

**ORIGINAL**Decision No. 67888

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the COUNTY OF MARIN )  
 for a public grade crossing over )  
 the Northwestern Pacific Railroad )  
 north of Marin County Civic Center )  
 and north of San Rafael, County of )  
 Marin. )

Application No. 46010  
 (Filed December 6, 1963)

Douglas J. Maloney, for County of Marin, applicant.  
Randolph Karr and Harold S. Lentz, for Northwestern  
 Pacific Railroad, protestant.  
George D. Moe, for the State of California, Depart-  
 ment of Public Works (for the limited purpose of  
 argument on the Motion of Northwestern Pacific  
 Railroad Company to make said department a  
 party to the proceeding).  
Kenneth Soderlund, for the Commission staff.

O P I N I O N

This application was heard before Commissioner Mitchell and Examiner Mallory at San Rafael on April 9 and 10, 1964, and was submitted upon the filing of a stipulation between applicant and the Northwestern Pacific Railroad Company concerning the safety, location and protection of the proposed crossing, and an agreement between applicant and the railroad concerning the apportionment of costs of construction and maintenance. Such stipulation and agreement were filed on July 1, 1964.

Applicant, the County of Marin, proposes to construct Civic Center Road from a point near the Marin County Civic Center to an access road connecting with Terra Linda Overpass (U.S. Highway 101) to the north of said Civic Center. The construction of this county road also will involve the construction of a crossing at grade over the tracks of the Northwestern Pacific Railroad Company

just north of and adjacent to the point where said railroad line passes under U.S. Highway 101 at Forbes Overhead (Crossing No. 5-19.6-A). At the present time the main line of the railroad between San Rafael and Ignacio is closed to through rail traffic because of the burning and collapse of the Puerto Suello Tunnel at the north end of San Rafael. The track through the Forbes Overhead can be used for the movement of cars to industries and a shopping center which take delivery of the cars at a point just south of the Forbes Overhead. Applicant proceeded upon the theory that the Puerto Suello Tunnel will be reconstructed and that the main line of the railroad will be reopened between San Rafael and Ignacio.<sup>1/</sup>

At the hearing applicant adduced evidence concerning the need for the county road and grade crossing to serve the nearby Marin Civic Center complex.

The stipulation entered into by applicant and the railroad at the hearing (and later reduced to writing) was to the following effect:

1. The parties are agreed that the Commission may authorize a crossing at the location set forth in the application; and that, with the protection hereinafter specified, the crossing would be safe.

2. The crossing should be protected by two Standard No. 1 crossing signs (General Order No. 75-B) until such time as the railroad line is opened to through traffic between San Rafael and Ignacio.

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<sup>1/</sup> At the time of the hearing there was pending an appeal to a three-judge federal district court from an order of the Interstate Commerce Commission directing the reconstruction of the tunnel. Such appeal has since been denied. The Commission has instituted Case No. 7907 to determine, among other things, the time schedule for the reconstruction of Puerto Suello Tunnel.

3. The crossing protection should be upgraded to Standard No. 8 flashing light signals (General Order No. 75-B) equipped with automatic gate arms when said railroad line is opened to through traffic between San Rafael and Ignacio.

4. The parties shall furnish the Commission with a written agreement concerning apportionment of costs between the County and the railroad, and if such agreement cannot be reached, the matter may be reopened for further hearing, upon written request of either party, for the limited purpose of apportionment of costs.

The Commission staff representative concurred in the stipulation insofar as it related to safety and protection of the crossing. The railroad withdrew its protest upon entering into said stipulation. A written agreement has been filed by the applicant and the railroad which provides, among other things, that the parties to said agreement agree that there is no necessity for the Commission to apportion costs of either installation or maintenance if Application No. 46010 is granted. This Commission has previously considered the question of maintenance costs and has concluded that maintenance of crossing protective devices should be borne in all instances by the railroad (Decision No. 66881, dated February 25, 1964, in Cases Nos. 7463 and 7464).

Based upon the evidence of record, we find:

1. Public convenience and necessity will require, and public health, safety and welfare will permit, the establishment of a crossing at grade over the tracks of the Northwestern Pacific Railroad Company at the location set forth in the application, to be identified as Crossing No. 5-19.7.

2. Public health, safety and welfare require that the crossing be protected by two Standard No. 8 (General Order No. 75-B) flashing light signals equipped with automatic gate arms; except that until such time as the railroad line between San Rafael and Ignacio is opened to through traffic, the crossing may be protected by two Standard No. 1 (General Order No. 75-B) crossing signs reflectorized with reflex-reflecting sheet material.

3. Although the parties have agreed that there is no necessity for the Commission to apportion installation and maintenance costs, the Commission has concluded in Decision No. 66881, supra, that it will maintain the policy of assessing all costs of maintaining crossing protective devices to the railroads. Accordingly, we find that Northwestern Pacific Railroad Company should bear all maintenance costs for said crossing inside of lines two feet outside of rails and of the crossing protection specified in Finding No. 2, above.

4. Construction of said crossing should be in accordance with the plans and specifications set forth in the application.

The Commission concludes that the application should be granted subject to the conditions set forth in the above findings and the order herein.

At the hearing, argument was heard on the motion of the railroad for an order bringing in the Department of Public Works of the State of California as an additional, necessary and proper party to the proceeding. This motion was denied at the hearing. The Commission affirms this ruling.

ORDER

IT IS ORDERED that:

1. The County of Marin is authorized to construct Civic Center Road at grade across the tracks of the Northwestern Pacific Railroad Company at the location set forth in the application, subject to and in accordance with the findings in the preceding opinion.

2. Within thirty days after completion pursuant to this order, applicant shall so advise the Commission in writing. This authorization shall expire if not exercised within one year unless time be extended, or if above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 22nd day of SEPTEMBER, 1964.

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President

*[Signature]*

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Commissioners

*[Signature]*

*[Signature]*

I dissent.  
*Frederick B. Hallock*

I dissent.  
*George L. Dwyer*