

Decision 06-09-016 September 7, 2006

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)

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

Application 05-05-014
(Filed May 6, 2005)

OPINION APPROVING SETTLEMENT

Introduction and Summary

The City of American Canyon (City) filed Application (A.) 05-05-014 seeking authority to replace an existing private crossing over the California Northern Railroad (CN) at South Napa Junction Road in Napa County with a new public at-grade crossing at the same location. The City also filed a petition for rehearing in A.01-09-021 to renew its authority to establish a public crossing south of the new crossing at Frisby Lane, which is renamed Donaldson Way. Authority to establish the Donaldson Way crossing was granted by Decision (D.) 02-06-059, but that authority has lapsed under the terms of the Commission's order. Both crossings are included in the City's General Plan as part of an extensive redevelopment of the recently incorporated City.

CN, the affected operating railroad, filed a protest in each proceeding, as did Union Pacific Railroad Company (UP), the owner of the line, which UP leases to CN. Upon motion by the parties the administrative law judge consolidated the two proceedings, as they involve similar questions of law and fact and similarly pertain to the redevelopment plans of the City.

Following a prehearing conference, the matter was set to be heard in April 2006, but the parties settled their dispute before the hearing commenced. At the parties' request the hearing date was vacated pending presentation of the written settlement agreement (Settlement) to the Commission for adoption pursuant to Rule of Practice and Procedure (Rule) 51.1, subdivision (c). On April 14, 2006, the parties filed a joint motion asking the Commission to adopt the Settlement, and thereby to approve the establishment of a South Napa Junction Road at-grade public crossing and extend the City's authority to establish the Donaldson Way at-grade crossing.

As grounds for their motion the parties assert that constructing separated grade crossings at South Napa Junction Road and Donaldson Way would be impractical; that there is a need for public at-grade crossings at South Napa Junction Road and Donaldson Way to accommodate the residential and commercial development contemplated by the City's General Plan, including specific projects now under development by two private developers; that grade crossings at these locations would be incompatible with CN's switching operations at its Napa Junction Yard; and that public safety requires the alterations to which the parties have agreed in the Settlement.

We determine that the Settlement satisfies our requirements for adoption and meets the criteria for establishing a new at-grade public crossing at South Napa Junction Road. The circumstances supporting our previous order

that authorized the establishment of a public at-grade crossing at Donaldson Way are materially unchanged, so we also reopen A.01-09-021 and determine that the authority we granted in that proceeding should be extended as requested by the City.

Background and Procedural History

The City was incorporated in 1992, and is rapidly being built on what was previously vacant or lightly developed commercial and industrial property in a rural area of southern Napa County. Its population currently exceeds 14,000, but the City is expected to grow significantly in the next several years with the construction of several entirely new residential neighborhoods within its boundaries. This is expected to cause greatly increased vehicular traffic volumes and new traffic circulation patterns.

The part of the City involved in this proceeding is bounded on the west side by State Route 29, a major north-south highway between the San Francisco Bay Area and the Napa Valley; on the north side by the east-west main rail line of CN; on the south side by American Canyon Road, a major east-west arterial that connects Highway 29 with Interstate 80, residential neighborhoods, and a large theme park and county fairgrounds in Vallejo; and on the west side by Flosdon Road (which is to be renamed Newell Road), a planned north-south arterial that will be situated parallel to Highway 29.

Bisecting this rectangular area in a more or less straight line from north to south is CN's rail line between Napa Junction, located on its main line to the north, and Vallejo. The Vallejo branch is situated a short distance from, and parallel to, Highway 29. The City's General Plan provides for the creation of a new town center on the west side of the CN tracks, and a new residential neighborhood on a gently rolling hillside above the east side of the tracks. The

plan also provides for a series of east-west arterial connectors between Highway 29 and Flosden Road to facilitate traffic circulation between different parts of the community, and to afford access to Flosden Road, relieving the traffic burden on Highway 29.

The Vallejo line is a segment of the nineteenth century rail route between San Francisco and Sacramento via steamer connections in Vallejo which long ago ceased to serve that function. The line now serves local customers in American Canyon and Vallejo, including the former Mare Island Naval Shipyard, which was recently turned over to civilian use. CN, a short line common carrier railroad, operates the line under lease from UP.

Immediately to the north of the proposed South Napa Junction Road public crossing is a small rail yard and locomotive servicing facility. CN uses this yard for switching inbound cars destined to local customers and outbound cars that CN hauls to the UP interchange at Suisun. Immediately north of the new crossing site is the south switch of a siding with two industrial spur tracks that serve a railroad customer, Adobe Lumber Co. As the yard is currently configured, CN switches from the south end, *i.e.*, from beyond the south switch at South Napa Junction Road. This requires CN to conduct switching operations across the existing private crossing. Both switching movements and freight train operations regularly occur over this crossing on weekdays and Saturdays.

CN and UP protested the City's requests for authority to establish the two crossings, citing safety and operational concerns. Principal among these concerns is that switching and train operations at the south end of Napa Junction Yard will conflict with vehicular traffic at the South Napa Junction Road grade crossing, causing traffic delays and a significant public safety problem because of the vastly increased volume of vehicular and

pedestrian traffic. The protestants also object to any increase in the number of at-grade crossings on the grounds that such an increase would violate state and federal policies that disfavor the creation of new at-grade crossings.

Although in its application the City explains that it investigated the option of building an elevated (*i.e.*, grade-separated) crossing at South Napa Junction Road, the short distance separating Highway 29 and the CN tracks, the location of the hillside immediately to the east, and various features of the town center together constitute constraints that render a grade separated crossing at this location infeasible as a practical matter. An alternative location for the crossing at Eucalyptus Road, which is south of the proposed crossing, was also considered, but was rejected during the course of the City's planning process.

The parties conducted extensive negotiations before and after the City brought its requests before the Commission, in an effort to fashion a mutually acceptable solution to the potential problems posed by establishment of the new crossings. In December 2005 the administrative law judge vacated the original procedural schedule at the parties' request to enable them to mediate the disputed issues, but that effort was unsuccessful and the proceeding was set for hearing.

In addition to the parties that are before the Commission, other nonparty participants were involved in the settlement discussions, because they had significant interests at stake. Most notably, Standard Pacific Corp, the developer of the area in the vicinity of the Donaldson Way crossing, and American Canyon I, LLC (ACI), the developer of the area around South Napa Junction Road, will be directly affected by the final location and design of the crossings. Involving these stakeholders in resolving the dispute provided an opportunity not only for input about the design aspects, but also potential financial participation in the

construction cost. In addition, although not parties to the proceeding, members of the Commission's Consumer Protection and Safety Division staff (Staff) also participated in the parties' discussion of crossing design proposals to ensure that the Commission's safety requirements were taken into consideration. The negotiations among these stakeholders produced an agreement that achieves a global solution to the dispute that goes well beyond the narrow options otherwise available to us in deciding the matter.

Specific Public Safety and Operational Concerns Relating to the South Napa Junction Road Crossing

The prepared testimony of CN's General Manager, Robert Jones, which was served by CN in anticipation of the hearing, states that CN switched 4,165 cars at Napa Junction Yard in 2005. The railroad makes six to ten switching moves over the South Napa Junction Road crossing on weekdays between 6:30 a.m. and 6:00 p.m., three on Saturday mornings, and occasionally on Sundays. The crossing site is also blocked by the inbound train from Suisun for as much as 45 minutes while its cars are switched, and for as much as 30 minutes by the trains to Vallejo and Suisun while brake lines are charged with air. There are currently four weekday train movements between the yard and Vallejo each day. These operations do not create notable interference with vehicular traffic at present, because the level of traffic over the private crossing is low.

When the City's General Plan is implemented, vehicular traffic will increase dramatically, because South Napa Junction Road will become a local connector between downtown and Flosden (Newhall) Road. The General Plan specifies that this connection is a critical element of the new town center, and the public need for the public roadway at this location is apparent. The City projects a traffic volume on the road of 5,710 vehicles daily, with 366 during the peak

morning hour and 516 during the peak afternoon hour. These figures indicate a high likelihood that significantly increased conflict will occur between the vehicular traffic and CN's operations if the railroad continues to switch south of the crossing during the day. The increased conflicts would create both congestion delays and safety hazards.

Terms of Settlement

The Settlement eliminates a considerable amount of the potential railroad-vehicular traffic conflict at the South Napa Junction Road public crossing by reconfiguring the Napa Junction Yard so that switching of cars and provision of rail service to Adobe Lumber Co. will be performed from the north end of the siding rather than the south end. Only four to six daily trains between Napa Junction and Vallejo are anticipated to cross the new roadway if the yard is reconfigured in this manner. Appropriate grade crossing protective devices that comply with applicable Commission requirements will be installed to protect the safety of motorists, bicyclists and pedestrians. Financial participation by the two affected developers will provide immediate funding for the crossing improvements at both South Napa Junction Road and Donaldson Way.

For the Commission's purposes the material provisions of the Settlement are as follows:

- (1) The parties agree that the City should be permitted to convert the existing private crossings at South Napa Junction Road and Donaldson Way into public at-grade crossings.
- (2) CN and UP agree to withdraw their respective protests to A.05-05-014 and the City's Petition to Modify D.02-06-059, and affirmatively support the City's pending requests for authority to construct the two public at-grade crossings.
- (3) The City, with cooperation from CN and UP, will design, construct and install the public at-grade crossings with

active warning devices in compliance with all applicable state and local rules and regulations, including but not limited to General Order 75-C and other applicable Commission rules and regulations. The Settlement incorporates drawings depicting the proposed designs for the South Napa Junction Road and Donaldson Way at-grade crossings. The Donaldson Way design has been revised to incorporate recommendations, including the addition of raised medians, proposed by Staff.

- (4) The City and UP will execute appropriate agreements for construction and maintenance of the crossing improvements, and the City will acquire from UP all necessary property rights required for the at-grade crossings and related roadways, with the cost of such property rights subject to reasonable determination by UP.
- (5) In exchange for the support of CN and UP for approval and construction of the public at-grade crossings, the City, ACI, and Standard Pacific have made a binding commitment to relocate the portions of the existing CN switching facilities that would otherwise be directly and adversely impacted by construction of the public at-grade crossings, pursuant to the scope of work set forth in plans approved by the parties, ACI, and Standard Pacific.
- (6) CN will assume full responsibility and liability for undertaking the design, construction, installation, maintenance and other ancillary work as may be required to complete this reconstruction project in compliance with all applicable state and local rules and regulations.
- (7) Standard Pacific and ACI will fund the reconstruction project and reimburse CN for costs not exceeding \$677,645.
- (8) The parties, Standard Pacific, and ACI acknowledge that this project cannot be undertaken without closure of the existing private grade crossing of Napa Junction Road over the multiple tracks of the CN Napa Junction Yard, and agree that closure of the Napa Junction Road private grade crossing is a condition to and part of the

consideration for UP's and CN's support of each of the new public at-grade crossings at South Napa Junction Road and Donaldson Way.

- (9) To facilitate the required closure of the private grade crossing at Napa Junction Road, the parties in this proceeding, Standard Pacific, and ACI recognize the need to provide alternative access to a public roadway to parcels that currently gain access over an existing dirt and gravel roadway on property connected to the private grade crossing at Napa Junction Road. In a letter dated March 15, 2006, a copy of which was furnished with the parties' motion, Jaeger Vineyards, LLC, the owner of the property traversed by the existing dirt and gravel roadway served by the Napa Junction Road private grade crossing, consents to rerouting the existing dirt and gravel road to provide the alternative access. The alternative access will allow the users of the Napa Junction Road private crossing direct access to Watson Lane, a public street, and to its associated grade crossing of the CN track (Crossing No. 108AA- 61.40-A). In addition, a proposed future extension of Newell Drive that is included in the City's General Plan will provide direct access to a major arterial public street for the two parcels of property that presently receive access over the Napa Junction Road private grade crossing.
- (10) In conjunction with the provision of this alternative access, CN has undertaken to comply with the requirements of the Commission regarding posting of notice of the planned closure of the private crossing at Napa Junction Road and, after issuance of the Commission's order authorizing the closure, will install at its expense facilities necessary to effect the physical closure of the private crossing at Napa Junction Road at its intersection with the westerly boundary of the Napa Junction Yard. CN has already initiated these measures by posting notice of the planned closure at the Napa Junction private crossing.
- (11) The City and Standard Pacific agree to take all reasonable steps to obtain any required consents from adjoining

property owners or other interested parties in order to effectuate the closure of an existing private at-grade crossing at Holcomb Lane upon completion of the installation of crossing improvements for the proposed public crossing at Donaldson Way. The City and Standard Pacific will document in writing their efforts to close the Holcomb Lane crossing and provide this information to CN, UP, and Commission staff within six months following issuance of the Commission order approving the settlement in this consolidated proceeding.

- (12) The City commits to minimizing the number of at-grade crossings in its land use planning and development process. Specifically, the City agrees to consolidate and close existing at-grade crossings within City limits to the maximum extent possible, and to use its influence with Napa County to reduce the number of existing and future at-grade crossings to the maximum extent possible. With regard to future plans for a crossing of CN tracks to accommodate the proposed extension of Newell Drive north of Watson Lane, the City agrees to support actively the development of a separated grade crossing in lieu of a new at-grade crossing in its discussions with the County and in future regulatory proceedings before the Commission.
- (13) With regard to potential at-grade crossings of CN lines and future potential extensions of Devlin Road, the City and CN agree to meet and confer in an effort to reach an accommodation regarding the need for any such crossing, as well as its (their) optimal design and location.

Discussion

Rule 51.1, subdivision (c), requires a motion by parties proposing a settlement for adoption by the Commission to contain a statement of the factual and legal considerations adequate to advise the Commission and parties not expressly joining the agreement of its scope and of the grounds on which adoption is urged. Subdivision (e) proscribes adoption unless the settlement is

reasonable in light of the whole record, consistent with law, and in the public interest. We find that the parties' motion in this matter fully satisfies these requirements.

The scope of the Settlement is clear: It provides that the two contested at-grade crossings may be established and constructed in accordance with applicable Commission safety requirements in return for reconfiguring CN's Napa Junction Yard in a manner that will eliminate many potential traffic conflicts and safety hazards at the South Napa Junction Road crossing. The grounds on which the parties urge adoption of this agreement are clearly and concisely stated in the motion.

The way in which the Settlement accomplishes its purposes is reasonable in light of the record, particularly in that it promotes a simpler and better means of doing so than would the elimination of essential east-west arterial roads required by the City's General Plan or requiring the construction of grade separations that are infeasible from a practical standpoint. The requirements that the construction comply with Commission safety requirements and that other crossings be eliminated ensures consistency with the law. Finally, the significant reduction of potential traffic conflicts and associated safety hazards is in the public interest, as is comprehensive land use planning for the new community.

The Settlement is an all-party settlement because it is an agreement among all of the parties to this consolidated proceeding. In the case of an all-party settlement the Commission requires the record to support findings that all active parties to the proceeding join in its sponsorship; that the sponsoring parties are fairly reflective of the affected interests; that no term of the settlement contravenes statutory provisions or prior Commission decisions; and that the settlement conveys sufficient information to permit the Commission to discharge

its future regulatory obligations with respect to the parties and their interests. (D.92-12-019, 46 CPUC 2d 538, 550-51 (1992).) The record in this proceeding supports each of these findings. The specific circumstances of this proceeding involving the creation of an entirely new community adjacent to an active railroad line require us to balance the public interest in fashioning a functional community and the public interest in safety, while nonetheless ensuring that the railroad will be able to conduct its common carrier activities without undue interference. The Settlement achieves that balance without violating any statute or specifying relief that conflicts with a prior Commission decision. It is comprehensive, and it conveys to us the necessary information to enable us to address future issues that may arise in relation to traffic generated by the City as it grows and changes

For the foregoing reasons we adopt the Settlement, approve the establishment of a public at-grade crossing of the CN track at South Napa Junction Road, and extend the authority granted in D.02-06-059 to establish a public at-grade crossing at Donaldson Way for a period of two years from the effective date of our order.

Categorization and Need for Hearing

In Resolution ALJ 176-3072, dated October 2, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that it is not necessary to alter the preliminary determinations in Resolution ALJ 176-3072.

Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311,

subdivision (g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Victor D. Ryerson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Settlement has been signed by all of the parties in this proceeding. A copy of the Settlement, including the attachments thereto, is attached as Appendix A to our Order.

2. The Settlement is an all-party settlement, because all parties to the proceeding have signed it. The other parties to the Settlement, Standard Pacific and ACI, are not parties to the Commission proceeding, but have an interest in the subject matter as owners and developers of land adjacent to the at-grade crossings that are to be established.

3. The motion proposing adoption of the Settlement contains a statement of factual and legal considerations adequate to advise the Commission and any persons not expressly joining in the Settlement of its scope and the grounds upon which adoption is urged.

4. For purposes of this decision the record consists of A.05-05-014, including the attachments thereto; the protests of CN and UP; the Prefiled Testimony of Robert Jones in A.05-05-014; D.02-06-059 in A.01-09-021; the Motion of City of American Canyon, California Northern Railroad Company, and Union Pacific Railroad Company to Adopt Settlement; and the documents identified in Finding of Fact 1.

5. The Settlement provides measures to reduce traffic conflicts at the South Napa Junction Road at-grade crossing by reconfiguring CN's

Napa Junction yard in lieu of building a grade separation. These measures will eliminate switching moves across the proposed public crossing. Other railroad operations at this crossing are unlikely to exceed six train movements per day.

6. There has been no material change of circumstances with respect to the establishment of an at-grade crossing of Donaldson Way since we approved the establishment of Public Utilities Crossing No. 108AAB-62.72 in D.02-06-059. Extending the City's authority to establish that crossing for two years will not conflict with the Commission's previous decision.

7. The Settlement provides for mechanical grade crossing protective devices that comply with Commission requirements. The crossing protection required by our order is appropriate to protect the safety of the public at the two public crossings, considering the anticipated volume and speed of vehicular traffic, the anticipated number of train movements, the speed of train operations, and the visibility at each location.

8. The configuration of the revised Donaldson Way crossing design attached as Appendix B to our Order has been approved by Staff. This design incorporates the suggestions made by Staff because of safety concerns.

9. The Settlement includes provision for temporary access to property that would otherwise be inaccessible during construction of the two crossings approved by our Order.

10. All active parties to the proceeding have joined in the sponsorship of the Settlement for approval by the Commission.

11. The sponsoring parties are fairly reflective of affected interests. CN and UP, respectively as lessee-operator and lessor-owner of the rail line, reflect their common interest in ensuring the safety of their operations and the provision of

common carrier rail service. The City represents the interests of the public in safety, traffic circulation, and rational land-use planning.

12. No term of the Settlement contravenes any statutory provision or previous Commission decision.

13. The Settlement conveys sufficient information to enable the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

14. It is desirable to expedite the effective date of the Commission's Order to enable the parties to commence construction of the crossings with contractors who are currently performing work on CN and can perform the construction in accordance with contractual arrangements that have already been made with the parties.

15. The City is the lead agency under the California Environmental Quality Act (CEQA), and has reviewed and considered all aspects of compliance of this project with CEQA as part of the adoption of its General Plan.

Conclusions of Law

1. The Settlement is reasonable in light of the whole record.
2. The Settlement is consistent with law.
3. The Settlement is in the public interest.
4. The Commission should adopt the Settlement as part of its Order, with consistent additional conditions to ensure that all grade crossing protection provided for by the Settlement will comply with the Commission's applicable General Orders and other rules.
5. Construction of the public at-grade crossings at South Napa Junction Road and Donaldson Way as provided in the Settlement is in the public interest and will preserve public safety.

6. The Order should be effective today.

O R D E R

IT IS ORDERED that:

1. The written Settlement Agreement entered into on April 6, 2006, among applicant City of American Canyon (City), protestants Union Pacific Railroad (UP) and California Northern Railroad Company (CN), and nonparties Standard Pacific Corp. and American Canyon I, LLC, a copy of which is attached as Appendix A, is adopted without modification, and its terms are incorporated herein to the extent of the Commission's jurisdiction.

2. The City is authorized to replace the existing, unprotected, private at-grade crossing of CN's rail line at South Napa Junction Road with a new, protected, public at-grade crossing at the same location. The new public crossing will be identified as South Napa Junction Road, Public Utilities Commission Crossing No. 108AAB - 62.30.

3. The City's Petition for Rehearing in Application (A.) 01-09-021 is granted, and the authority granted in our Order in Decision (D.) 02-06-059, is extended as provided herein. A copy of the design of this crossing is attached as Appendix B to our Order.

4. Each of the new public crossings authorized to be constructed by this order shall be protected with an active warning system consisting of two Standard No. 9 automatic flashing signal light signals with gates compliant with General Order (GO) 75-C on either side of the railroad track for traffic in each direction. In conjunction with the warning devices there shall be standard roadway markings and signage for railroad-highway grade crossings.

5. Each crossing signal within 200 feet of a present or future signalized intersection shall be wired at the time of installation for traffic signal pre-emption to clear vehicles on the tracks from approaching trains.

6. All clearances shall comply with GO 26-D, and all walkways shall comply with GO 118.

7. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions, and shall be restored promptly to their original condition in the event that they are damaged during construction.

8. Construction costs for each crossing shall be borne in accordance with a written agreement between the parties, a copy of which shall be filed by the City with the Commission's Consumer Protection and Safety Division (CPSD) prior to construction.

9. Maintenance costs for the crossings shall be shared equally between the City, on one hand, and CN, its successors and assigns, on the other hand.

10. Prior to construction of each crossing the City shall file with CPSD final construction plans approved by CN and UP. CPSD shall promptly review the plans to ensure compliance with the Commission's requirements, and shall report any discrepancies or objections to the parties not more than 30 days after receiving the plans. The parties shall, at the earliest opportunity, meet and confer with CPSD and exercise their best efforts to resolve any discrepancies or objections by informal agreement. In the event that the parties and CPSD are unable to resolve any such problem informally, the aggrieved party may submit the matter to the Commission by petition for modification of this order. A failure by CPSD to report any discrepancies or objections to the parties within 30 days as provided herein shall be deemed to constitute its approval of construction plans.

11. With respect to the private crossing of Napa Junction Road that is affected by this order, UP and CN are authorized to close the crossing. The expense of closure of the crossing on railroad property shall be borne by and apportioned among the railroads in accordance with the existing lease agreement between them. The expense of providing alternative access over the lands of Jaeger Vineyards, LLC, is governed by Settlement terms that are approved and adopted, but may only be enforced to the extent of the Commission's jurisdiction.

12. The City shall inform the Rail Crossings Engineering Section of CPSD in writing within 30 days of the completion of construction of each crossing that is authorized by this order.

13. The authority granted in this order shall expire if not exercised within two years of the effective date, unless the time is extended by the Commission.

14. The authority granted in this order may be suspended or revoked in the event that the parties, or any of them, fail to comply with the foregoing conditions of approval. The Commission, upon a showing of good cause, may at any time revoke or modify the authority if public convenience, necessity, or safety so require.

15. No hearing is necessary in A.05-05-014.

16. A.01-09-021 and A.05-05-014 are closed.

This order is effective today.

Dated September 7, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN

A.01-09-021, A.05-05-014 ALJ/VDR/avs

RACHELLE B. CHONG
Commissioners

[D0609016 ATTACH A&B TO Ryerson A0109021 / A0505014](#)