

Decision No. 16396

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the application of the County of Santa Cruz (Viewers' Petition) for authority to construct road across the tracks of the Southern Pacific Company in the vicinity of Aptos.

Application No. 12074.

David C. Clark, for Applicant.

H. W. Hobbs, for Southern Pacific Company.

Harry J. Bias, for W. I. Morgan, the owner of the adjacent property.

BY THE COMMISSION:

O P I N I O N

In this application, which is filed in the form of a Viewers' Petition under Section 2694 of the Political Code, the County of Santa Cruz requests permission to construct a public road across the tracks of Southern Pacific Company at a point approximately two miles north of Aptos. A public hearing was held in the rooms of Board of Supervisors in Santa Cruz on January 25, 1926, before Examiner Austin.

The crossing applied for is over a branch line track of Southern Pacific Company, which in a general way skirts the shores of Monterey Bay between the cities of Watsonville and Santa Cruz. At the point of the proposed crossing the railroad is about one-quarter of a mile from the Bay and the tract of land lying between the railroad and the beach has been recently sub-divided into a residence sub-division known as Sea Cliff Park. A considerable portion of this property has already been sold and at the time of the

hearing in this matter thirty-five houses had been constructed on the tract. These houses are, for the most part, of substantial construction ranging in cost from \$3,000. to \$7,000. and the further development of this tract appears probable.

The main County Road between Santa Cruz and Watsonville is approximately parallel to the railroad, a half mile to the north of the track, and the only means of access to the developed portion of Sea Cliff Park is across the track of Southern Pacific Company. At the present time there is one public road leading into this territory which crosses the track 3800 feet south of the proposed crossing. This road has been in existence for some 40 years and has been used by the public in reaching a beach which extends along the entire water frontage of the Sea Cliff property.

Leading westerly from a point near the beach terminus of this road to the proposed crossing and thence northerly to a connection with the main County Road a thoroughfare, known as Sea Cliff Drive, has been laid out and graded, thus forming a loop through Sea Cliff Park and permitting entrance from either end. This road at present utilizes an old farm crossing over the railroad track, the promoter of the subdivision retaining a flagman for the purpose of protecting the traffic and opening and closing the gates which Southern Pacific Company rightfully requires to be maintained at this crossing.

The County of Santa Cruz has tentatively agreed to take over, as a public thoroughfare, this road and has therefore applied to this Commission to construct a public crossing across the track of Southern Pacific Company.

Based upon the evidence produced at the hearing, there appears to be sufficient public necessity to warrant the opening of a crossing in this vicinity. Counts taken at the existing private crossing indicate a considerable traffic over this road. On a Sunday in the

latter part of January 567 cars used this crossing during the hours between 8:00 A.M. and 5:30 P.M. and on Sundays during the summer season a heavier traffic is recorded. The crossing affords residents a more convenient means of reaching Santa Cruz, the County Seat and nearest large town, than the existing public crossing. Also the drive through the new sub-division and along the cliff attracts many pleasure seekers. While much of the present traffic is probably temporary, due to the advertising and promotion of Sea Cliff Park, there is no doubt a permanent need for a public crossing in this vicinity.

The existing private grade crossing is, however, exceedingly dangerous. The approaches from each direction are at steep grades with the view obscured by trees, fences and the railroad cuts and embankment. The track is on a sharp curve with grades descending in both directions toward the crossing. Twelve trains a day are scheduled over this branch and frequently, especially during the summer season, extra trains are operated. It is doubtful that even the most cautious driver can use the crossing with perfect assurance that he was not in danger. If a public crossing is opened at this point at grade, the hazard to the public using both the road and the railroad would be very great and the Commission is convinced that a grade crossing should not be permitted.

The County of Santa Cruz desires that the grades be separated and has presented a tentative plan whereby such separation can be economically accomplished. At a point some 300 feet east of the private crossing the railroad crosses a ravine on a fill 12 feet in height and a subway can be constructed through this embankment at a cost estimated by the County Engineer at \$15,000.

The existing private crossing is maintained under an agreement, dated August 22nd, 1874, between John S. Ord, who was at that time the owner of the adjacent land, and the Santa Cruz Railroad Company, a predecessor of Southern Pacific Company. According to the terms of

this agreement the railroad company agrees to provide a good and sufficient crossing for said John S. Ord over the railroad, with cattle guards and gates on each side. The question is now raised by the applicant in this proceeding as to whether or not the present admittedly hazardous crossing can be considered a "good and sufficient crossing". It is not the province of this Commission to pass upon the interpretation of this agreement; in our judgment the determination of the obligation of Southern Pacific Company in respect to the private crossing is a problem for the courts. Consequently, we express no opinion as to this matter.

It is, however, the duty of this Commission to determine the obligation of Southern Pacific Company to provide safe and adequate crossings for the public. This Commission has, on several occasions, pointed out that the construction of a line of railroad through a territory so divides it that a barrier to intercommunication between the separated portions is created. To restore, as nearly as practical, the same degree of accessibility which the public previously enjoyed, considerable expenditures are often necessary and it is not unreasonable to expect the utility, whose roadbed tracks and trains create the barrier, to participate in these expenditures.

Southern Pacific Company offers no objection to the construction of a subway, excepting to urge a slight change in the location proposed by the County. It does, however, take the position that it should not participate in the expense, contending that the junior interest should bear the cost of crossings. It is true that in the case of grade crossings of new roads over railroad tracks it has been customary to assess the entire cost of constructing the crossing to the applicant but the expense of maintaining the crossing and such protection as the Commission considers necessary, is usually borne by the railroad.

If a public grade crossing were opened at the site of the existing private crossing, it is reasonable to assume that since the owner of the property has seen fit to provide protection in the form of a human flagman, the railroad company would be required to furnish like protection. From the standpoint of the railroad company, therefore, participation in the cost of this grade separation, which will do away for all time with the hazard of accident, and the necessity for protecting the public, should be preferable to the opening of a grade crossing and the expense of maintaining adequate protection. The opening of this crossing is, however, of material benefit to the owners of property in this subdivision and will, in effect, increase land values, which in turn are reflected in the taxable values of the County, a feature in which the railroad company does not have a direct interest. It is accordingly the judgment of the Commission that twenty (20) per cent of the cost of this subway should be borne by Southern Pacific Company and the remainder of the cost shall be borne by applicant.

O R D E R

The Board of Supervisors of Santa Cruz County, having filed with this Commission, under the provisions of Section 2694 of the Political Code of California, a certified copy of a petition of freeholders of said County for the construction of a certain road, together with a certified copy of the Order of the Board of Supervisors appointing viewers to view said road, which road crosses the track and right of way of Southern Pacific Company in the vicinity of Aptos, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision, therefore,

IT IS HEREBY FOUND AS A FACT, that public convenience and necessity require the construction of a road crossing under the main track of the Santa Cruz Branch of Southern Pacific Company at or near

Engineers Station 727 in the vicinity of Aptos; therefore,

IT IS HEREBY ORDERED, that permission and authority be and it is hereby granted to the Board of Supervisors of the County of Santa Cruz, State of California, to construct public road under the tracks of Southern Pacific Company at or near the above described point, said crossing to be constructed subject to the following conditions, namely:

(1) Said crossing shall be constructed approximately at the above described point, the specific location to be agreed upon between applicant and Southern Pacific Company.

(2) Said crossing shall be constructed with clearances conforming to provisions of the Commission's General Order No. 26-a.

(3) Detailed plans of said crossing, as agreed upon by applicant and Southern Pacific Company, shall be filed with this Commission and the approval of this Commission received before any work of constructing said crossing is undertaken.

(4) The cost of constructing said crossing (Except paving of the highway) shall be borne twenty (20) per cent by Southern Pacific Company and eighty (80) per cent by the applicant.

(5) The cost of future maintenance of the superstructure of said crossing shall be borne by Southern Pacific Company.

(6) The cost of future maintenance of the remainder of the structure shall be borne by applicant.

(7) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing.

(8) If said crossing shall not have been installed within two years from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(9) The 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.

This order shall become effective twenty (20) days after the making thereof.

Dated at San Francisco, California, this 2nd day of April, 1926.

J. A. Brundage
A. Seavey
Ernest C. ...
Leon Whittell

Commissioners.