

Decision No. C22-0667

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0385R

IN THE MATTER OF APPLICATION OF THE TOWN OF CASTLE ROCK COLORADO FOR AUTHORITY TO PETITION FOR A PERMANENT PARTIAL WAIVER OF, OR VARIANCE FROM, RULE 4 CCR 723-7:7327(B)(III) AND RULE 4 CCR 723-7:7327 (C)(IV), AND FOR CONSTRUCTION OF A REGIONAL TRAIL IN THE LANTERNS PLANNED DEVELOPMENT (AKA MONTAINE) THAT WOULD PASS UNDER THE UNION PACIFIC RAILROAD, NO USDOT NUMBER 978264Y EXISTS IN CASTLE ROCK, DOUGLAS COUNTY, STATE OF COLORADO.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE, GRANTING APPLICATION AND
GRANTING PETITION FOR VARIANCE**

Mailed Date: October 28, 2022
Adopted Date: October 26, 2022

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the Town of Castle Rock (Castle Rock) on August 31, 2022, requesting authority to convert an existing dual box culvert concrete structure that used to be used as a crossing to get cattle from one side of the railroad to the other under the tracks of the Union Pacific Railroad Company (UPRR) at approximate railroad milepost 36.09 of the Colorado Springs Subdivision, no current National Inventory No., in Castle Rock, County of Douglas, State of Colorado.

2. Castle Rock also filed a Petition for Permanent Partial Waiver of, or Variance From, Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7327(b)(III), Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, requiring a

minimum overhead clearance of 10'-0" be provided above the surface of a pathway where a railroad crosses above a public pathway, and Rule 4 CCR 723-7-7327(c)(IV) requiring public pathways for pedestrian and bicycle use to have a minimum clear width of 12'-0" for a pathway where a railroad crosses above a public pathway.

3. 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 September 12, 2022.

4. On October 6, 2022, UPRR filed an Entry of Appearance and Notice of Intervention. UPRR does not contest or oppose the Application.

5. The Commission has reviewed the record in this matter and deems that the Application is complete within the meaning of § 40-6-109.5, C.R.S.

6. 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 or Petition.

1. Application

9. Castle Rock is constructing regional trails to connect with the trail system through Douglas County. Because of the topography of the area and the existing railroad tracks, there is only one opportunity to cross users from one side of the railroad to the other at an existing box culvert. This location will serve as a safe and economic trail crossing that will provide connectivity for the regional trail network. This crossing is critical to the connection of the

regional trail system from Fountain to the south and Brighton to the north. This location is one of the few remaining legs to be constructed and is essential for the Colorado Front Range Trail that will ultimately connect the entirety of Colorado from New Mexico to Wyoming.

10. Castle Rock proposes to add fence up the slopes that will tie into the existing fence on all four quadrants of the location of the box culvert. Storm flows will be contained to the southern cell of the box with the trail constructed at the norther cell of the box. Thirty foot scour walls will be constructed on each side of the box culvert. Debris structures will be constructed on both sides of the crossing. Warning signs indicating the reduced height of the grade separation is 7' and warning pathway users that the path narrows as users approach the grade separation. Bollards will be placed on the trail on both sides of the crossing to deter vehicles from using the path. These bollards will be able to be removed by Castle Rock to allow maintenance vehicles through the box culvert to allow for any necessary repairs and maintenance of the box culvert cell.

11. Castle Rock provides an exhibit from James H. Lowell that documents the existing use of the box culverts to move cattle from one side of the railroad to the other starting with the Lowell family purchase of the property in 1907.

12. Castle Rock states there are currently 26 trains per day using the track above the proposed pathway grade separated crossing at a maximum timetable speed of 45 miles per hour. Castle Rock estimates that at least 50 pedestrians and bicycles will use the pathway grade separated crossing.

13. Castle Rock states the necessary modifications to the existing concrete box culvert will be approximately \$50,000. Castle Rock proposes to start construction of the trail

project in September 2022 with the pathway grade separated crossing being opened for users in September 2023.

2. Petition for Variance

14. Pursuant to Rule 1003, 4CCR 723-1, the Commission may grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions and orders for good cause. In making a determination, the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual.

15. Commission Rule 4 CCR 723-7-7327(b)(III), requires a minimum overhead clearance of 10'-0" be provided above the surface of a pathway where a railroad crosses above a public pathway.

16. Commission Rule 4 CCR 723-7-7327(c)(IV) requires public pathways for pedestrian and bicycle use to have a minimum clear width of 12'-0" for a pathway where a railroad crosses above a public pathway.

17. Castle Rock requests a permanent, partial waiver of Commission Rules 4 CCR 723-7-7327(b)(III) and (c)(IV) to reduce the overhead clearance 7'-0" and the horizontal width to 8'-0".

18. Castle Rock discusses the various guidelines provided by the United States Board Access for Trail Guidelines, the Americans with Disabilities Act Accessing Guidelines, and the American Association of State Highway and Transportation Officials discussing the various recommended guidelines for pathway grade separations where the pathway is traveling under the railroad tracks.

19. However, in this case, the circumstances are that the proposed box culvert is the only location where the trail pathway crossing is economically feasible. This is the only proposed trail crossing that has been approved by the UPRR.

20. Castle Rock states that the requested variances are supported by the following conditions: 1) bicycle traffic is expected to be low; 2) pedestrian use of the facility is not expected to be more than occasional; 3) horizontal and vertical alignments provide frequent, well-designed passing and resting opportunities; and 4) the path will not be regularly subjected to maintenance vehicle loading conditions that would cause pavement edge damage. Castle Rock proposes providing warning signs that will provide pathway users with information about the narrowing pathway approaching the crossing and will provide users information about the 7' height of the grade separation.

21. Castle Rock notes that there are a number of communities along the front range that have pedestrian pathways where the underpasses are seven feet or less including Golden, Fort Collins and Loveland.

22. From a public policy and engineering standpoint, the ability to use the existing opening will serve multiple purposes and objectives including enhancing the public use of outdoor trails, will allow pathway users to safely pass under the railroad track, and maximizes cost savings by repurposing an existing dual box culvert.

23. Commission Rules 4 CCR 723-7-7327(b)(III) and (c)(IV) were established to prevent accidents and promote public safety of pathways using roadways underneath railroad tracks carrying trains. The minimum requirements were determined to ensure there is enough room for two pathway users to pass at the same time. With the limited number of users currently estimated to use this pathway crossing, it is likely that movement through the crossing will be

slower and consist of only one party moving through the box culvert at a time. Should there be two users using the pathway box culvert at the same time, the proposed speed will allow users from opposite sides of the crossing to see that another pathway user is trying to do the same, and the users can adjust accordingly.

24. Ultimately, having bicyclists and pedestrians crossing the tracks through a grade separated structure will prevent accidents and promote public safety of the pathway users that will use the subject crossing.

C. Conclusions

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

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

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

28. Because the Application and Petition are unopposed, the Commission finds that it 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.

29. We find that good cause exists and that the requirements of public safety are met by granting the Application and Petition consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed by the Town of Castle Rock (Castle Rock) on August 31, 2022, requesting authority to convert an existing dual box culvert concrete structure that used to be used as a crossing to get cattle from one side of the railroad to the other under the tracks of the Union Pacific Railroad Company (UPRR) at approximate railroad milepost 36.09 of the Colorado Springs Subdivision, no current National Inventory No., in Castle Rock, County of Douglas, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Application is granted.

3. Castle Rock is granted a permanent partial waiver of Rules *Code of Colorado Regulations* (CCR) 723-7-7327(b)(III) and (c)(IV) for the location of the existing box culvert location at approximate railroad milepost 36.09 of the Colorado Springs Subdivision. This permanent partial waiver shall be for the life of the crossing.

4. Castle Rock is authorized and ordered to proceed with the proposed changes as described above to turn in the double box culvert into a public pathway crossing.

5. Castle Rock is required to provide a copy of the signed Construction and Maintenance Agreement prior to starting any work at the box culvert. This signed agreement will be expected by the Commission by December 31, 2022.

6. Castle Rock is required to inform the Commission in writing that the crossing changes are complete and operational within ten days after completion. We shall expect this letter by September 30, 2023. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

7. Castle Rock will be required to work with UPRR to have a U.S. DOT Inventory Number assigned to the crossing and to file a copy of that new inventory form in this proceeding by the end of construction of the project by September 30, 2023.

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. The Commission retains jurisdiction to enter further decisions as necessary.

10. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 26, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners