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Decision 97-07-055 July 16, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Amended Application by the City of San Rafael to construct one grade crossing of the Golden Gate Bridge, Highway and Transportation District main line (formerly Northwestern Pacific Railroad Company) at Andersen Drive in said City of San Rafael, State of California.

**ORIGINAL**

Application 95-08-020  
(Filed August 7, 1995;  
amended September 25, 1996)

McCutchen, Doyle, Brown & Enersen, by Terry J. Houlihan,  
Attorney at Law, for the City of San Rafael, applicant.  
David Schonbrunn and Hannah Creighton, for Marin  
Advocates for Transit, intervenor.  
James T. Quinn, Attorney at Law, and Alex E. Lutkus, for the  
Rail Engineering Safety Branch.

**FINAL OPINION**

**Background**

On August 7, 1995, the City of San Rafael (The City) filed Application 95-08-020 seeking Commission authorization to construct an at-grade crossing at the intersection of The City's extension of Andersen Drive and the tracks of the former Northwestern Pacific Railroad, now owned by the Golden Gate Bridge, Highway and Transportation District.

Following the application, the Commission Staff met with representatives of The City and discussed safety issues primarily due to the angle at which the street and the tracks would meet. This 11 degree angle presented visibility and other concerns for an at-grade crossing of trains and automobiles. To address these issues, The City filed an amended application on September 25, 1996, which proposed a "blockaded crossing." The City reasoned that, because no trains had used the tracks for over a decade and no such use is contemplated in the foreseeable future, the tracks could be conveniently

blocked and paved over with a thin layer of asphalt to allow unfettered automobile traffic. Should rail traffic resume at some point in the future, The City promised to either secure the funds for a grade separation or close the Andersen Drive extension.

On October 28, 1996, the Marin Advocates for Transit filed a protest to the application which alleged that the proposed blockaded crossing would prevent use of the rail line for contemplated passenger and freight service.

A prehearing conference, discovery, and prefiled written testimony led up to formal evidentiary hearings on April 29-30 and May 1-2, 1997. A public participation hearing was also held on March 31, 1997.

#### **Summary of Evidence Presented**

##### **A. The City**

The City presented three witnesses. Michael Christensen, a consulting railroad engineer, examined the proposed at-grade crossing and seven alternatives. These alternatives involved reconfiguring Andersen Drive to allow for a safer, i.e. closer to 90 degree angle, intersection and constructing a grade separation. The least expensive of these alternatives would cost \$7 million, and range up to \$30 million. Mr. Christensen concluded that The City's proposed crossing is the only practical alternative because the other alternatives are costly, disrupt local businesses, infringe on wetlands, cause visual disruptions, and lead to significant safety concerns.

Andrew Preston, The City's Senior Civil Engineer, provided a description of the proposed crossing and the public benefits from the extension of Andersen Drive. He, too, concluded that the proposed crossing is the only presently practicable alternative.

Rod Gould, City Manager, described The City's commitment to using the railroad right-of-way for mass transit purposes. He noted that the existing City general plan calls for such a use, and that San Rafael would benefit from rail transit. However, Mr. Gould continued, there is uncertainty over whether rail service of any kind will be resumed, and, if so, when, as no rail transit plan has yet been approved or funded. Mr. Gould also provided copies of letters from the Mayor of The City of Larkspur

indicating The City's reluctance to host significant land development in conjunction with the resumption of rail service.

Mr. Gould also testified to the sources of funding that The City would explore to finance a grade separation, should rail service resume in the future.

Mr. Gould stated that The City and the Transit District have agreed to cooperate in attempting to secure state and federal funding for the grade separation. If such funding is not available, The City can rely on bonds issued by the San Rafael Redevelopment Agency. To effectuate this, the parties agreed (without qualification) to modify the existing Fiscal Agreement among The City, the Redevelopment Agency, the County of Marin, and three school districts (the San Rafael Elementary School District, the San Rafael High School District, and the College of Marin) regarding the allocation of tax increment revenue should funding be required to finance the grade separation.

Mr. Gould testified that tax increment consists of the property taxes generated by increases in the assessed value of property in a redevelopment area following adoption of a redevelopment plan for that project area. The City and County's pledge of their shares of the tax increment revenues from property taxes to which they are entitled under the Fiscal Agreement will result in a minimum of approximately \$2.7 million annually that could be pledged to repay the proposed debt, allowing Mr. Gould to conclude that the Redevelopment Agency would have ample resources to service the proposed debt. Mr. Gould also stated that the Agreement is binding on The City, the Redevelopment Agency, and the County now, and on future governing boards of those three entities.

B. The Commission Rail Safety and Carriers Division

The Commission staff presented Donald D. Edmisten, Associate Transportation Operations Supervisor, who testified regarding the actual state of the tracks. Beginning at the south terminus, in Larkspur, the track is missing in places and is in generally poor condition up to the Cal Park Hill Tunnel, which is caved in at the south end due to a fire in 1990. From the north end of the tunnel to Bellum Boulevard, near the Andersen Drive extension, the track is in place but requires rehabilitation. From San Rafael north to Ignacio, the track is serviceable but requires maintenance.

Mr. Edmisten also testified to the ownership chain of the San Rafael Branch and other rail right-of-way purchases made by public bodies.

Avlin Odviar, Assistant Transportation Engineer, testified regarding staff's evaluation of The City's application and the proposed design as it related to public safety, and provided comments on alternative designs presented by The City's consultant. Mr. Odviar stated that the crossing at hand should be classified as "skewed crossing with nearby roadway intersection." These two hazards amplify each other. Crossings in general should be designed to meet at a right angle and without nearby intersections or driveways. This enhances the automobile driver's view of a crossing, tracks and trains, and eliminates the potential for conflicting vehicular movements at the crossroad or driveway. All of Mr. Odviar's safety analysis presumed regular train traffic through the intersection.

The Rail Safety and Carriers Division's final witness was Alex E. Lutkus, Chief of the Rail Engineering Safety Branch. Mr. Lutkus explained staff's concerns with the proposed crossing. He stated that, due to the substantial expenditure of public funds to acquire the right-of-way, rail service will coexist with motor vehicle traffic at the Andersen Drive intersection sometime in the future. For this reason, he supports requiring The City to provide a bond or funding mechanism that guarantees sufficient funds to construct a grade separation when rail service is re-established.

C. The Marin Advocates for Transit (MAT)

The Transit Advocates presented four witnesses. Michael Strider, railroad engineer, testified to the cost of improving the existing track sufficiently to allow for demonstration trains to come to San Rafael, potential customers for freight service, the standard of rails necessary for service, and the need for a grade separation after rail service begins. Mr. Strider also commented on Mr. Christensen's testimony.

Another Transit Advocates witness, John Holtzclaw, recommended preserving the rail line rather than blockading it.

Transit Advocates also presented Arthur Lloyd to testify on whether two-lane streets commonly have grade separations, and the potential for tourist trains in San Rafael.

Transit Advocates' final witness was John D. Hugunin, engineer, who testified that a safe but reconfigured at-grade crossing could be constructed at Andersen Drive which could accommodate passenger and freight service as well as automobile traffic. Mr. Hugunin's recommended reconfiguration of the intersection would require additional right-of-way and reduced automobile speeds.

In its opening brief, MAT contended that the application must be denied because it seeks to block the rail line. MAT stated that from its origins as the California Railroad Commission, the PUC has been actively involved in the preservation and maintenance of California's railroads. The Commission has historically been actively involved in the fate of the Northwestern Pacific Railroad: protecting passengers from excessive fares, protecting passengers from service discontinuance, protecting shipper from the \$1000 per car surcharge and protecting shippers from discontinuance of freight service. MAT concluded that these activities reflect a clear understanding by the Commission of the value of a railroad to the economy of a region and the entire state.

MAT further stated that progress is being made towards resuming service on the San Rafael Branch. The Sonoma/Marin Multimodal Transportation and Land Use Study, which will be completed in June 1997, recommends the implementation of a light rail system from Healdsburg to Larkspur. MAT noted that political discussions are underway for the development of sales tax measures in 1998 in both Marin and Sonoma Counties and that a demonstration train idea in Marin County evoked widespread interest. MAT suggested that there are potential near-term uses of the San Rafael Branch that would not require the major expenditures of a full rehabilitation of the track.

MAT advised the Commission to determine whether the application serves the public convenience and necessity. MAT proposed that the Commission "do no harm" and leave the right-of-way functional, so that it could be used soon. In MAT's view, the Commission must weigh the benefit a functioning rail line can bring to an entire region against the benefit that closing it would bring to the residents of one town.

MAT also urged the Commission not to reward The City for its poor handling of this project. The City's history with this project, according to MAT, has

been a striking case of grievous errors in the handling of this project have inevitably resulted in delays and additional costs.

MAT asked the Commission to deny the application because The City's promise to construct a grade separation does not guarantee a safe future crossing. The City has not demonstrated the ability to finance a grade separation, which has been estimated to cost between \$5 million and \$20 million. MAT stated that City Manager Gould admitted that the Redevelopment Agency did not now have the bonding capacity to issue \$20 million in debt without a further amendment to the fiscal agreement. Such agreement would require the cooperation of three school districts and the County of Marin. MAT also stated that The City's promise is predicated on the County then contributing its share of additional tax increment to a grade separation project. MAT contended, however, that there is no direct evidence in the record that any Marin County Supervisor knows anything about the contents of the funding agreement with The City or The City's claim that the County is contractually bound to provide the funding.

D. The Public Participation Hearing

The hearing was attended by approximately 70 members of the community who expressed a wide range of views on the proposed crossing. Some commenters urged the Commission to reject The City's application and require that the intersection be redesigned to allow for either a safe at-grade crossing or a grade separation. These commenters believed that a resumption of rail service was very likely and that the blockaded crossing proposed by The City would constitute an additional impediment.

Other members of the community spoke of the benefits from the Andersen Drive extension. A business leader noted that the existing primary streets are overcrowded, which results in frustrated drivers taking aggressive and perhaps dangerous actions. A resident of a street which would possibly see a decrease in traffic spoke of the difficulty in seeing children due to the angle of the sun as they walk to the neighborhood school along what is now a busy street. A community leader addressed the connection that the Andersen Drive extension will create between downtown San

Rafael and the Canal neighborhoods, a connection that would serve as "a conduit of human, cultural, social, and economic capital of these neighborhoods and businesses."

The balance the Commission needs to strike, however, was best illustrated by a representative of a large Marin business which is currently proposing to build its new headquarters in San Rafael at the northern end of the Andersen Drive extension. This representative stated that its employees, and the employees of other downtown businesses, need the short-term relief to immediate traffic congestion that the Andersen Drive extension represents. These same employees, however, desire the long-term commute relief that rail service would provide. The representative concluded that these goals are not mutually exclusive; one means of accomplishing both is to proceed with the Andersen Dive extension and to have rail service, when available, at the current transit center in San Rafael.

The commenters suggestions as to the timing of the resumption of rail service reflected a wide range of views. Some commenters suggested that it was imminent; others felt that it would not occur in their lifetimes; the only speaker who hazarded a guess picked 30 years.

### **Discussion**

For analytical purposes, we will evaluate this application first, under current circumstances, and second, when and if train service resumes.

#### *Current Circumstances*

The current factual circumstances are straightforward: no trains have run on the tracks which intersect Andersen Drive for over a decade. Just south of the proposed intersection is a tunnel which is caved in due to fire. Beyond that is a portion of right-of-way where the tracks have been removed. This track then terminates in a city which has indicated its reluctance to host significant train traffic.

These facts rather dramatically illustrate that it is virtually certain that the tracks will remain unused by trains for the immediate future. Under these circumstances, we agree with The City that expending millions of dollars of public

funds to construct a grade separation or realign the intersection would be irresponsible. Similarly, the future potential for rail service should not outweigh the current need for enhanced street connections in San Rafael.

The Commission's rail safety expert agreed, and no other party's expert disputed, that the current configuration of the proposed intersection, the "blockaded intersection," is safe so long as no regular train service exists. For this reason, we will approve The City's proposed intersection. This authorization, however, will expire upon the resumption of regular rail service.

#### *Resumption of Rail Service*

Much of the testimony and hearings in this proceeding focused on disputes over whether or when rail service would resume through Marin County over the tracks which intersect Andersen Drive. We are generally supportive of mass transit and seek to balance competing interests when exercising our jurisdiction under Public Utilities (PU) Code § 1201. However, due to substantial uncertainty regarding the timing of the resumption of the rail service, the type of service which may be provided, and whether the service route will extend south through the Andersen Drive extension or terminate north of it, we are unable to determine how best to balance the public's interest in the intersection. We must allow the future to unfold before we resolve this dispute. In the meantime, however, we wish to preserve options for the future, while meeting current needs.

One means of accomplishing our objective, which we adopt herein, is to authorize The City to construct its proposed blockaded crossing, but to leave it in place only as long as no regular train service<sup>1</sup> is scheduled. Upon the scheduling of such service, The City's authorization will expire. This is absolutely necessary because the

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<sup>1</sup> We define regular train service as the scheduled running of trains, including passenger and freight, through the intersection with Andersen Drive on at least a weekly basis for an indefinite period of time. Train service for a limited period of time and demonstration trains would not meet this definition but will be subject to the directives set out in this decision.

intersection, as presently configured, is not safe for use by both trains and automobiles. We will not allow an unsafe crossing to be used. If The City wishes to continue to cross this right-of-way after regular rail service is scheduled, it will need to apply to the Commission and demonstrate that it can address our safety requirements in a way that allows both trains and automobiles to use the intersection. At that time, the Commission will be able to assess the facts and determine the best means of balancing the competing interests of rail users and motor vehicles while providing for the safety of both.

By limiting the authorization in such a way, the Commission also ensures that The City will be required to submit another application to the Commission for continued use of the intersection. Similarly, The City will bear the risk that the Andersen Drive intersection may at some point in the future require substantial investment to retain its function as an intersection. Thus the risk that The City's proposed means of financing a grade separation will not prove reliable will fall entirely on The City.

#### *Demonstration Trains*

One likely precursor to regular train service will be the running of occasional trains for demonstration purposes. The blockaded intersection approved above would preclude such trains. The City has committed in its testimony to make temporary arrangements to allow such trains to run. The City's cooperation in the running of demonstration trains shall be a further requirement of its authorization to construct the blockaded intersection.

Demonstration trains will, by their very nature, be unusual activities for the users of the streets, bike lanes, and sidewalks. All parties involved in such an effort will be expected to maintain the highest standards of safety. The Rail Safety and Carriers Division is directed to carefully supervise The City's plans for accommodating these trains.

#### *Environmental Review*

The Commission is a responsible agency for this project under California Environmental Quality Act (CEQA) and has reviewed and considered the lead agency's

Final Environmental Impact Report (FEIR). (The City is the lead agency.) The application meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38, which relates to the construction of a public road across a railroad track.

#### *Siding Track and Switch*

The City removed the siding track and switch would had been located in the center of what will be the intersection. The City stated that they intend to replace the siding track and locate the switch north of the intersection. Commission staff supports this replacement.

MAT requests that the Commission order The City to replace the switch south of the intersection. Such placement, however, would have two sets of tracks through the intersection. For this reason, we will not order The City to deviate from their planning restoration.

#### **Findings of Fact**

1. Rail service over the tracks which the proposed Andersen Drive extension will intersect has been suspended for over a decade.
2. The Cal Park tunnel is south of the proposed intersection. It is obstructed at the south end due to a cave-in which followed a fire.
3. South of the Cal Park tunnel a portion of the tracks has been removed.
4. The City of Larkspur has indicated its reluctance to host significant land development in conjunction with the resumption of rail service.
5. The tracks with which Andersen Drive is proposed to intersect will remain unused for the immediate future.
6. The future potential for rail service does not outweigh the current need for enhanced street connections in San Rafael.
7. The configuration of the proposed intersection, the "blockaded intersection," is safe so long as no regular train service exists.
8. The proposed configuration of the intersection is not safe for use by both trains and automobiles.

9. It is unknown when or if rail service through San Rafael might resume. Similarly, it is unknown what type of service may be provided and whether the service route will extend south through the Andersen Drive extension or terminate north of it.

10. The City testified that it is committed to funding a grade separation at Anderson Drive, should the Commission determine a grade separation is required.

11. The City testified that it will rely on tax increment financing through the San Rafael Redevelopment Agency should no other source of funds be available.

12. The Rail Safety and Carriers Division should carefully supervise The City's plans for accommodating demonstration trains.

13. Locating the switch south of the proposed intersection will result in two sets of tracks over the street.

#### **Conclusions of Law**

1. The Commission seeks to balance competing interests when exercising its jurisdiction under PU Code § 1201.

2. The current record in this proceeding does not support the Commission determining if or in what manner the currently proposed intersection should be modified to accommodate rail traffic.

3. The public interest requires that the Commission retain as many options as possible for the future configuration of the proposed intersection, consistent with meeting current needs.

4. The City should be authorized to construct the proposed blockaded crossing, but to leave it in place only as long as no regular train service is scheduled over the affected tracks.

5. The Commission will not allow both trains and automobiles to use this intersection as currently configured.

6. Absent further order of the Commission, rail service will have priority right to use the intersection.

7. Grade separation at the proposed Andersen Drive intersection would be impracticable so long as no regular train service is scheduled over the affected tracks.

8. The Commission is a responsible agency for this project under CEQA and has reviewed and considered the lead agency's FEIR. (The City is the lead agency.)

9. The application meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38, which relates to the construction of a public road across a railroad track.

10. The City is on notice that it is responsible for securing continuing authority to use the intersection for automobile traffic, should rail service resume

11. Unless another source of funds is available, The City will be responsible for funding any needed changes to the intersection.

12. The City will bear the burden of proving that any modifications it proposes to accommodate rail services through the intersection will meet the Commission's standards for safety.

13. The public interest does not support locating the switch south of the proposed intersection.

### FINAL ORDER

Therefore, IT IS ORDERED that:

1. The City of San Rafael's (The City) application, as amended, to construct an at-grade intersection with the tracks of the former Northwestern Pacific Railroad Company, currently owned by the Golden Gate Bridge, Highway and Transportation District, at Andersen Drive in such a way that the tracks are blocked with temporary structures which prevent any trains from entering the intersection, is granted so long as no regular train service is scheduled over the tracks.

2. This authorization to blockade the tracks shall expire upon the scheduling of regular train service over the tracks which intersect Andersen Drive. Upon such expiration of authority, The City shall take all actions necessary to ensure the unimpeded use of the intersection by the rail service, absent further order of the Commission.

3. The City shall cooperate in making safe arrangements to accommodate the running of any demonstration trains through the intersection.

4. The Rail Safety and Carriers Division is directed to carefully supervise The City's plans for accommodating demonstration trains.

5. This proceeding is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON  
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners