

ORIGINAL

Decision 82 06 092 JUN 15 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of )  
Rohnert Park to construct a )  
pedestrian-bike crossing vicinity )  
Copeland Creek at Northwestern )  
Pacific Railroad Company Mainline, )  
Proposed Crossing No. 5-46.97-X )  
in the City of Rohnert Park, )  
County of Sonoma. )

Application 59879  
(Filed August 14, 1980)

John D. Flitner, Attorney at Law, for  
the City of Rohnert Park, applicant.  
Harold S. Lentz, Attorney at Law, for  
Northwestern Pacific Railroad Company,  
protestant.  
Robert W. Stich, for the Commission staff.

O P I N I O N

The City of Rohnert Park (Rohnert Park) requests authority to construct a grade crossing over the tracks of the Northwestern Pacific Railroad Company (Northwestern Pacific). The proposed crossing, located in the vicinity of Copeland Creek and the Northwestern Pacific's mainline tracks in Rohnert Park, is part of a physical fitness pedestrian-bike path project developed by the city. At the present time, pedestrians and cyclists illegally cross the Northwestern Pacific tracks at the location of the proposed crossing along two paths which run in an east-west direction on the banks of Copeland Creek. Between the two paths, the Northwestern Pacific tracks span Copeland Creek by means of a railroad bridge.

Because of the circumstance of parallel paths, the city proposes to install four Standard No. 10 signals (General Order (G.O.) 75-C)

on either side of the creek.<sup>1/</sup> The application states that the proposed crossing will not have a significant effect on the environment. A notice of exemption is attached indicating that a prior Environmental Impact Report (EIR) covering the project has eliminated the necessity for an additional EIR.

On November 21, 1980, Northwestern Pacific filed a motion to permit the late-filing of a protest to the application. The motion, accompanied by Northwestern Pacific's protest, was based on delayed knowledge of the application and the Commission's protest rules (Article 2.5 of the Commission's Rules of Practice and Procedure) which at the time of the filing had only recently been adopted. The protest itself stated that during hearing Northwestern Pacific would demonstrate that the crossings were unnecessary, would create or increase a safety problem, and would place an undue and unwarranted burden on Northwestern Pacific and its property.

By ruling of the presiding Administrative Law Judge dated December 2, 1980, Northwestern Pacific's motion was granted and the matter was set for hearing. Hearings were held in San Francisco, California, on February 9 and 10, 1981.

#### Positions of the Parties

During hearing, four witnesses appeared on behalf of Rohnert Park. These witnesses included Rohnert Park's Director of Public Works and City Engineer, as well as its Planning Director, Recreation Director, and Parks and Recreation Committee Chairman.

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<sup>1/</sup> A Standard No. 10 signal is defined in G.O. 75-C as an automatic crossing signal used for pedestrian crossings which by alternately flashing red lights in both directions provides a warning of an approaching train. A sign posted on the signal indicates a crossing for pedestrians only.

According to these witnesses, the proposed crossing is necessary to the city's interconnected bikeway and fitness system which runs through the central portion of Rohnert Park. This system had its roots with the city's original plan requiring all major drainage ways and flood control channels leading to and from residential or commercial areas within the community to provide paths on the channel bottoms for horse trails and on the channel banks for bikes and pedestrians. Among the specifically adopted flood control plans was the "Copeland Creek Improvement Project." This project, completed in 1968, involved the development of Copeland Creek as a flood control channel with landscaped banks flattened on the top and sloped into the channel. At present, the average depth of the creek is 10 feet, with a width of 120 feet at the top of the creekbed, and 60 feet at the bottom. The creek flows in an east-west direction and is located approximately 2,000 feet south of Rohnert Park Expressway and 900 feet north of Southwest Boulevard. At its midpoint, the creek, at a depth of 18 inches, intersects the unfenced Northwestern Pacific tracks which run in a northwest-southeast diagonal through Rohnert Park.

Adjacent to the intersection of the creek and the tracks are residential and open space areas. Along the creek are schools, businesses, shopping complexes, and residences. Since Copeland Creek's development, residents have used the flattened surface of both banks as paths for jogging, biking, and traveling to and from the schools, parks, and businesses in the area, crossing the railroad tracks if necessary to reach their destinations. The paths, which run the length of Copeland Creek, have also been the site of a city-sponsored mini-marathon.

On October 10, 1978, the city adopted its present General Plan Land Use Map which provides for a bicycle and pedestrian walk. Instead of a series of isolated routes, the bikeway system has been

could range from as few as 30 or 40 pedestrians and cyclists a day to as many as 350 when school is in session. The paths are both developed (asphalt paving) and undeveloped (dirt). The remaining dirt portions, which include the areas adjacent to the tracks, are to be developed by a subdivider in one to two years from February 1981. The city's witnesses asserted that normal population growth, not the par course nor approval of the crossing, would increase traffic on the paths.

With respect to the railroad bridge, city witnesses conceded that an unsafe condition existed. These witnesses acknowledged that the timber bridge, with no railings, had been used by both adults and children principally to cross from one side of the creek to the other. While one witness indicated he had heard of a child being injured on the bridge, he was unaware of any details or the extent of damages, if any. He also suggested that signs would probably prove ineffective in keeping people off the bridge and that he could envision no reasonable way to achieve that end.

In this regard, however, Rohnert Park stated that it had approved plans and entered into agreements for the construction of a road parallel to the tracks on the west side from Rohnert Park Expressway to Southwest Boulevard. This project is scheduled to be completed three years from the date of hearing in this application. The road would include an automobile bridge immediately adjacent to the railroad bridge spanning Copeland Creek. An eight-foot bike lane would be provided. Although the roadway would be fenced along its length, the city would install a gate to permit cyclists and presumably pedestrians to enter the road and use the bridge to cross Copeland Creek.

Based on these facts the city is of the opinion that the crossing it proposes meets the requirements of public safety.

necessity, and convenience. Further, on January 26, 1981, Rohnert Park adopted a "Negative Declaration" following properly noticed public hearings and concluded that the proposed crossing would not have an adverse impact on the environment. In support of this declaration, the city found, among other things, that "the proposed bikeway and pedestrian crossing is necessary to provide adequate transportation and recreation facilities to the residents of Rohnert Park." (Ex. 18.) Although one of the city's witnesses acknowledged that installation of the proposed crossing could result in an almost continuous train whistle from the crossing at Rohnert Park Expressway through the one at Southwest Boulevard, the Negative Declaration states that the "project will not generate general adverse noise to the surrounding properties."

In addition to the necessity of the crossing, Rohnert Park is of the opinion that safety can be achieved by the installation of four Standard No. 10 signals. According to the city, such a signal is sufficient given the good visibility at the crossing and the absence of any highspeed bike travel. The city estimates the cost of installing the signals and providing minor grading to be \$18,000.

Northwestern Pacific

Northwestern Pacific argues that Rohnert Park, by its actions, has created an "open invitation to trespass" and created a dangerous condition years before seeking Commission approval of a crossing at Copeland Creek. The railroad believes that the unique situation of paths crossing its tracks on either side of a railroad bridge can be made safe only by requiring a grade-separated underpass for each path.

In support of its position, Northwestern Pacific called four witnesses, each of whom was involved either directly or indirectly with the operations of Northwestern Pacific. According to their

testimony, the trains which operate along the track intersecting Copeland Creek do not make scheduled runs, but generally operate between 6:00 p.m. and 10:00 a.m. It was estimated that the railroad operates one or two trains a week between 8 a.m. and 4 p.m., one or two trains a day between 6 p.m. and 12 a.m., and three trains a day between 12 a.m. and 8 a.m., for a total of four to six trains a day. The actual and posted speed limit is 40 m.p.h. One witness confirmed that prior to reaching a crossing each train must blow a continuous whistle for 1/4 mile before the crossing. At the present time, he was unaware of any complaints with respect to whistles at the crossings at Southwest Boulevard and Rohnert Park Expressway.

Two of Northwestern Pacific's witnesses provided specific cost estimates of installing the crossing proposed by Rohnert Park, as well as that recommended by the railroad. The first witness, Donald E. Baker, a public project engineer with Northwestern Pacific, estimated that the installation of the four Standard No. 10 signals would cost \$44,150. This total reflected the cost of installation (material, labor, handling, and equipment rental), but not the cost of any grading, paving, or physical construction of the crossing. Baker testified that his estimate was not based on competitive pricing, but that it did reflect the least expensive method of installing the Standard No. 10's. He also concluded that the crossings could be installed six months from the date of the order with an estimated 10% to 15% increase in costs per year.

This testimony was followed by that of Patrick Jumper, a public projects engineer with Southern Pacific Transportation Company, which performs the engineering work for Northwestern Pacific. Jumper detailed the cost of providing two grade-separated underpasses at Copeland Creek. The cost of installing the underpasses, including all of the work within the track area, was estimated to total \$124,020.

With grading, blacktopping, drainage, and fencing, the cost of the underpass would increase to \$130,000. Jumper felt that any flooding of the creek and, in turn, the underpass, which dips three feet at its lowest point, could be cured by the installation of drain pipes.

Jumper urged the use of separated crossings because of the unique and potentially dangerous situation of locating two pedestrian crossings on either side of a railroad bridge. A "no trespass" sign posted on each side of the bridge has apparently done little to deter its use. In Jumper's opinion, underpasses were preferable to overpasses, which would allow more people to reach the trestle and could impair jogging and cycling, and fencing along the tracks or paths, which could be torn down or overcome. Jumper was uncertain whether at-grade crossings would be safer than the current condition. However, if they were approved, he did recommend the installation of dismount bars to prevent cyclists from trying to "beat the train" and the present construction of a parallel pedestrian bridge to provide an immediate alternative to the railroad bridge. Although Jumper said his recommendation stemmed from the dangers created by the railroad bridge, he could recall no accidents at the site.

Commission Staff (staff)

Paul Burket, an associate transportation engineer, testified on behalf of the staff. Prior to hearing in this application, Burket attended several meetings with Rohnert Park and Northwestern Pacific regarding the crossing. According to Burket, at those meetings, Northwestern Pacific's concerns regarding the crossing centered on pedestrians and cyclists tripping on the rails and using the railroad bridge.

Burket, in accord with both the city and the railroad, similarly found the railroad bridge to be a dangerous condition. In particular, Burket noted the absence of any railing or adequate

pedestrian walkway on the bridge, the present walkway being strictly for use by train personnel. Although Burket supported the granting of Rohnert Park's application, he also recommended that the Commission authorize such construction only if the city is directed to construct a parallel pedestrian bridge. Because Rohnert Park's planned automobile bridge would serve the same purpose, however, Burket alternatively recommended that Rohnert Park be directed to construct the pedestrian bridge only if the automobile bridge is not completed within three years from the date of hearing in this application.

In his testimony, Burket indicated that other solutions to the hazards created by the railroad bridge, including signs, were inadequate. In Burket's opinion, separated crossings also would not completely deter children from playing on the bridge. Such crossings would, in turn, create problems of their own including rock throwing from and climbing on overpasses, and graffiti and crime in underpasses.

With respect to the use of the path by cyclists, Burket stated that dismount bars were not necessary and could, in fact, injure cyclists. A more appropriate solution to ensure careful crossings by cyclists would be signs telling cyclists to dismount before crossing the tracks and the installation on approaches of "rumble strips," a series of metallic bumps or buttons to encourage slowing at the crossing.

#### Discussion

The preceding facts make it clear that a pedestrian crossing at the intersection of Copeland Creek and the Northwestern Pacific tracks in Rohnert Park is necessary and in the public interest. The growth of Rohnert Park coupled with the central location of Copeland Creek have gradually increased the pedestrian traffic on the paths



which have developed along the creek banks. Rohnert Park's delay in seeking authorization for a crossing, while not condoned, is to some extent understandable given the longstanding practice of the public to cross the tracks at Copeland Creek and the ability of pedestrians to cross the unfenced tracks at any accessible point.

The question of the level of the protection needed is complicated, as noted by most of the witnesses, by the presence of the railroad bridge. From the testimony, however, we know:

1. Visibility at the proposed crossing is good.
2. At the present time, train operations on this route are not at high speed and do not coincide with pedestrian traffic along Copeland Creek, the former taking place primarily after dark and the latter occurring during the day.
3. Access to the crossing will be strictly limited to pedestrians and cyclists with little high-speed bike travel anticipated given the terrain and Rohnert Park's decision to undertake only minor improvements on the surface area around the tracks.
4. The location of the crossing in a predominantly open space area, where there are presently no nearby roads, will make police surveillance of either underpasses or overpasses difficult.
5. Safety at the Copeland Creek crossing has been good, the railroad being unable to verify injury accidents with its witnesses and the city only vaguely recalling one such incident.
6. The existence of the unfenced railroad bridge between the two paths creates a potential for injury principally by providing a hazardous means of crossing from one side of Copeland Creek to the other.
7. No crossing protection can completely prevent access to the bridge, but certain alternatives, including another means of crossing the creek, could improve safety at this location.

8. Using either the city's or the railroad's estimates of costs, the installation of separated grade crossings as opposed to at-grade crossings at Copeland Creek will be considerably more costly.

In reviewing these facts and the parties' positions, we find that the staff's recommendation comes closest to providing a safe and reasonable solution to the issue of the proper level of protection at the proposed crossing. To obtain a reasonably safe crossing, the substantial additional expenditure which would be required by the city to install a separated as opposed to an at-grade crossing does not seem warranted. The only fact which in any way suggests the need for such protection is the existence of the railroad bridge. In this case, however, other alternatives would appear to be equally well-suited to deterring pedestrians from using the bridge and would not create such additional safety problems as increasing the potential for assault or vandalism.

We will authorize therefore the immediate installation of a crossing at Copeland Creek as proposed by Rohnert Park. This authorization will be conditioned, however, on Rohnert Park's completion of an automobile bridge parallel to the present railroad bridge within the next two years. Should the bridge not be completed by that time, Rohnert Park will be required to install a pedestrian bridge parallel to the railroad bridge in order to retain the crossing authorization granted by this order. We will also direct the city to install rumble strips on all path approaches to the crossing, a sign directing cyclists to dismount before crossing the tracks, and adequate access and protection for cyclists and pedestrians using the automobile bridge.

The other alternatives discussed relative to this crossing are either too burdensome or insufficient to provide the level of

safety required. We find that safety demands some protection at Copeland Creek, instead of leaving it as is, and that barricading or closing access to the crossing is inappropriate in an area where the public would probably develop an alternate path or route over the unfenced tracks. As both Rohnert Park and Northwestern Pacific pointed out, signs and fences are usually ineffective deterrents to use.

Finally, we conclude that Rohnert Park followed proper procedures in noticing and issuing its Negative Declaration of the crossing's impact on the environment. With respect to noise, there have been no complaints about whistles blown at the present crossings, and the whistling which will be required at the new crossing is not a sufficient factor to warrant a change in the protection which we will authorize.

#### Findings of Fact

1. Regular use by pedestrians and cyclists has created paths along the banks of Copeland Creek, a flood control channel in Rohnert Park.

2. Copeland Creek is located in a central area of Rohnert Park and its paths are used by residents for jogging, biking, and traveling between the homes, schools, businesses, shopping complexes, and parks in the vicinity.

3. At its midpoint, Copeland Creek is bordered by open space and residential areas and intersects the Northwestern Pacific railroad tracks which run through Rohnert Park.

4. Because of the central location of the Copeland Creek paths and their existing use, those paths have been included in Rohnert Park's current General Plan as part of its interconnected bikeway system.

5. Both Rohnert Park's past and present bike-path plans have contemplated a crossing at Copeland Creek and the Northwestern Pacific tracks.

6. During school hours as many as 350 people may use the Copeland Creek paths on a daily basis.

7. In May 1980, Rohnert Park completed a par or fitness course which uses the paths on both sides of Copeland Creek and involves crossings of the Northwestern Pacific tracks.

8. Train operations on the Northwestern Pacific tracks are unscheduled, but generally run between 6:00 p.m. and 10:00 a.m.

9. Northwestern Pacific usually operates one or two trains a week between 8 a.m. and 4 p.m., one or two trains a day between 6 p.m. and 12 a.m., and three trains a day between 12 a.m. and 8 a.m., for a total of four to six trains a day.

10. In the vicinity of Copeland Creek, the posted and actual speed of trains on the Northwestern Pacific mainline is 40 m.p.h.

11. The Northwestern Pacific tracks span Copeland Creek by means of an unfenced timber railroad bridge with signs posted on both sides forbidding trespass.

12. Despite the presence of "no trespass" signs and the absence of a pedestrian walkway along the bridge, children and adults have been seen using the railroad bridge to cross from one side of Copeland Creek to the other. Children have also been observed playing on the bridge.

13. Although visibility at the proposed crossing is good and no injury accidents at Copeland Creek could be confirmed during hearing, the circumstance of a railroad bridge between the two paths creates a unique and potentially hazardous condition.

14. Within the next two years, Rohnert Park will complete a roadway parallel to the Northwestern Pacific tracks between Rohnert Park Expressway and Southwest Boulevard including an automobile bridge over Copeland Creek.

15. The planned automobile bridge, if constructed to accommodate pedestrian and bicycle traffic along Copeland Creek, will offer a safe alternative for crossing the creek near the railroad tracks.

16. Should the automobile bridge not be completed in two years, construction of a parallel pedestrian walkway will be required to provide a safe alternative to crossing Copeland Creek in the vicinity of Northwestern Pacific tracks. The cost of installing four Standard No. 10 signals, as proposed by Rohnert Park, was estimated by Rohnert Park to be \$18,000 with minor grading.

17. At the time of hearing, Northwestern Pacific estimated the cost of installing four Standard No. 10 signals at the proposed crossing, without any grading or paving, to be \$44,150 and the cost of two underpasses, with required grading, paving, and drainage, to be \$130,000. Northwestern Pacific estimates that installation costs will rise approximately 10% to 15% a year.

18. The general timing of train operations along the Northwestern Pacific tracks as compared to pedestrian traffic along Copeland Creek, the moderate speed of train travel and bike travel at the proposed crossings, the terrain of the general area, and the restricted use of the paths to pedestrians and cyclists minimize any need for separated crossings at Copeland Creek.

19. Underpasses can provide an opportunity for criminal behavior and vandalism particularly in an area removed from usual police surveillance.

20. There have been no complaints regarding train whistles required in approaching the railroad crossings on either side of Copeland Creek.

21. The proposed crossings will have no significant impact on the environment.

IT IS ORDERED that:

1. The City of Rohnert Park is authorized to construct a pedestrian and bike path across the tracks of the Northwestern Pacific Railroad Company, crossing at the vicinity of Rohnert Park, Sonoma County, California, as shown on Drawing S-46.97-D.

2. Construction of the crossing shall be equal or superior to that of the existing crossing at G.O. 72-B.

3. Clearances shall conform to G.O. 26-D. Walkways shall conform to G.O. 118.

4. Protection at the crossing shall be four Standard No. 10 automatic flashing light-type signals (G.O. 75-C).

5. Construction expense of the crossing and installation cost of the automatic protection shall be borne by applicant.

6. Maintenance of the crossing shall conform to G.O. 72-B. Maintenance cost of the automatic protection shall be borne by applicant.

7. Rumble strips and signs directing cyclists to dismount before entering the crossing shall be installed at each approach to the crossing. The cost of these materials and installation shall be borne by applicant.

8. No later than April 30, 1984, applicant shall advise the Commission in writing as to the completion date of the planned automobile bridge in the vicinity of Copeland Creek and the Northwestern Pacific's tracks. The automobile bridge shall provide safe access and use by pedestrians and cyclists. If the automobile bridge is not completed by April 30, 1984, applicant shall immediately commence construction of a pedestrian bridge parallel to the railroad bridge over Copeland Creek. The pedestrian bridge, if required, shall be completed by April 30, 1985, and the Commission advised in writing on that date of its status.

9. Construction plans of the crossing approved by the Northwestern Pacific Railroad Company, together with a copy of the agreement entered into between the parties involved, shall be submitted to the Commission prior to commencing construction.

10. Within 30 days after completion, under this order, applicant shall so advise the Commission in writing.

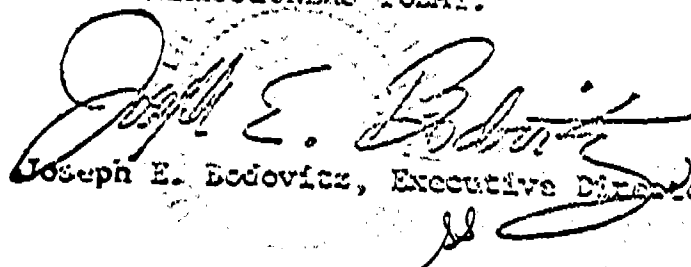
11. This authorization shall expire if not exercised within two years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

This order is effective today.

Dated JUN 15 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. CRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director

According to these witnesses, the proposed crossing is necessary to the city's interconnected bikeway and fitness system which runs through the central portion of Rohnert Park. This system had its roots with the city's original plan requiring all major drainage ways and flood control channels leading to and from residential or commercial areas within the community to provide paths on the channel bottoms for horse trails and on the channel banks for bikes and pedestrians. Among the specifically adopted flood control plans was the "Copeland Creek Improvement Project." This project, completed in 1968, involved the development of Copeland Creek as a flood control channel with landscaped banks flattened on the top and sloped into the channel. At present, the average depth of the creek is 10 feet, with a width of 120 feet at the top of the creekbed, and 60 feet at the bottom. The creek flows in an east-west direction and is located approximately 2,000 feet south of Rohnert Park Expressway and 900 feet north of Southwest Boulevard. At its midpoint, the creek, at a depth of 18 inches, intersects the unfenced Northwestern Pacific tracks which run in a northwest-southeast diagonal through Rohnert Park.

Adjacent to the intersection of the creek and the tracks are residential and open space areas. Along the creek are schools, businesses, shopping complexes, and residences. Since Copeland Creek's development, residents have used the flattened surface of both banks as paths for jogging, biking, and traveling to and from the schools, parks, and businesses in the area, crossing the railroad tracks if necessary to reach their destinations. The paths, which run the length of Copeland Creek, have also been the site of a city-sponsored mini-marathon.

On October 10, 1978, the city adopted its present General Plan Land Use Map which provides for a bicycle and pedestrian walk. Instead of a series of isolated routes, the bikeway system has been



designed by the city to provide a safe, interconnected system of loops linking the central areas of the community. The system would permit a cyclist to travel in any direction and return to his place of origin without using the same bikelane twice. Like a prior bike plan, this one envisions a bicycle/pedestrian crossing at Copeland Creek and the Northwestern Pacific tracks.

In addition to the bikeway system, Rohnert Park in 1979 amended the Copeland Creek Project plans to include development of a physical fitness or "par" course. The course, completed in May 1980, requires participants to cross the tracks westbound on the north side of the creek and eastbound on the south side. The course is marked by stations identified by a sign indicating the exercise to be performed and directing the participant by arrow on to the next station. In two cases, the arrow directs the participant over the tracks. The stations are numbered consecutively and provide for progressively more strenuous exercise.

In the opinion of Rohnert Park, Copeland Creek was the logical and in fact the only choice to locate the par course. The two paths were already established and situated in the middle of the community providing the greatest exposure of the recreation facility to the greatest number of people. The city's witnesses explained that the crossing application followed the development of the par course because the city was unaware that one would be needed until so informed, apparently by Northwestern Pacific. The city's belief that a crossing was unnecessary was based on pedestrians<sup>x</sup> having used the paths along Copeland Creek and crossed the tracks at that location for many years. SS

While no specific analysis of path usage was undertaken by Rohnert Park, its witnesses did estimate traffic along the paths