

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCKET CONTROL

DATE: NOVEMBER 16, 2010

DOCKET NO.: RR-20747A-10-0206

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

THE CENTRAL ARIZONA COMMERCCE PARK, LLC  
(NEW 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:

NOVEMBER 26, 2010

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:

DECEMBER 1, 2010

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.

Arizona Corporation Commission  
DOCKETED

NOV 16 2010

DOCKETED BY

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

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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 CITY OF CASA GRANDE AND  
THE CENTRAL ARIZONA COMMERCE  
PARK, LLC FOR TO ESTABLISH A NEW  
PUBLIC RAILROAD CROSSING ON  
PETERS ROAD IN THE CITY OF CASA  
GRANDE, PINAL COUNTY, ARIZONA.

DOCKET NO. RR-20747A-10-0206

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

DATE OF HEARING: September 23, 2010  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: Mr. Brett D. Wallace, City Attorney, on behalf of the City of Casa Grande;  
Mr. Frederick G. Gamble, Attorney-at-Law, on behalf of the Central Arizona Commerce Park, LLC; and  
Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Safety Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On May 19, 2010, the City of Casa Grande ("City") and the Central Arizona Commerce Park, LLC ("CAZCP") (collectively "Applicants") filed with the Arizona Corporation Commission ("Commission") an application for the establishment of a new public railroad crossing on Peters Road between Burris and Thornton Roads in the City, Pinal County ("County"), Arizona at USDOT No. 935-873-F ("Application").

On July 2, 2010, by Procedural Order, the proceeding was scheduled for a hearing on September 23, 2010.

On August 4, 2010, Applicants filed certification that they had provided public notice of the Application pursuant to the Commission's Procedural Order.

1 On September 23, 2010, a full public hearing was convened before a duly authorized  
2 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The City, CAZCP  
3 and the Railroad Safety Section of the Commission's Safety Division ("Staff") were present with  
4 counsel. At the conclusion of the hearing, the matter was taken under advisement pending  
5 submission of a Recommended Opinion and Order to the Commission.

6 \* \* \* \* \*

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

9 **FINDINGS OF FACT**

10 1. On May 19, 2010, the City and CAZCP filed an Application in which they requested  
11 an Opinion and Order from the Commission approving the establishment of a new public at-grade  
12 railroad crossing on Peters Road between and Burris and Thornton Roads in Casa Grande, Pinal  
13 County, Arizona at USDOT No. 935-873-F.

14 2. On July 2, 2010, by Procedural Order, a hearing was scheduled on the Application.

15 3. On August 4, 2010, pursuant to the Commission's Procedural Order, an Affidavit of  
16 Publication was filed certifying that public notice had been provided of the Application and hearing  
17 thereon in the *Casa Grande Dispatch*, a newspaper of general circulation in the area of the site where  
18 the crossing will be constructed.

19 4. On September 3, 2010, the Staff Memorandum was filed recommending approval of  
20 the Application.

21 5. The hearing was held as scheduled on September 23, 2010.

22 6. The Application provides for CAZCP to construct and maintain a new public at-grade  
23 railroad crossing for a private spur industrial track which will cross Peters Road approximately 2.25  
24 miles southwest of the City's downtown area to serve an area which has been zoned for industrial  
25 development. Peters Road borders the area on its northern boundary, Thornton Road is to the east  
26 and Burris Road to the west. The Selma Highway is the planned industrial area's southern boundary.

27 7. Presently, Peters Road is a two lane east-west roadway which CAZCP will improve to  
28

1 a four land roadway with raised medians where the crossing is to be constructed. CAZCP will install  
2 automatic warning devices consisting of double curb-side automatic gates, flashing LED lights and  
3 bells together with a concrete crossing surface.

4 8. CAZCP is in the process of developing a large commercial/industrial area which is to  
5 become part of an Industrial Area Improvement District ("District"). Phase I of CAZCP's  
6 development lies to the north of Peters Road and consists of approximately 150 acres. Phase II of  
7 CAZCP's development is located to the south across Peters Road where the new at-grade crossing  
8 which will connect Phase I with Phase II is to be constructed. Plans call for both phases of CAZCP's  
9 development to be served by CAZCP's private spur line that will be interconnected with what is  
10 termed the "VIP line" of the Union Pacific Railroad ("UPRR").

11 9. CAZCP called four witnesses in support of its Application as follows: Jakob  
12 Andersen, the managing member of CAZCP; Vern Vandelloo, president of Mountain States  
13 Contracting, Inc. ("Mountain States"); Christopher Bert Williams, a civil engineer with SouthWest  
14 Traffic Engineering ("SWTE"); and Scott Parkinson, the president of Arizona Railroad Group  
15 ("ARG"), and also the general manager of the San Pedro Operating Company ("SPROC") and its  
16 primary operating subsidiary, the San Pedro and Southwestern Railroad ("SPSW").

17 10. Mr. Andersen testified that beginning in 2006, CAZCP acquired 150 acres of land as  
18 the beginning of its first phase of development for a rail-served heavy industrial park. CAZCP plans  
19 to expand to the south in its second phase of development and has acquired approximately 580 acres  
20 of land to the south of its Phase I development across Peters Road. (Tr. 8: 12-13) According to Mr.  
21 Andersen, the first 150 acres of Phase I has been improved and currently this area has rail lines in  
22 place to serve the parcels in the first phase of development. (Tr. 9: 10-24).

23 11. Mr. Andersen testified that an economist had finished a study in September, a week  
24 before the hearing, on the impact of the industrial park on the City. The economist's study projects  
25 that, by 2030, development will create 14,500 jobs in the area with construction revenue projected at  
26 \$60 million. (Tr. 10: 3-8)

27 12. In order to proceed with development, SWTE and Mountain States were retained to  
28 prepare traffic studies and to design the crossing.

1 13. Representatives of CAZCP, Mountain States and Staff met to discuss the Peters Road  
2 crossing and the manner in which it would be designed. (Tr. 11: 7-25)

3 14. Mr. Andersen further indicated that CAZCP is willing to accept reasonable conditions  
4 for approval of the proposed crossing in order to enhance public safety. (Tr. 12: 3-7)

5 15. Since CAZCP's private industrial spur is to be serviced by the UPRR, it retained a  
6 third-party operator, SPROC, which was highly recommended to CAZCP. SPROC operates SPSW  
7 and 9,500 feet of track in the Phase I area of CAZCP's industrial development to the north of Peters  
8 Road. (Tr. 12-13: 19-2)

9 16. Mr. Andersen testified that SPSW operates what he termed a "switch tail" which is  
10 composed of three parallel lines of track next to each other where the UPRR can drop off fully loaded  
11 railcars and pick up unloaded or reloaded railcars from what is called a "run-around track." (Tr. 13:  
12 2-6)

13 17. To facilitate the operations of CAZCP's industrial spur, it has entered into agreements  
14 with both SPROC and the UPRR.

15 18. Additionally, CAZCP has entered into an agreement with the City wherein the City  
16 has authorized an easement and maintenance agreement with CAZCP for its private industrial spur  
17 which will across Peters Road that requires CAZCP to maintain the crossing pursuant to the terms of  
18 its agreement with the City. (Tr. 14: 1-11)

19 19. According to Mr. Andersen, CAZCP will complete its roadway work on Peters Road  
20 when the crossing is constructed. At full buildout in 2030, Peters Road will have two lanes in each  
21 direction with a turning lane. (Tr. 14: 7-19)

22 20. Mr. Andersen testified that CAZCP's first phase of development has resulted in 24  
23 fully developed parcels and that there is water, sewer, electric and rail service available along with  
24 roads for use by future lot owners in the northern portion of CAZCP's development area. Thus far,  
25 two of the parcels located in Phase I have been sold for development by their owners. (Tr. 17: 22-25)

26 21. Presently, the southern parcel or Phase II has only been improved with water and  
27 sewer service.

28 22. According to Mr. Andersen, SPSW will be operating its own locomotive which will

1 move railroad cars across the Peters Road crossing and SPSW will also maintain the crossing for  
2 CAZCP. (Tr. 21: 18-25)

3 23. Maintenance costs for the crossing will be paid with funds collected from the  
4 individual parcel owners within CAZCP's industrial park pursuant to the Codes, Covenants and  
5 Restrictions which have already been adopted. (Tr. 22: 4-9)

6 24. According to Mr. Andersen, the Peters Road crossing can be completed by CAZCP's  
7 contractor, Mountain States, within 60 to 90 days after the commencement of construction. CAZCP  
8 does not plan on construction being started on the crossing until there is a need for rail service in the  
9 southern parcel where CAZCP's second phase of development will take place. (Tr. 26: 3-10)

10 25. Mr. Andersen estimated that construction of the private spur track crossing on Peters  
11 Road will cost CAZCP just under \$400,000, but that does not include the cost of road construction.  
12 (Tr. 37: 13-15)

13 26. Mr. Andersen further testified that CAZCP is in the process of forming a new limited  
14 liability company to be called Central Arizona Commerce Park Property Association, LLC, which  
15 will be taking over the functions of CAZCP once its property is totally developed, and that the  
16 property owners association will be collecting fees for the maintenance of the crossing and making  
17 reports to the Commission, if they are required in the future.

18 27. Mr. Vern Vandeloo, the president of Mountain States, testified that his company has  
19 contracted with CAZCP for the design and construction of the Peters Road at-grade crossing as  
20 development takes place in Phase II of CAZCP's property. (Tr. 45: 1-5)

21 28. Mr. Vandeloo described the crossing and automatic warning system which his  
22 company will install on Peters Road as having a concrete crossing surface with double gates wide  
23 enough to stop traffic in each lane along with a center median which will prevent cars from crossing  
24 over and zigzagging around the gates. (Tr. 47: 1-5)

25 29. Mountain States is proposing the use of an island circuit sensing system which  
26 requires a train to come up to the crossing and stop and wait for the signal to activate the gates before  
27 proceeding. In this way, the automatic warning system will not be activated unless the third party  
28 switching train is actually going to cross Peters Road at the crossing. (Tr. 47-48: 24-7)

1           30.     Additionally, Mr. Vanderloo testified that the automatic gates will have LED flashing  
2 lights with bells and battery backup power. (Tr. 48: 11-19)

3           31.     Mr. Vandeloo confirmed that once his company receives the go-ahead to start  
4 construction from CAZCP, construction will be completed in 60 to 90 days. (Tr. 49: 21-22)

5           32.     Mr. Christopher Williams, a civil engineer with SWTE, testified that he had prepared  
6 a traffic study for the entire District which is being developed and a small section analysis for the  
7 Peters Road crossing, which included the projection of traffic impacts at the at-grade crossing which  
8 is to be constructed in the future. (Tr. 56: 2-15)

9           33.     According to Mr. Williams, SWTE utilized the City of Casa Grande Traffic Impact  
10 Study Guidelines in preparing the analysis of the effect on traffic at present and in 2030. (Tr. 56: 13-  
11 25)

12          34.     Mr. Williams further testified that using a worst-case scenario at peak crossing times,  
13 which are either at 5:00 p.m. or usually 7:00 or 8:00 a.m., with one or two train crossings a day, at  
14 present it would delay approximately four vehicles for seven minutes and in 2030 it was projected  
15 that 81 vehicles divided between two lanes could possibly be delayed. (Tr. 58-59: 7-10)

16          35.     Mr. Williams opined that it would be "unthinkable" to build an overpass presently  
17 based on the minimal delays which are projected. (Tr. 60: 13-16)

18          36.     Scott Parkinson, the president of ARG, testified that his company has contracted with  
19 CAZCP to operate the switching operation in the industrial park and at the Peters Road crossing  
20 using its own locomotive. (Tr. 63: 10-25)

21          37.     Mr. Parkinson further testified that his company had previous experience in the  
22 operation of a switch yard for the UPRR in Willcox, Arizona. (Tr. 65: 1)

23          38.     Mr. Parkinson anticipates that there will be two switching operations per day once  
24 development takes place in Phase II. (Tr. 65: 4-15)

25          39.     According to Mr. Parkinson, he anticipates that switching operations will only take  
26 place in daylight hours. (Tr. 67: 8-9)

27          40.     Mr. Chris Watson, an assistant supervisor and grade-crossing inspector for Staff,  
28 testified that he had evaluated the Application and prepared the Staff Memorandum. (Tr. 69: 4-19)

1           41.     Mr. Watson indicated that the island circuit system proposed by Mountain States for  
2 the operation of the double gates at the crossing would be beneficial to the public. (Tr. 70: 21-25)

3           42.     According to Mr. Watson, Staff has no special concerns with respect to the proposed  
4 operations at the Peters Road crossing as proposed by CAZCP. (Tr. 71: 6-12)

5           43.     Mr. Watson found the proposed safety improvements to be constructed at the Peters  
6 Road at-grade crossing to be appropriate and consistent with similar crossings throughout the state.  
7 (Tr. 72: 2-8)

8           44.     The Staff Memorandum describes how CAZCP has entered into an industrial track  
9 agreement for the service of its private rail spur by the UPRR.

10          45.     The Staff Memorandum confirms the planned installation of automatic safety  
11 equipment at the proposed at-grade crossing on Peters Road in the City with the switching and  
12 maintenance to be performed by SPSW.

13          46.     Mr. Watson testified further that Staff had evaluated the issue of grade separation at  
14 the crossing and does not believe that it would be appropriate. (Tr. 72:15-18)

15          47.     Utilizing the *Federal Highway Administration* ("FHWA") *Railroad-Highway Grade*  
16 *Crossing Handbook* (Rev. 2nd. Edition, Aug. 2007), which contains the nine criteria for determining  
17 whether a highway/rail crossing should be considered for grade separation or otherwise eliminated  
18 from the railroad right-of-way, Staff, in the Staff Memorandum, confirms the fact that none of the  
19 nine criteria will be satisfied by the year 2030. It is also clear that Staff did not find unreasonable the  
20 light traffic projections made by SWTE or the fact that future delays will fall well below the FHWA  
21 recommended threshold of 40 vehicles hours delay per day before the consideration of a grade  
22 separated crossing.

23          48.     Staff further believes that the safety measures proposed for the crossing in the  
24 Application and described during the hearing are consistent with other similar at-grade crossings in  
25 Arizona and will provide for the public's safety.

26          49.     Staff is recommending approval of the Application.

27          50.     CAZCP's Application for approval of the at-grade crossing of Peters Road should be  
28 approved.

**CONCLUSIONS OF LAW**

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

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

3. The construction of the public at-grade crossing of Peters Road is necessary for the public's convenience and safety.

4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as recommended by Staff.

5. CAZCP should notify the Commission, in writing, within 10 days of both the commencement and completion of the project for the at-grade crossing of Peters Road in accordance with A.A.C. R14-5-104.

6. After the completion of the public at-grade crossing at Peters Road, CAZCP should maintain the crossing in accordance with A.A.C. R14-5-104.

**ORDER**

IT IS THEREFORE ORDERED that Application of the City of Casa Grande and the Central Arizona Commerce Park, LLC for the construction of a public at-grade crossing of Peters Road in the City of Casa Grande, Pinal County, Arizona at USDOT No. 935-873-F is hereby approved.

IT IS FURTHER ORDERED that the Central Arizona Commerce Park, LLC shall notify the Commission in writing within 10 days of both the commencement and the completion of the at-grade crossing of its private spur line at Peters Road in the City of Casa Grande, Pinal County, Arizona, pursuant to A.A.C. R14-5-104.

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IT IS FURTHER ORDERED that upon completion of the at-grade crossing, Central Arizona Commerce Park, LLC or its successor shall maintain the crossing of the roadway on Peters Road in the City of Casa Grande, Pinal County, Arizona, in compliance with A.A.C. R14-5-104.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:db

1 SERVICE LIST FOR: CITY OF CASA GRANDE AND THE CENTRAL  
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