

Decision No. C24-0207

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0076R

IN THE MATTER OF THE APPLICATION OF THE CITY OF FORT COLLINS AND LARIMER COUNTY FOR AUTHORITY TO CONVERT THE LARIMER COUNTY ROAD 9 AT-GRADE CROSSING OF GREAT WESTERN RAILWAY FROM PRIVATE TO PUBLIC AND TO WIDEN THE CROSSING (DOT NO. 244870B) IN THE CITY OF FORT COLLINS, LARIMER COUNTY, STATE OF COLORADO.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE, GRANTING MOTION TO PERMISSIVELY
INTERVENE, AND GRANTING APPLICATION**

Mailed Date: April 3, 2024
Adopted Date: March 27, 2024

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application (Application) filed by the City of Fort Collins (Fort Collins) and Larimer County (collectively Joint Applicants) on February 12, 2024, requesting authority to change the crossing of Larimer County Road 9 with the tracks of the Great Western Railway (GWR) from a private crossing to a public crossing, and to widen the crossing at railroad milepost 78.68 of the Greeley Subdivision, National Inventory No. 244870B in Fort Collins, Larimer County, in the State of Colorado.

2. On February 14, 2024, the Commission gave notice of the Application to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S.

3. On March 13, 2024, Cottonwood Land and Farms, LTD (Cottonwood) filed a Notice of Intervention as of Right or in the Alternative Motion for Permissive Intervention.

4. On March 20, 2024, the Joint Applicants filed a Motion to Strike Intervention of Right and Response to the Motion to Intervene of Cottonwood Land and Farms, LLC.

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

6. The Commission has reviewed the record and deems the Application complete within the meaning of § 40-6-109.5, C.R.S.

7. As discussed below, Cottonwood does not indicate in its intervention filing that it contests or opposes the Application. Under Rule 1403(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission will consider a proceeding unopposed unless an intervention has been filed with a clear statement specifying the grounds on which the proceeding is contested or opposed.

8. Because the Application is 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 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

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

B. Intervention

10. As grounds to intervene, Cottonwood states that determinations made regarding the Application could have a direct pecuniary and tangible impact on its existing or future contracts. Cottonwood further indicates the GWR crossing at issue is adjacent to property that Cottonwood has a legal right to use via a Mining Permit. Additionally, Cottonwood states that it seeks to protect its continued and unfettered use of an historical access road adjacent to the crossing for access to its properties. Cottonwood does not indicate that it contests or opposes the specific crossing changes proposed in the Application.

11. In their response, the Joint Applicants contend that Cottonwood failed to establish that a legally protected interest or cognizable legal right may be affected by granting the Application. Referring to Exhibit Response-A, which contains a map of the existing GWR crossing and adjacent property owners, the Joint Applicants claim the proposed improvement to the crossing would not negatively impact Cottonwood's access or property rights. The crossing improvement, the Joint Applicants continue, would be constructed entirely on Colorado State University and GWR properties and do not interfere with Cottonwood's use of the historical access road. Additionally, the Joint Applicants state the Mining Permit at issue is currently in Fort Collins' possession and although Fort Collins anticipates transfer to Cottonwood as a successor operator, it has not done so yet.

12. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (Intervention of Right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (Permissive Intervention).

13. We find that Cottonwood has not met the burden of stating the basis for the legally protected right that may be affected by the proceeding required under Rule 1401(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, for Intervention as of Right. Consequently, we take up Cottonwood's alternative motion for Permissive Intervention.

14. Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive to show the following, in part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the

pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

15. We find it appropriate to exercise our discretion and grant Cottonwood's motion to permissively intervene in this Proceeding.

C. Findings of Fact

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

17. The Joint Applicants seek authority to change the crossing of Larimer County Road 9 with the tracks of the GWR and to widen the crossing in Fort Collins, Colorado.

18. The Joint Applicants state that the existing crossing is shown as a private crossing in the Federal Railroad Administration database. Larimer County Road 9 is a public right-of-way that provides the only access to the Colorado State University's Environmental Learning Center (ELC) and a private residence. The public regularly uses this crossing to access the ELC and the Poudre River Recreational Trail that currently has an access point approximately 0.5 miles north of the crossing. Signing and striping is not shown on the plans, so pursuant to our rule on minimum crossing safety requirements at 4 *Code of Colorado Regulations* (CCR) 723-7-7213 all public crossings are required to have, at a minimum, a crossbuck (R15-1) and a yield sign (R1-2) mounted on the same support for each direction of vehicle and/or pedestrian traffic.

19. The Joint Applicants proposed to upgrade the existing concrete surface to a concrete crossing surface with asphalt approaches. The Joint Applicants also propose to construct an attached sidewalk/trail by widening the crossing. This part of the crossing will be constructed to Americans with Disabilities Act standards and will extend to the Poudre River trail. Our review of the proposed signing at the trail crossing shows the Joint Applicants propose

posing crossbucks (R15-1) and the “Look” sign (R15-8). As stated previously, our rule on minimum crossing safety requirements at Rule 7213 requires that all public crossings require at a minimum a crossbuck (R15-1) and a yield sign (R1-2) mounted on the same support for each direction of vehicle and/or pedestrian traffic. We will require the Joint Applicants to post crossbucks (R15-1) and yield signs (R1-2) for the trail portion of the crossing in addition to the proposed pavement markings for the trail.

20. The Joint Applicants state that Larimer County Road 9 is currently a publicly dedicated right-of-way. Per an Intergovernmental Agreement between Fort Collins and Larimer County, Fort Collins will assume maintenance of the roadway within the project limits. Per a Lease Agreement/Construction and Maintenance Agreement that will be negotiated between Fort Collins and GWR, maintenance of the trail crossing will be allocated to Fort Collins.

21. There are currently trains per day using the crossing at a maximum timetable speed of 10 miles per hour (MPH) with no anticipated increases or decreases in the number or character of trains at this time. There are currently 700 Vehicles Per Day (VPD) using the crossing with approximately 20 percent heavy vehicles and potential school bus use to take students to and from the ELC at an unposted speed limit of 25 MPH. Vehicle volume is projected to increase to 87 VPD in five years and 117 VPD in 20 years. A trail extension at the crossing is part of this Application. The Joint Applicants project 504 trail users within five years and 642 trail users within 20 years.

22. There have been no reported accidents at the crossing since 1975.

23. The Joint Applicants estimate the cost of the project at \$280,000 with Fort Collins paying for the cost of the project. No cost allocation is being sought as part of the project.

24. The Joint Applicants propose to start construction within one year of the Commission's approval of the final application of this project and be completed within 18 months of the Commission's approval of this project. We will require the Joint Applicants to file a copy of the signed Construction and Maintenance Agreement within one-month of starting the project, which we will expect to be filed no later than March 31, 2025, prior to starting construction and the crossing. We will also require the Joint Applicants to inform us in writing that construction is complete within ten days of project completion. We shall expect this letter by no later than September 30, 2025. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

25. The Joint Applicants and GWR shall be required to update the U.S. DOT National Inventory form for this crossing changing the status of the crossing to a public crossing and updating the physical characteristics and public highway information for the crossing. We shall expect this updated form to be filed no later than September 30, 2025.

D. Conclusions

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

27. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application. Because the Application is 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, 4 CCR 723-1.

28. We find that 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 of Fort Collins and Larimer County (collectively Joint Applicants) on February 12, 2024, requesting authority to change the crossing of Larimer County Road 9 with the tracks of the Great Western Railway (GWR) from a private crossing to a public crossing, and to widen the crossing at railroad milepost 78.68 of the Greeley Subdivision, National Inventory No. 244870B in Fort Collins, Larimer County, in the State of Colorado, is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Motion to Strike Intervention of Right filed by the Joint Applicants on March 20, 2024, is granted, consistent with the discussion above.

3. The Motion to Permissively Intervene filed by Cottonwood Land and Farms, LTD, on March 13, 2024, is granted.

4. The Application is granted.

5. The Joint Applicants are authorized and ordered to change the status of the crossing from a private crossing to a public crossing.

6. The Joint Applicants are authorized and ordered to widen the crossing of Larimer County Road 9 and construct the attached trail crossing with the requirement that the vehicle crossing and the trail crossing each be posted with crossbucks (R15-1) and yield signs (R1-2).

7. The Joint Applicants shall be required to file a copy of the signed Construction and Maintenance Agreement by no later than March 31, 2025, prior to starting construction at the crossing.

8. The Joint Applicants shall inform the Commission in writing when the crossing changes are complete within ten days of completion. The Commission will expect the letter by

no later than September 30, 2025. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

9. The Joint Applicants and GWR shall be required to update the U.S. DOT National Inventory form for this crossing and file an updated copy of the form in this proceeding by September 30, 2025.

10. 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.

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

12. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 27, 2024.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director