

Mailed 6/9/00

Decision 00-06-036 June 8, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the matter of the Joint Application of City of |) | |
| Novato, a municipal corporation, and Black Point |) | |
| Partnership, L.P., a California limited partnership, for |) | Application 99-10-029 |
| an Order authorizing an at-grade crossing of the tracks |) | (Filed October 22, 1999) |
| of the Northwestern Pacific Railroad Authority in the |) | |
| City of Novato, County of Marin. |) | |

OPINION

As part of the Black Point Development Project, the City of Novato (City) requests authority to construct a new public at grade crossing at the site of an existing private crossing at Renaissance Road and to close an existing private crossing at milepost 28.08 of the tracks of the Northwestern Pacific Railroad Authority (NWPR).

The Black Point Development is a golf course, clubhouse, and 53 residential units within the boundaries of the City of Novato. The proposed Black Point Drive crossing will be the only means of public access to the project. As part of the construction an existing private crossing at milepost 28.08 will be closed.

The application was originally filed jointly by Black Point Partnership, L.P. (Black Point) and City. The application states "Black Point ultimately is responsible for the construction or improvement of the streets and roadways in the Black Point development-including the street which will cross the NWPR tracks-prior to dedicating such streets and roadways to Novato." By letter dated November 1, 1999 staff indicated to applicants that under Rule 38 of the Commission's Rules of Practice and Procedure "applications to construct a public road, highway, or street across a railroad must be made by the municipal, county, state or other governmental authority which proposes the construction". By letter dated January 10, 2000, counsel for Black Point withdrew as an applicant and stated that a letter from City would be forthcoming stating

that City had no objection to Black Point withdrawing. By letter dated April 12, 2000 City stated it has no objection to Black Point withdrawing as an applicant and will assume responsibility for the crossing's construction and maintenance of automatic crossing protection devices which may be installed.

City is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code Sections 21000, et seq. In August 1997, City certified the Final Environmental Impact Report (FEIR). The project was found to have a significant effect on the environment and mitigation measures were made a condition of approval.

The Commission is a responsible agency for this project under CEQA and has reviewed and considered the lead agency's FEIR. The application meets the filing requirements of the Commission's Rules of Practice and Procedure. A sketch of the crossing area is set forth as Appendix A.

The site of the proposed project has been inspected by the Commission's Rail Safety and Carriers Division (RSAC) Rail Crossings Engineering Section staff. The staff examined the need for and safety of the proposed new public at grade crossing at the site of the existing private crossing of Renaissance Road and the closing of the private crossing at milepost 28.08 and recommends that the requested authority be granted.

In Resolution ALJ 176-3026 dated November 4, 1999 the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. RSAC recommends that this application be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3026.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code Section 311 (g) (2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on October 27, 1999.
2. No protests have been filed.

3. City requests authority, under Public Utilities Code Sections 1201 - 1205, to construct a new public crossing at the site of an existing private crossing at Renaissance Road and to close an existing private crossing at milepost 28.08 of the tracks of the NWPR in the City of Novato.

4. Public convenience and necessity require construction of the new at grade crossing at site of the existing private crossing and the closure of the existing private crossing at milepost 28.08.

5. City is the lead agency for this project under CEQA, as amended.

6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIR.

7. The mitigation measures adopted by City will reduce the severity of adverse environmental impacts to acceptable levels.

Conclusions of Law

1. The application is uncontested, and a public hearing is not necessary.
2. The application should be granted as set forth in the following order.

ORDER

IT IS ORDERED that:

1. The City of Novato (City) is authorized to construct a new public at grade crossing at the site of an existing private crossing at Renaissance Road and to close an existing private crossing at milepost 28.08 of the tracks of the Northwestern Pacific Railroad Authority (NWPR) at the location and substantially as shown by plans attached to the application. The new crossing is to be identified as CPUC Crossing 5H-28.11.

2. Clearances shall be in accordance with GO 26-D.

3. Walkways shall conform to GO 118.

4. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be promptly restored to their original condition in the event of damage during construction.

5. Protection at the new crossing shall be two No. 9-A automatic gate-type signals with cantilever lights (GO 75-C).

6. Upon completion of the new Black Point Drive crossing and its opening to vehicular traffic, the existing private crossings at milepost 28.08 shall be closed and physically removed. NWPR shall file a Form "G" report with the Commission's Rail Safety and Carriers Division within 30 days of completion.

7. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between the parties. A copy of the agreement, together with plans of the crossing approved by NWPR shall be filed by City with the Commission's Rail Safety and Carriers Division prior to commencing construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

8. Within thirty (30) days after completion of the work under this order, City shall advise the Commission's Rail Safety and Carriers Division, Rail Crossings Engineering Section in writing that the authorized work has been completed.

9. This authorization shall expire if not exercised within three (3) years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

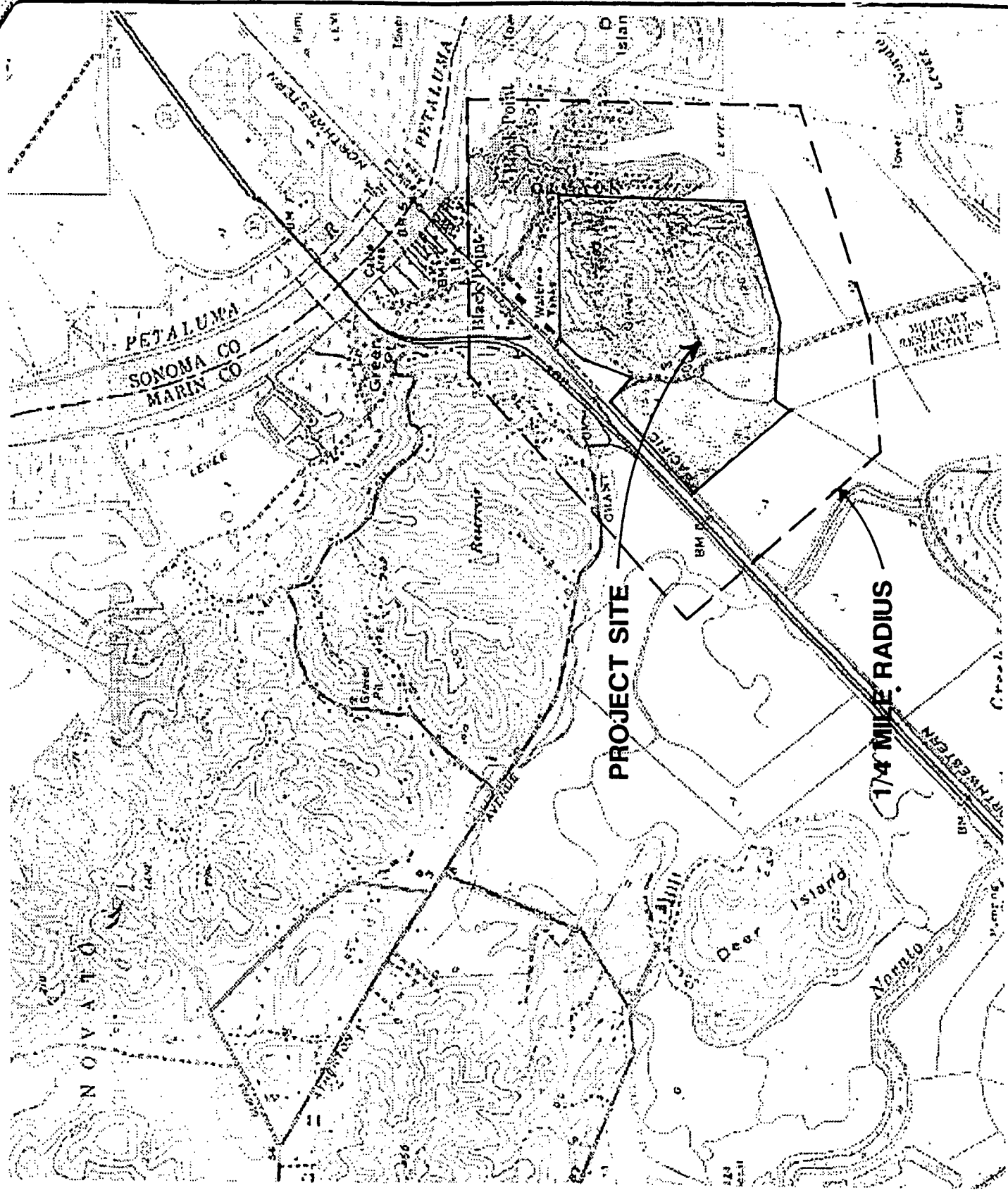
10. This application is granted as set forth above.

11. Application 99-10-029 is closed.

12. This order becomes effective 30 days from today.

Dated June 8, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners



CSW

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1"=2000'
10/1/98

JOB# 1.215.93

BLACK POINT GOLF LINKS

SITE MAP

(FIGURE 1)

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NOVATO

MARIN

CALIFORNIA