

OPEN MEETING ITEM



0000097352

Interim Executive Director

ORIGINAL

COMMISSIONERS  
KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 26 2009

DATE: MAY 26, 2009  
DOCKET NOS: RR-03639A-08-0618

DOCKETED BY [Signature]

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

TOWN OF SAHUARITA/UNION PACIFIC RAILROAD COMPANY  
(UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JUNE 4, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 11, 2009

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

IN THE MATTER OF THE APPLICATION OF  
 THE TOWN OF SAHUARITA TO UPGRADE  
 AN EXISTING CROSSING OF THE UNION  
 PACIFIC RAILROAD AT LA CAÑADA DRIVE  
 IN THE TOWN OF SAHUARITA, PIMA  
 COUNTY, ARIZONA, AT DOT CROSSING NO.  
 742-159-T.

DOCKET NO. RR-03639A-08-0618  
  
 DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING: March 30, 2009  
 PLACE OF HEARING: Tucson, Arizona  
 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring  
 APPEARANCES: Mr. Daniel J. Hochuli, Town Attorney for the Town of Sahuarita, on behalf of the Town of Sahuarita; and  
 Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Safety Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

This case involves an application by the Town of Sahuarita ("Town") to upgrade an existing crossing of the Union Pacific Railroad ("Railroad") at La Cañada Drive in the Town, in Pima County, as part of a Town roadway-widening project.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On December 29, 2008, the Town filed with the Arizona Corporation Commission ("Commission") an application to upgrade an existing Railroad crossing as part of a Town roadway-widening project. The Town stated that the La Cañada Drive crossing requires upgrading as part of

1 the Town's La Cañada Drive Phase III Project.

2       2.       The La Cañada Drive crossing is located just to the north of the intersection of La  
3 Cañada Drive and the paved portion of El Toro Road.<sup>1</sup> The crossing is identified as DOT Crossing  
4 No. 742-159-T.

5       3.       On January 28, 2009, a Procedural Order was issued scheduling a hearing in this  
6 matter for March 30, 2009, and establishing other procedural requirements and deadlines.

7       4.       On February 24, 2009, the Railroad Safety Section of the Commission's Safety  
8 Division ("Staff") filed a Staff Report in this matter, recommending approval of the Town's  
9 application.

10       5.       On March 12, 2009, a Procedural Order was issued identifying an error in the Town's  
11 address as provided in the application, requiring the Town to file certification that notice had been  
12 provided by the Town as required by the Procedural Order scheduling the hearing, requiring the  
13 Town to identify the attorney who would be representing the Town at hearing, and requiring the  
14 Town to indicate whether it had received adequate notice of the hearing and Staff Report and would  
15 be ready to proceed to hearing as scheduled. The Procedural Order also required the Railroad to  
16 make a filing identifying the attorney who would be representing the Railroad at hearing and required  
17 Staff to file verification that copies of the Staff Report had been provided to the individuals on the  
18 service list for the docket.

19       6.       On March 19, 2009, the Town filed copies of a public notice published in *The*  
20 *Sahuarita Sun* on February 18, 2009, and in the *Arizona Daily Star* and *Tucson Citizen* on February  
21 19, 2009.

22       7.       On March 19, 2009, Staff filed notice that the Staff Report had been mailed to the  
23 Town, the Railroad, the Arizona Department of Transportation, and the Pima County Department of  
24 Transportation on the date that it was issued. Staff confirmed that the Town's copy had been sent to  
25 the wrong address, but stated that another copy was mailed to the correct address on March 16, 2009,  
26 and that the Town had also been referred to the Commission's website for an electronic copy.

27 \_\_\_\_\_  
28 <sup>1</sup> An unpaved portion of El Toro Road is located just to the north of the tracks and travels to the west of La Cañada Drive. This unpaved portion of El Toro Road now functions as an unmaintained private drive.

1           8.       On March 26, 2009, the Town filed a document confirming that the Town had  
2 published notice as required by the Procedural Order scheduling the hearing, identifying the attorney  
3 who would represent the Town at hearing, and confirming that the Town had had adequate time to  
4 prepare for the hearing.

5           9.       The Railroad did not make any filing in response to the Procedural Order issued on  
6 March 12, 2009.

7           10.      On March 30, 2009, a full evidentiary hearing was held before a duly authorized  
8 Administrative Law Judge of the Commission at the Commission's offices in Tucson, Arizona. The  
9 Town and Staff appeared through counsel and presented testimony and documentary evidence. The  
10 Town presented the testimony of Farhad Moghimi-Fard, Public Works Director and Town Engineer  
11 for the Town, and Joel Harris, Civil Engineer and Project Manager for the Town. Staff presented the  
12 testimony of Chris Watson, Staff Grade Crossing Inspector and Assistant Supervisor of Rail Safety.  
13 No public comment was received. The Railroad did not appear.

14 **The La Cañada Drive Phase III Project**

15           11.      The La Cañada Drive Phase III Project involves widening of approximately one mile  
16 of La Cañada Drive, from El Toro (to the south) to Sahuarita Road (to the north), and will also  
17 include intersection improvements and drainage improvements, for a total cost of approximately \$4.1  
18 million. (Tr. at 12-13.) The other two phases of the project were completed in the past two to three  
19 years. (Tr. at 12.) Phase III is the northernmost portion of the overall roadway-widening project.  
20 (Tr. at 28.) Thus, La Cañada Drive currently narrows from three lanes to two lanes when traveling  
21 from the south into the Phase III Project area. (Tr. at 28.) In the Phase III Project area, La Cañada  
22 Drive also lacks drainage, curbs, and sidewalks and often floods during monsoons and other rain  
23 events. (Tr. at 28-29.) After the widening is completed, La Cañada Drive will consist of three  
24 lanes—one lane in each direction (north to south) and a continuous center left-turn lane for use in  
25 either direction—and will have large shoulders with bike lanes. (Tr. at 31.)

26 **The Area Surrounding the Crossing**

27           12.      In the immediate area of the crossing, the rail line is sandwiched between parallel  
28 roadways—by two private drives on the west side of La Cañada Drive and by a multi-use path and

1 the paved portion of El Toro Drive on the east side of La Cañada Drive. (Ex. A-3.) These parallel  
2 roadways are all located within a distance of only approximately 20 feet or less from the rail line.

3 (*Id.*)

4 13. The area south of the rail line is primarily built out residential area. (Tr. at 48.) To the  
5 northwest of the crossing, there is a large active mining operation owned by the Asarco Mining  
6 Company. To the northeast of the crossing, approximately one-half mile away, there is an active  
7 Pima County landfill. A little further away to the northeast, in the Sahuarita Road area, the Town  
8 anticipates development of a proposed commercial center. (Tr. at 34.) The commercial center, a big  
9 box center or power center, is expected to include a Home Depot and potentially a hotel and is very  
10 significant to the Town because it will be the first major retail commercial center for the northern part  
11 of Town, which is where most of the major development is occurring at this time. (Tr. at 15-16, 34.)

12 14. The Town testified that the quickest way in and out of the new power center will be  
13 Sahuarita Road and the I-19, so a great deal of the traffic that will access the power center will never  
14 travel through the La Cañada Drive crossing. (Tr. at 48.)

15 **The Crossing Upgrade**

16 15. The Town proposes to replace the existing equipment at La Cañada Drive with the  
17 latest in industry standards, to include 12-inch LED flashing lights, sidelights, cantilevers with 12-  
18 inch LED flashing lights, automatic gates, bells, and constant warning time circuitry.<sup>2</sup> The Town also  
19 intends to add a new concrete crossing surface and to replace any impacted pavement markings. The  
20 crossing does not currently have either sidelights or cantilevers. (Tr. at 54.) The sidelights will be  
21 angled toward El Toro Road and will provide added visibility for cars turning onto and off of El Toro  
22 Road. (*Id.*)

23 16. The existing incandescent flashing lights, gates, mechanisms, bells, and detection  
24 circuitry at La Cañada Drive were installed pursuant to Decision No. 44999 (February 27, 1975).

25 17. The Town is the road authority for the crossing.

26 \_\_\_\_\_  
27 <sup>2</sup> Constant warning time circuitry improves safety at a crossing by reducing the amount of delay at the crossing and thus  
28 alleviating driver frustration. (Tr. at 55.) It does this by keeping the crossing gate down only for the appropriate amount  
of time. (Tr. at 56.) According to Staff, accidents generally occur at a crossing because of drivers failing to observe  
crossing restrictions, often due to frustration caused by delay. (*See* Tr. at 56.)

1           18.     The estimated cost of the crossing improvements is approximately \$535,919 and  
2 includes \$175,421 for track and surface work and \$360,468 for signal work. At the time of  
3 application, the Town indicated that the costs would be paid entirely by the Town. The Town has  
4 entered into a Public Road At-Grade Crossing Agreement with the Railroad under which the Town  
5 will pay the Railroad to make the alterations to the crossing. At the hearing, the Town testified that  
6 the Town has received approval of funding from the Regional Transportation Authority to cover the  
7 entire cost of the crossing improvements. (Tr. at 11, 18.)

8           19.     The Town testified that it desired to start construction of the third phase of the  
9 roadway widening project on April 20, 2009, and to complete the third phase, including the crossing  
10 upgrade, by March 2010. (Tr. at 10.) In approximately August 2008, the Town entered into a  
11 settlement agreement with the developer owning the adjacent property. (*Id.*) As part of the  
12 settlement agreement, the Town committed to completing the roadway project by March 2010. (*Id.*)  
13 Thus, even if the Town is unable to obtain Commission authorization in time to complete the crossing  
14 upgrade by March 2010, the Town intends to move forward with the remainder of the roadway-  
15 widening project to meet the March 2010 deadline.<sup>3</sup> (Tr. at 10, 17.) This would be accomplished by  
16 retaining the roadway directly south of the crossing as a two-lane roadway, retaining the crossing as a  
17 two-lane crossing, and then having the roadway widen just north of the crossing. (Tr. at 21-22.) The  
18 Town testified that the Railroad has been working with Town Staff to complete the design for the  
19 crossing upgrade and has indicated that it will be able to complete the crossing upgrade by March  
20 2010. (Tr. at 23-24.)

21           20.     The Town testified that La Cañada Drive is the main north-south corridor within the  
22 Town and serves as a significant alternate to the I-19, which runs parallel, approximately one-half  
23 mile to the east. (Tr. at 13, 32.) The Town desires to keep local traffic on La Cañada Drive. (*Id.*)

24           21.     Based on traffic data provided to the Town by the Pima Association of Governments,  
25 the average daily traffic (“ADT”) for the crossing in 2006 was 5,200 vehicles per day (“VPD”). The  
26 Town testified that it believes this figure is still a good estimate. (Tr. at 33.) At hearing, the Town

27 <sup>3</sup> The Town testified that failure to commence construction by April 20, 2009, would not be a breach of its settlement  
28 agreement. (Tr. at 17.)

1 testified that a 2002 study projected a 2025 ADT of 9,000 VPD, but did not account for the  
2 commercial center to be built north of the crossing. (Tr. at 33.) The Town testified that the  
3 commercial developer projected a 2019 ADT of 30,900 VPD in a traffic study completed in June  
4 2008. (Tr. at 33-34.) Staff believes that the 30,900 VPD projection is a little high, but that the 9,000  
5 VPD projection seems reasonable. (Tr. at 57.) Due to the Town's testimony that the easiest path to  
6 access the power center will be from the north and will not involve crossing the rail line, we concur  
7 with Staff.

8         22. According to Staff, the current Level of Service ("LOS") for the crossing, based on the  
9 standards of the American Association of State Highway and Transportation Officials Geometric  
10 Design of Highways and Streets, 2004, is LOS A, or least congested. The posted speed limit on La  
11 Cañada Drive is 45 MPH south of the crossing and 50 MPH north of the crossing. With the upgrade,  
12 the speed limit will be reduced to 40 MPH north of the crossing.

13         23. Staff and FRA records indicate that one accident has occurred at the crossing, with one  
14 injury. The accident occurred on March 7, 1975, approximately 10 days after the Decision approving  
15 installation of warning devices and before the warning devices had been installed.

16 **Train Volume and Crossing Usage**

17         24. The rail line that runs through the crossing is known as the Anamax Mine Spur and is  
18 used solely to serve the mines to the west. (Tr. at 35, 57-58.)

19         25. Only one freight train per day travels through the crossing, at a speed of 10 miles per  
20 hour. (Tr. at 35, 57-58.) All train movements through the crossing are thru freight, serving the mine.  
21 (Tr. at 36.) The rail line is not used by passenger trains. (*Id.*)

22         26. There is only one school located within one mile of the crossing, a charter elementary  
23 school located 0.95 miles to the south of the crossing, at the intersection of La Cañada Drive and  
24 Camino Antigua. The Sahuarita Unified School District campus, which houses a primary school, an  
25 intermediate school, a middle school, and a high school, is located approximately two miles from the  
26 crossing on Sahuarita Road. Six school buses cross at the crossing four times each school day, for a  
27 total of 24 school bus crossings per school day.

28         27. There is currently no Town bus service in the area. Thus, the school buses are the

1 only buses that use the crossing.

2 28. The Town states that no hospitals are located in the vicinity of the crossing and that  
3 the use of the roadway by emergency vehicles is typical of that in other areas around Town. There is  
4 no evidence indicating that the crossing is used extensively by emergency vehicles.

5 **Grade Separation/Crossing Elimination**

6 29. Staff analyzed whether grade separation is currently warranted at the crossing using  
7 the Federal Highway Administration ("FHWA") *Railroad-Highway Grade Crossing Handbook*  
8 ("FHWA Handbook").<sup>4</sup> The FHWA Handbook indicates that grade separation or crossing  
9 elimination should be considered when one or more of nine criteria are met. Staff created a chart,  
10 attached hereto and incorporated herein as Exhibit A, showing the results of Staff's analysis of the  
11 criteria for the crossing.

12 30. Exhibit A shows that the crossing currently does not meet any of the nine criteria in  
13 the FHWA Handbook. The Town and Staff both testified that even with an ADT of 30,900 VPD, the  
14 crossing would not meet any of the grade-separation criteria of the FHWA Handbook. (Tr. at 44-45,  
15 59.) Staff does not recommend grade separation at the crossing. (Tr. at 59.)

16 31. The Town considered grade separation at the crossing and determined that it is not  
17 appropriate due to the extremely minimal train traffic, the need for access to the roadways in close  
18 proximity to the crossing, and the crossing's not meeting any of the criteria in the FHWA Handbook.  
19 (See Tr. at 39-40.) The Town explained that it hopes to establish El Toro Road as more of a major  
20 east-west corridor and that grade separating La Cañada Drive would cut off both El Toro Road and  
21 neighborhood access for private property owners west of the crossing. (Tr. at 41-42.) Staff agreed  
22 with the Town's determination that a grade separation at the crossing would present substantial  
23 challenges due to the area surrounding the crossing. (Tr. at 59-60.)

24 32. Because the area surrounding the crossing is highly developed with both commercial  
25 and industrial businesses, Staff determined that closing the crossing would have a negative impact on  
26 local businesses. Staff does not recommend closure of the crossing.

27  
28 <sup>4</sup> Staff used the revised 2<sup>nd</sup> edition from August 2007.

**Staff's Recommendations**

33. Staff recommends approval of the application. Staff believes that the upgrades are in the public interest, are reasonable and appropriate, and are consistent with safety measures taken at crossings of a similar nature throughout the State of Arizona. (Tr. at 60.)

34. At hearing, Staff testified that the Railroad should be ordered to complete the upgrades at the La Cañada Drive crossing within 12 months, to assist the Town in meeting its deadline. (Tr. at 61.) Staff also testified that the Town's moving forward with the roadway widening without upgrading the crossing at the same time would render the crossing unsafe by creating a bottle neck situation at the crossing, which could result in driver frustration and associated problems. (Tr. at 61-62, 65.) Staff believes that synchronizing the roadway widening with the crossing upgrades will enhance safety. (Tr. at 63.)

35. Staff further testified that the potential increase in the volume of traffic as a result of the commercial development makes it appropriate for the Commission to order monitoring of the ADT at the crossing for the next five years, as the Commission has sometimes done in other cases. (Tr. at 63-64.)

**Conclusion**

36. Staff's recommendations are reasonable and appropriate and should be followed, although Staff's recommendation for the crossing upgrades to be completed within 12 months should be modified to require completion by March 31, 2010, so that the Town can meet the deadline imposed by the settlement agreement. This is appropriate both because the public interest necessitates that the crossing upgrades take place at the same time as the roadway widening and because the Railroad has indicated to the Town that it can meet this deadline.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and over the subject matter of the application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337, and 40-337.01.

2. Notice of the application was provided in accordance with the law.

3. Upgrading of the crossing as proposed in the application is necessary for the public's

1 convenience and safety.

2 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the application should be approved as  
3 recommended by Staff, with the deadline modification set forth in Findings of Fact No. 36.

4 5. After the crossing is upgraded, the Railroad should maintain the crossing in  
5 accordance with A.A.C. R14-5-104.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the application of the Town of Sahuarita is hereby  
8 approved.

9 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the  
10 upgrades to the crossing at La Cañada Drive by no later than March 31, 2010.

11 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the  
12 Commission, in writing, within 10 days of both the commencement and the completion of the  
13 crossing upgrades, pursuant to A.A.C. R14-5-104.

14 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall maintain the  
15 crossing at La Cañada Drive, in the Town of Sahuarita, Pima County, Arizona in compliance with  
16 A.A.C. R14-5-104.

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1 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall file with the  
2 Commission's Docket Control, as a compliance item in this docket, every five years from the  
3 effective date of this Decision, an update on the average daily traffic count at the La Cañada Drive  
4 crossing. The updated average daily traffic count shall be obtained from the road authority or a  
5 contractor hired by the Railroad.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
8  
9

10 CHAIRMAN \_\_\_\_\_ COMMISSIONER

11  
12 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER

13  
14 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim  
15 Executive Director of the Arizona Corporation Commission,  
16 have hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this \_\_\_\_ day of \_\_\_\_\_, 2009.

18 \_\_\_\_\_  
19 MICHAEL P. KEARNS  
20 INTERIM EXECUTIVE DIRECTOR

21 DISSENT \_\_\_\_\_

22  
23 DISSENT \_\_\_\_\_

24 MES:db

1 SERVICE LIST FOR: TOWN OF SAHUARITA/UNION PACIFIC  
2 RAILROAD COMPANY

3 DOCKET NO.: RR-03639A-08-0618

4 TOWN OF SAHUARITA-PUBLIC WORKS DEPARTMENT  
5 Attention: Joel Harris, Civil Engineer  
6 375 West Sahuarita Center Way  
7 Sahuarita, Arizona 85629

8 Daniel J. Hochuli, Town Attorney  
9 TOWN OF SAHUARITA, ARIZONA  
10 375 West Sahuarita Center Way  
11 Sahuarita, Arizona 85629

12 Aziz Aman, Manager of Special Projects  
13 UNION PACIFIC RAILROAD COMPANY  
14 2073 East Jade Drive  
15 Chandler, Arizona 85286-4898

16 Anthony J. Hancock  
17 Terrance L. Sims  
18 BEAUGUREAU, ZUKOWSKI, HANCOCK, STOLL & SCHWARTZ, P.C.  
19 302 East Coronado Road  
20 Phoenix, Arizona 85004  
21 Attorneys for Union Pacific Railroad Company

22 Robert Travis, PE, State Railroad Liaison  
23 Utilities & Railroad Engineering Section  
24 ARIZONA DEPARTMENT OF TRANSPORTATION  
25 205 South 17<sup>th</sup> Avenue, Mail Drop 618E  
26 Phoenix, Arizona 85007

27 Traffic Records Section  
28 ARIZONA DEPARTMENT OF TRANSPORTATION  
29 206 South 17<sup>th</sup> Avenue, Mail Drop 064R  
30 Phoenix, Arizona 85007

31 Bob Roggenthen, PE  
32 Traffic Engineering Division  
33 PIMA COUNTY DEPARTMENT OF TRANSPORTATION  
34 1313 South Mission Road  
35 Tucson, Arizona 85713-1398

36 Brian Lehman, Chief  
37 Railroad Safety Section  
38 ARIZONA CORPORATION COMMISSION  
39 1200 West Washington Street  
40 Phoenix, Arizona 85007

41 Janice Alward, Chief Counsel  
42 Legal Division  
43 ARIZONA CORPORATION COMMISSION  
44 1200 West Washington Street  
45 Phoenix, Arizona 85007

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## EXHIBIT "A"

FHWA Guidelines Regarding Grade Separation

The Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook (Revised Second Edition August 2007) provides nine criteria for determining whether highway-rail crossings should be considered for grade separation or otherwise eliminated across the railroad right of way. The Crossing Handbook indicates that grade separation or crossing elimination should be considered whenever one or more of the nine conditions are met. The nine criteria are applied to this crossing application as follows:

		<b>La Cañada</b>
The highway is a part of the designated Interstate Highway System	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
The highway is otherwise designed to have full controlled access	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
The posted highway speed equals or exceeds 70 mph	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
AADT exceeds 100,000 in urban areas or 50,000 in rural areas	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
Maximum authorized train speed exceeds 110 mph	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
An average of 150 or more trains per day or 300 million gross tons/year	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	N/A
Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250k in rural; or passenger train crossing exposure exceeds 800k in urban or 200k in rural	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	N/A
Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	N/A
Vehicle delay exceeds 40 vehicle hours per day	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No

N/A = Information was not available to perform these calculations. However, based on information currently available, Staff does not anticipate that these criteria will be met by 2030.