with increased costs and risks. Though such agreements are standard, the County refused. The County filed its Application Nos. A1110010, A1110011, and A1110012 without Sierra's support, hoping the Commission would

² Aptos Village Plan, adopted Feb. 23, 2010 by the County Board of Supervisors, at pp. 1, 11-12, 15-17, 22, 24, and 27, available at http://sccounty01.co.santa-cruz.ca.us/PLN_pdf/Aptos_Village_Plan.pdf; Bookwalter, *Development plans are in for Aptos: New drawings detail proposed buildings, village green for vacant lot*, Santa Cruz Sentinel (Jul. 28, 2010), available at http://www.santacruzsentinel.com/localnews/ci_15619522.

³ Aptos Village Plan, pp. 15-16, 22.

⁴ *Id.*, at p. 27. The County plans to erect the State Park's entry sign directly across the railroad tracks at Aptos Creek Road. (*Id.*, at p. 29, Figure 10.)

⁵ *Traffic Impact Study for Aptos Village Mixed-Use Development* (the "Traffic Impact Study") part of Exhibit H to the County's Application, noting that daily motor-vehicle trips alone will almost double from something less than 1,947 trips per day (the actual number is not stated) to 3,650 trips per day, with up to 322 railroad crossings per hour. (Traffic Impact Study, pp. 1, 12, 17, and 33.) The Traffic Impact Study does not address the dramatic increase in bicycle, skateboard, and pedestrian crossings that is also bound to occur.

allow the County to escape responsibility for its crossing changes, saddling Sierra with the costs and risks associated with those changes.

As the County has informed Sierra that it will not enter into any agreement with Sierra unless the Commission denies the County's Applications, Sierra has no choice but to protest the County's Applications. Sierra thus asks the Commission to deny the County's Applications unless conditioned upon the County entering into an appropriate agreement with Sierra that ensures the crossings: (1) will incorporate adequate drainage; (2) will incorporate up-to-date equipment and materials and comply with good railroad practices and applicable FRA and Commission standards; and (3) will not burden Sierra with the increased costs and risks created by the crossings. Subject to those conditions, Sierra would be prepared to support the County's Applications.

II. FACTS

Union Pacific Railroad Company ("UP") owns the railroad line at issue, which it has leased to Sierra for freight operations. Sierra is responsible for line maintenance. UP is in the process of selling the line to the County's Regional Transportation Commission (the "RTC") subject to a retained freight service easement to be assigned to Sierra.

Sierra and the RTC have entered into a September 28, 2010 Administration, Coordination, and License Agreement (the "Agreement") to govern Sierra's operations following the sale. Once effective, the Agreement will require Sierra to cooperate with the County's efforts to secure approval of future crossing changes, though Sierra is not to incur any costs or expenses as a result and all issues concerning the construction, maintenance, or repair of such crossings are to be set by agreement between the parties or by the Commission, as applicable.⁶

Though the Agreement is not yet effective, the County asked Sierra to support its Applications for crossings changes to further its Aptos Village plan. Sierra views its relationship with the County as a partnership. Sierra thus agreed to support the County's Applications—though the County's changes will not benefit Sierra and will only increase Sierra's operational

⁶ Agreement, § 3.3, available at [http://www.stb.dot.gov/filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/0b728f51f74d4d788525786c00519d38/\\$FILE/229139.pdf](http://www.stb.dot.gov/filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/0b728f51f74d4d788525786c00519d38/$FILE/229139.pdf).

difficulties and risks—provided that the County agreed to construct the crossings safely and to take responsibility for the costs and risks its changes will create.

The County refused, taking the position that the increased costs and risks are Sierra's problem, not the County's. The County accordingly filed its Applications without Sierra's support in a manner that not only ignores Sierra's concerns⁷ but also seeks to burden Sierra with the costs and risks created by the County's desired changes.

Given the County's position, Sierra has no choice but to protest the County's Applications and to ask the Commission to deny the County's Applications unless conditioned upon the County entering into an appropriate agreement with Sierra that ensures that the crossings: (1) will incorporate adequate drainage; (2) will incorporate up-to-date equipment and materials and comply with good railroad practices and applicable FRA and Commission standards; and (3) will not burden Sierra with the increased costs and risks created by the crossings.

III. ARGUMENT

The County's traffic study has revealed that its plans to develop sleepy Aptos Village into a "vibrant" and "active" area—densely populated with retail stores, offices, residences, recreational parks, and community open spaces capable of hosting civic, cultural, and musical events for 1,000⁸—will double motor vehicle traffic.⁹ Though the County does not reveal the expected increase in bicycle, skateboard, and pedestrian traffic due to its plans, it is safe to say that the County's plan to develop a bicycle or skate park, its plan to make Trout Gulch Road part

⁷ The County's Application does not address Sierra's concerns or mention whether emergency authorities have any concerns about the County's plans and the expected doubling of motor vehicle cross-traffic, not to mention any increase in pedestrian, bicycle, and skateboard cross-traffic. The County also pretends in section 3(j) of its Application that passenger service is not at issue, stating that Sierra's operations are limited to freight service and that "[p]assenger service is currently not provided on this rail line." While technically true, the County should have disclosed that it has asked for passenger service on this line and that its plans set aside two rail passenger loading areas in Aptos Village. (Aptos Village Plan, p. 47.)

⁸ Aptos Village Plan, pp. 1, 11-12, 15-17, 22, 24, and 27.

⁹ Traffic Impact Study, pp. 1, 12, 17, and 33.

of the “primary vehicular spine” for the area,¹⁰ and its plan to make Trout Gulch Road one of the main connections to Aptos Creek Road as the “gateway” to Nisene Marks State Park with its picnic areas and “many miles” of hiking and biking trails,¹¹ will lead to a dramatic increase of not just motor vehicle cross-traffic, but also pedestrian, bicycle, and skateboard cross-traffic. The doubling of motor vehicle crossings predicted by the County’s traffic study is almost certainly just the tip of the iceberg.

The changes envisioned by the County for the Aptos Village area, and its impacts on the crossing at Trout Gulch Road, are so dramatic that the County’s Application should be viewed as an application for a new at-grade crossing at Trout Gulch Road. The Commission should thus require the County to make the showing described by Sierra in its Protest in response to the County’s Application Number A1110011, which involves the same project, and the same issues and concerns, as in the County’s instant Application.¹²

Even if the Commission does not deny the County’s Application on the grounds set forth in Sierra’s Protest to the County’s Application Number A1110011, the Commission should nevertheless deny the County’s Application on the ground that the County has refused to enter into an appropriate agreement with Sierra concerning the construction, maintenance, costs and risks related to the County’s desired crossing changes. The Commission has this authority¹³ and there is no basis in either law or equity for the County to refuse to provide Sierra with assurance that its construction will meet or exceed Sierra’s engineering standards and that the County will take responsibility for the costs and risks created by crossing changes that the County alone desires and that the County alone will benefit from.

Sierra thus protests the County’s Application and asks the Commission to deny the County’s Application.

¹⁰ Aptos Village Plan, pp. 15-16, and 22.

¹¹ *Id.*, at pp. 15 and 27.

¹² In order to avoid burdening the Commission with needless redundancy, Sierra incorporates herein the arguments in its Protest in response to the County’s Application Number A1110011.

¹³ See Cal. Pub. Util. Code § 1202(a).

IV. GROUNDS FOR PROTEST

With the above as context, Sierra states the following grounds for protesting the County's Application:

1. The County has not demonstrated a public need to expand the crossing at Trout Gulch Road.

2. The County has not demonstrated that it has eliminated all potential safety risks related to an expanded crossing at Trout Gulch Road.

3. The County has not demonstrated that local authorities concur in its plans. While the local Board of Supervisors has approved the County's Aptos Village plan, it is unclear that local authorities approved the County's Application or its plan to expand the crossing at Trout Gulch Road without entering into an appropriate agreement with Sierra and while ignoring Sierra's safety and operational concerns.

4. The County has not demonstrated that local emergency authorities concur in its plans.

5. The County has not demonstrated general public opinion concerning its plans. While residents may support improved access to Aptos Village, issues of safety, convenience, and noise may erode support for the County's specific plan and voice support for one or more grade-separated crossings.

6. The County has not demonstrated the comparative costs of at-grade and grade-separated crossings. The cost of a single grade-separated crossing that allows safer and more efficient access to Aptos Village may not differ substantially from the cost of the County's three planned at-grade crossing changes.

7. The County has not demonstrated Staff's concurrence as to the safety of an expanded crossing at Trout Gulch Road.

8. The County has not demonstrated Commission precedent supporting the County's applications, especially not any precedent reflecting a factually similar situation with two other nearby crossings—both of which the County is seeking to expand—and especially not any precedent excusing an applicant from making the showings required for a new at-grade crossing.

9. The County has not provided Sierra with sufficient assurance that the County's crossing changes will meet or exceed Sierra's engineering standards.

10. The County has not entered into any agreement with Sierra concerning the construction and maintenance related to, and the costs and risks that will arise because of, the County's desired changes. There is no basis in law or equity to allocate to Sierra any of the costs or risks created by the County's desired crossing changes.

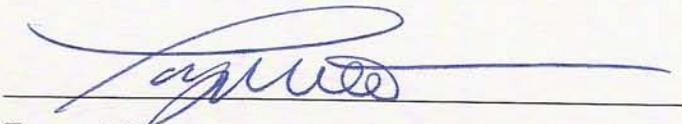
V. CONCLUSION

The Commission has the power under California Public Utilities Code § 1202(a) to determine and prescribe the manner, including "the terms of installation, operation, maintenance, use, and protection," of each crossing of a railroad. The Commission should use its power here to prevent the County from making an end-run around Sierra's safety and operational concerns and shifting to Sierra the County's responsibility for new and expanded crossings that only the County desires and will benefit from.

Sierra accordingly asks the Commission to deny the County's Application to expand the crossing at Trout Gulch Road unless conditioned upon the County entering into a mutually acceptable agreement with Sierra that ensures that the crossing: (1) will incorporate adequate drainage; (2) will incorporate up-to-date equipment and materials and comply with good railroad practices and applicable FRA and Commission standards; and (3) will not burden Sierra with the increased costs and risks created by the crossing.

Dated this November 9, 2011 at Davis, California.

Respectfully submitted,



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