

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
NEAL A. McCONAUGHY for permission  
to construct a public highway  
crossing at grade over the tracks  
of South Pacific Coast Railway in  
Lorenzo Garden Acres, near San  
Lorenzo, Alameda County, California.

Application No. 881.

Leon A. Clark for applicant.  
George D. Squires for South Pacific Coast Railway  
and Southern Pacific Company.

THELEN, Commissioner.

O P I N I O N.

This is an application by Neal A. McConaughy, under the provisions of Section 43 of the Public Utilities Act, for an order authorizing the construction of a public highway crossing at grade over the tracks owned by the South Pacific Coast Railway and operated by the Southern Pacific Company, at a point in a proposed subdivision to be called "Lorenzo Garden Acres," in Eden Township, Alameda County, California, where Grant Avenue, as indicated on the map which is attached to the petition herein and marked "Exhibit A," crosses said tracks.

Mr. McConaughy is the owner of a tract of farming land lying in Eden Township, Alameda County, south of the Town of San Lorenzo, and desires to subdivide the same. He has prepared a map showing the tract as subdivided, which map has been filed with the Board of Supervisors of Alameda County but has not as yet been accepted. This map shows Grant Avenue, a highway forty feet wide, running through the tract, between the two tiers of lots of this subdivision, from a connection with a public highway on the east westerly across the tracks of the South Pacific Coast Railway to property of the Union Water Company. The railroad crossing is desired to enable persons who may purchase the eight lots lying west of

the railroad right-of-way to secure ingress<sup>to</sup> and egress from their property.

The line of the South Pacific Coast Railway runs from Oakland to Santa Cruz. Some three daily passenger trains each way as well as freight trains are operated over this line. Mr. McConaughy has at present two private crossings over the railroad tracks, one north and the other south of the proposed point of crossing by Grant Avenue. These crossings have a gate on either end and are maintained by the Southern Pacific Company.

The travel over this crossing, if constructed, will be light. No one other than persons living on the eight lots west of the railroad right-of-way will be served thereby. The country is flat and there are no obstructions to the view in the vicinity of the proposed crossing. If the crossing is authorized, no safety device other than the whistling posts hereinafter referred to, will at present be necessary. A separation of grades would be costly and unnecessary.

As appears from copy of letter dated November 23, 1913 from J. D. Brennan, Superintendent of the Southern Pacific Company, attached to the petition as Exhibit "B", the Southern Pacific Company has consented to the proposed crossing, provided that Mr. McConaughy will release the present two private crossings and pay the entire expense incident to the installation of a standard public highway crossing. This expense will include the necessary construction work and grading and the installation of whistling posts, cattle guards and wing fences. The work is to be performed by employees of the Southern Pacific Company. Mr. McConaughy has agreed to these terms.

Two questions arose at the hearing - one concerning the grant by the railway company of an easement for the crossing and the other concerning the maintenance of the crossing. The South Pacific Coast Railway has heretofore offered to execute and deliver to the County of Alameda a deed conveying an easement for the highway crossing, but the Board of Supervisors refused to accept it, apparently because of a

fear that the acceptance of the deed might subject them to some obligation with respect to the crossing in excess of the obligations to which they would otherwise be subjected. The railway company then offered to convey the easement to Mr. McConaughy if he would give sufficient assurance that the crossing would thereafter be maintained. As the crossing will become a public crossing as soon as Grant Avenue has been extended across the railway tracks and the offer to dedicate has been accepted by public user, it would seem proper that the title to this easement should vest in the County of Alameda. The order in this case will contain a provision to this end. It must be understood, however, that the acceptance of this deed by the County of Alameda will in no way increase such obligations with reference to this crossing as might rest on the Board of Supervisors or any member thereof, in the absence of such deed.

The other matter is insignificant in fact, though of some importance in principle. It affects the duty of maintaining the approaches to the crossing. It is the duty of the railway company to maintain the crossing between the rails and a reasonable distance, say two feet, on each side thereof. The railway company does not desire to be placed in the position of being compelled hereafter to maintain the approaches as well. Until the offer of dedication has been accepted by user, it will be Mr. McConaughy's duty to maintain the approaches: thereafter it will be the duty of the Board of Supervisors, to the same extent, but no more, as is true in the case of all similar railroad crossings by public highways.

I recommend that the application be granted, subject to the conditions which will appear in the order.

I submit herewith the following form of order:

#### O R D E R.

NEAL A. MCCONAUGHY having applied to the Railroad Commission for an order authorizing the construction of a public highway to be known as Grant Avenue over the tracks of the South Pacific Coast Railway, operated by the Southern Pacific Company, at a point in the proposed

subdivision to be known as "Lorenzo Garden Acres," in Eden Township, Alameda County, California, as appears from a map which is attached to the petition in this proceeding, and marked Exhibit "A", and a public hearing having been held on said application, and it appearing to the Commission that it is not reasonable or practicable to avoid a grade crossing at the proposed point of crossing, and that said application should be granted, subject to the conditions hereinafter specified,

IT IS HEREBY ORDERED that permission be and the same is hereby granted to Neal A. McCaughy to construct a road or highway forty (40) feet in width, at grade, across the tracks of the South Pacific Coast Railway, operated by the Southern Pacific Company, at a point in the tract known as "Lorenzo Garden Acres," in Eden Township, Alameda County, as indicated on the map which is attached to the petition and marked Exhibit "A," subject to the following conditions and not otherwise, to-wit:

1. Said crossing shall be constructed by the Southern Pacific Company, but the entire expense thereof, including the actual construction and grading work, together with the installation of two whistling posts, one on each side of the crossing, and of the necessary cattle guards and wing fences, shall be paid to the Southern Pacific Company by Mr. McCaughy.

2. The width of the roadbed shall be not less than twenty-four (24) feet and the grades of approach to the crossing shall not exceed six (6) per cent. The crossing shall be ballasted with first class stone or gravel ballast to a depth of not less than six (6) inches, across the track and to a distance of two (2) feet on each side thereof.

3. South Pacific Coast Railway shall execute and deliver to the County of Alameda a deed conveying an easement for said crossing and unless the Board of Supervisors of said county accepts said easement, this order shall not become effective. If the Board

of Supervisors accepts the easement, such acceptance will in no way increase the obligations to which the Board or any member thereof would be subject, if such deed were not accepted.

4. The Railroad Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7<sup>th</sup> day of January, 1914.

John M. Eastman  
H. D. Loveland  
Max Thelen  
E. O. Edgerton

Commissioners.