

Decision No. C24-0038

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0458R

IN THE MATTER OF THE APPLICATION OF CITY AND COUNTY OF DENVER FOR AUTHORITY TO ALTER THE EXISTING AT-GRADE CROSSING AND MODIFY WARNING DEVICES OF THE BURLINGTON NORTHERN SANTA FE RAILWAYS TRACKS NEAR THE INTERSECTION OF SOUTH KALAMATH STREET AND WEST BAYAUD AVENUE (US DOT #245394V) IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Mailed Date: January 19, 2024

Adopted Date: January 17, 2024

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the City and County of Denver (Denver) on September 12, 2023, requesting authority to modify the active warning railroad signals on S. Kalamath Street at milepost 3.466, and to close the crossing of W. Bayaud Avenue at railroad mile post 3.481 with the tracks of the BNSF Railway (BNSF) on the Pikes Peak Subdivision, National Inventory Nos. 245394V for S. Kalamath Street and 245393N for W. Bayaud Avenue in Denver, in the State of Colorado.

2. The Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S. The Notice was mailed on September 18, 2023.

3. Notice of closure was not posted at the W. Bayaud Avenue during the initial notice period, so the Application had to be re-noticed. The re-notice was mailed on December 11, 2023.

4. On December 11, 2023, Denver filed an Affidavit of Posting of Notice of Closure at the W. Bayaud Avenue crossing including photos showing the posted signs at the crossing.

5. On December 12, 2023, BNSF filed a Notice of Intervention. BNSF does not context or oppose the Application.

6. The Commission deems the Application complete within the meaning of § 40-6-109.5, C.R.S. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

7. Now being fully advised in the matter, we grant the Application.

B. Findings of Fact

8. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

9. First, Denver requests the W. Bayaud Avenue crossing be closed. This closure will allow the design of the site to keep pedestrians, bicycles, and vehicles from using the W. Bayaud Avenue crossing given the limited sight distance that will be created by the building being constructed on the site. The access point from W. Bayaud Avenue will allow vehicles to enter the site traveling from S. Santa Fe Drive to W. Bayaud Avenue, and to leave the site traveling east on W. Bayaud Avenue to S. Santa Fe Drive. There is an additional access point from W. Ellsworth that allow vehicles to access the site from either S. Kalamath Street or S. Santa Fe Drive. The active warning devices and the crossing panels will be removed from this crossing as part of the closure.

10. Denver also requests authority to upgrade the S. Kalamath Street crossing. The upgrades consist of replacing the existing flashing light signals, adding backlights to the existing flashing light signals, and adding a cantilever signal over the middle lane of the three-lane S. Kalamath Street. This crossing was on the Colorado Department of Transportation (CDOT) Section 130 list to receive funding to install safety upgrades at the Kalamath crossing, so those funds are being used for the Kalamath upgrades on the project. A letter from CDOT is included as part of the Application with an authorization of the funds and requirements for meetings with the railroad and local government.

11. There have been 24 accidents at the S. Kalamath Street crossing since 1975 including one fatality in 2013, six injury accidents in 1979, two in 1982, 2006, 2014, and 2021, and 17 property damage only accidents in 1979, 1980, two in 1982, 1983, 1984, two in 1985, 1989, 1991, 2002, 2004, 2007, 2008, 2009, and 2019.

12. Based on the Mobility Study/Traffic Impact Study included in the Application as Exhibit F, Denver states there are currently 6,200 vehicles per day (VPD) using the crossing in 2020 at a posted speed limit of 35 miles per hour (MPH) with an estimated ten percent heavy vehicles using the crossing. Traffic is projected to grow to approximately 11,200 VPD by 2040. There are currently approximately 24 through train movements per day using the crossing at speeds of up to 30 MPH with no current projections of future train traffic growth.

13. The estimated cost for the work at the crossings is \$152,508 for the Kalamath Street crossing, which will be paid through Section 130 funding, and the remainder of the project to close the Bayaud Avenue crossing will be paid by the Camden Property Trust, an S&P 500 Company valued at approximately \$2 billion.

14. Denver proposes starting the project during the third quarter of 2023 and be completed with the project by the third quarter of 2024. We will require Denver to file the signed Construction and Maintenance Agreement prior to starting any work on the rail line portion of this project. Given the proposed start date and today's date, we will require the signed construction and maintenance agreement to be filed no later than March 31, 2024, prior to the start of rail construction and removal. We will also require Denver to inform the Commission in writing that the crossing work is complete and operational within ten days of completion. The Commission will expect this letter by September 30, 2024. However, the Commission does understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

15. We will require BNSF to update their parts of the crossing inventory form for the S. Kalamath Street crossing, show the W. Bayaud Avenue crossing as closed, and file the updated crossing inventory forms in this proceeding. The Commission will expect this information to be filed with the completion of the crossing work by September 30, 2024.

C. Conclusions

16. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

17. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application.

18. Because the Application is unopposed, the Commission will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

19. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety are met by granting the Application consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed by the City and County of Denver (Denver) on September 12, 2023, requesting authority to modify the active warning railroad signals on S. Kalamath Street at milepost 3.466, and to close the crossing of W. Bayaud Avenue at railroad mile post 3.481 with the tracks of the BNSF Railway (BNSF) on the Pikes Peak Subdivision, National Inventory Nos. 245394V for S. Kalamath Street and 245393N for W. Bayaud Avenue in Denver, in the State of Colorado is deemed complete.

2. The intervention by BNSF is granted.

3. The Application is granted.

4. Denver is authorized and ordered to proceed with the proposed upgrades including replacement of existing flashing lights, addition of back flashing lights, and construction of a cantilever signal over the center lane at the S. Kalamath Street crossing and the closure and removal of crossing surfaces and signal equipment at the crossing of the W. Bayaud Avenue crossing in Denver, Colorado.

5. Denver shall file a copy of the signed Construction and Maintenance Agreements for this project by March 30, 2024, prior to starting work at the crossing.

6. Denver shall inform the Commission in writing that the crossing changes are complete and operational within ten days of completion. We shall expect this letter by

September 30, 2024. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

7. BNSF shall update their parts of the crossing inventory form for the S. Kalamath Street crossing, show the W. Bayaud Avenue crossing as closed, and file the updated crossing inventory forms in this proceeding by September 30, 2024.

8. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 17, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners