

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 01A-484R

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IN THE MATTER OF THE APPLICATION OF THE CITY OF COLORADO SPRINGS, STATE OF COLORADO, FOR AUTHORITY TO CONSTRUCT AN AT-GRADE TRAIL CROSSING ON THE FORT CARSON RAIL SPUR, APPROXIMATELY 75 FEET WEST OF LAS VEGAS STREET, IN EL PASO COUNTY, COLORADO AND TO CONSTRUCT A TRAIL UNDER-PASS, AT MILE POST 79.8, UNDER THE EXISTING BURLINGTON NORTHERN AND SANTA FE RAILWAY TRESTLE, AT SAND CREEK, IN EL PASO COUNTY, COLORADO, AS PART OF THE SAND CREEK TRAIL.

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**COMMISSION ORDER GRANTING APPLICATION**

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Mailed Date: November 22, 2004

Adopted Date: November 17, 2004

**I. BY THE COMMISSION:**

**A. Statement**

1. On October 17, 2001, the City of Colorado Springs (Colorado Springs), Colorado, filed an application for authority to construct an at grade trail crossing of the Fort Carson Rail Spur, west of Las Vegas Street and an under-pass trail crossing the Burlington Northern and Santa Fe Railroad (BNSF) near mile post 79.8 at Sand Creek in El Paso County, Colorado.

2. The Commission gave notice of the application together with a copy of the application to all interested parties, including the adjacent property owners, in accordance with § 40-6-108(2), C.R.S. The Notice was mailed October 24, 2001.

3. On October 24, 2001, the Staff of the Commission filed its Entry of Appearance and Notice of Intervention

4. On November 8, 2001, the BNSF filed its Entry of Appearance and Notice of Intervention.

5. On July 27, 2004, the Commission received a letter requesting to amend the application to remove the Fort Carson Rail Spur project.

6. In addition, on July 27, 2004, the Commission received the Construction and Maintenance Agreement between Colorado Springs and BNSF, effective April 30, 2003, concerning the project for the pedestrian/bike trail underpass under the BNSF tracks at Railroad Milepost 79.8 at Sand Creek

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

**B. Findings of Fact**

8. The purpose of this application is to secure Commission approval to construct the pedestrian-bicycle trails as part of an integrated multi-use trail system in Colorado Springs and El Paso County.

9. The Commission has given notice of the proposed trail underpass to all interested parties, including the adjacent property owners and the BNSF. No intervention was received in opposition to this application.

10. On July 27, 2004, the Commission received a letter requesting to amend the application to remove the Fort Carson Rail Spur project. Subsequent to the original application filing, it was determined that this spur track fell under the sole jurisdiction of the Federal Government and the Department of Army Corps of Engineers.

11. Funding for the underpass project will be by Colorado Springs according to the Construction and Maintenance Agreement between Colorado Springs and BNSF, effective April 30, 2003.

12. Maintenance of the pedestrian-bicycle trail and approaches will be the responsibility of Colorado Springs.

13. All exhibits, specifications, and plans are complete, accurate, and meet Commission requirements.

### **C. Conclusions**

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

15. The public safety, convenience, and necessity require, and will be served by granting this application.

16. Because the application is unopposed, the Commission will determine this matter on the record, without a formal hearing, under § 40-6-109(5), C.R.S., and Rule 24, Commission Rules of Practice and Procedure, 4 CCR 723-1.

## **II. ORDER:**

### **A. The Commission Orders That:**

1. The City of Colorado Springs, Colorado, is authorized, per the amendment to the application, to construct a pedestrian-bicycle underpass under the Burlington Northern and Santa Fe Railway Company tracks near Railroad Milepost 79.8 at Sand Creek in El Paso County, Colorado.

2. The construction authorized in Ordering Paragraph 1 above shall be in accordance with the plans, specifications, and exhibits submitted with the application, and the Construction and Maintenance Agreement, effective April 30, 2003, which is hereby approved.

3. The operation and maintenance of the pedestrian-bicycle trail shall be the responsibility of the City of Colorado Springs, Colorado.

4. The Burlington northern and Santa Fe Railway Company shall continue to maintain its railroad track and facilities.

5. The Commission retains jurisdiction to enter further required orders.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLEY MEETING  
November 17, 2004**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners