

Decision No. 28992**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
SOUTHERN PACIFIC COMPANY for an order  
authorizing construction at grade and  
at separated grades of railroad tracks  
across certain streets, lanes, alleys  
and highways, and across the track of  
The Western Pacific Railroad Company  
at locations hereinafter described, in  
the City of San Jose and in the vicin-  
ity of San Jose, County of Santa Clara,  
State of California.

**ORIGINAL**

Application No. 28948.

- E. J. Foulds, for Southern Pacific Company,  
Applicant.  
C. W. Dooling and L. N. Bradshaw, for The  
Western Pacific Railroad Company, in-  
terested party.  
Archer Bowden, C. B. Goodwin and W. L. Popp,  
for the City of San Jose, interested party.  
Harry McClelland, representing the Department  
of Public Works, Division of Highways,  
State of California.  
Edward M. Fellows, for certain citizens, of  
Santa Clara County, interested parties.  
John P. Fitzgerald, for the County of Santa  
Clara, interested party.  
Ernest L. Brune, for the San Jose Ice & Cold  
Storage Company, Protestant.  
H. A. Blanchard, for certain citizens of Santa  
Clara County, Protestant.

BY THE COMMISSION:

O P I N I O N

This is an application of Southern Pacific Company for authority to construct the various crossings over public thoroughfares involved in the relocation of its main line tracks through the City of San Jose and the unincorporated territory immediately south of the City of San Jose, and for a crossing at grade with the track of The Western Pacific Railroad Company.

Public hearings on this application were conducted by Examiner Handford at San Jose and San Francisco, the matter having been duly submitted regarding the portion of the application requesting approval for crossings in the City of San Jose and

the Commission by its Decision No.20559, dated December 5, 1923, disposing of such portion of the matter. Following the receipt of further evidence at a public hearing the entire matter was duly submitted and is now ready for decision.

The crossings which have not already been authorized by the Commission are situated in the unincorporated portion of the County of Santa Clara, south of the City of San Jose. The proposed double track main line of the Southern Pacific Company through this territory crosses the single track branch line of Western Pacific Railroad Company at grade and three county roads, viz: Hillsdale Avenue, Almaden Road and Northern Road. In addition to these crossings, it is proposed to construct a connecting freight lead between the new main line and the existing main line, a section of which will be retained to serve the industrial district adjacent thereto. This proposed connecting track crosses a county road known as Stone Avenue and the main coast route state highway, locally known as Monterey Road.

#### WESTERN PACIFIC CROSSING

The single track of Western Pacific Railroad to be crossed is a portion of the Niles-San Jose branch of that company, which is used in providing service to an industrial district in West San Jose and to the main L.C.L. freight sheds and team tracks of The Western Pacific Railroad at San Jose. It is not used by passenger trains, the passenger station and main freight yard being east of the proposed crossing.

It appears that the parties are in verbal agreement with regard to the terms under which this crossing may be constructed, but the details of this agreement have not yet been reduced to writing. According to the testimony, Southern Pacific Company is to be considered the junior party and will bear the expense of constructing the crossing and a suitable protective device. It is proposed to protect the crossing by an interlocker controlled

from a tower in the vicinity of the new passenger station approximately two miles north of the crossing. It was requested that the Commission authorize the crossing at grade subject to the condition that the parties enter into an agreement fixing the details in regard to the construction and maintenance which is to be filed with and approved by the Commission. This request appears reasonable and the order will provide accordingly.

#### Hillsdale Avenue Crossing

The proposed crossing with Hillsdale Avenue is located near the southerly end of the project and involves the construction of a double track main line across this road at a point about 100 feet distant from the crossing of the existing main line with Hillsdale Avenue. The track of the existing main line will remain in place, but in the future will have limited use. A slight shifting of the track of the Almaden Branch at the point that it crosses Hillsdale Avenue is also required. The vehicular traffic on Hillsdale Avenue is at present light, but when this road is paved, it will furnish a convenient connection between the Almaden Road territory and Monterey Road. The main line crossing should be protected by automatic wig-wags, so equipped as to give warning of the approach of a second train.

#### Almaden Road and Northern Road Crossing

Almaden Road is an important paved county road furnishing the principal outlet to an extensive farming section lying to the south of the City of San Jose. Traffic counts submitted in this proceeding show a travel of 2,651 vehicles on a Sunday in July and a week-day count in June of 1722 vehicles. Near the point where the Southern Pacific Company proposes to cross this road, Almaden Road is intersected by Northern Road, which would also be crossed by the new main line tracks, the distance between the two crossings being about 300 feet. This latter road furnishes

one important outlet from the City of Willow Glen, although other roads provide shorter routes into the City of San Jose. A Sunday traffic count in July shows 780 vehicles traveled along this highway in the vicinity of the proposed crossing, while a week day count in June shows 1333 vehicles at the same point.

At the first hearing on this application considerable opposition to a crossing at grade with Almaden Road developed. It was suggested that the railroad, the county and other interested parties try to agree on some plan before the next hearing under which one grade separation would be constructed to take care of the travel of both Almaden Road and Northern Road across the proposed tracks of Southern Pacific Company. At the hearing on December 11, 1928, Southern Pacific Company presented a plan, Exhibit No. 4, which provided for a subway in Almaden Road and the construction of a connecting road between Northern Road and Almaden Road which would give access from Northern Road to the subway. This plan was satisfactory to the property owners on Northern Road, who were protesting closing of this road at the point of crossing with the proposed tracks, but the plan did not meet with the entire approval of the county. The County of Santa Clara also presented a plan providing for a subway in Almaden Road which would pass under the proposed tracks of Southern Pacific Company and also provide for a proposed major highway which may be constructed, at some future date, parallel to the proposed new main line tracks. A different connection between Northern Road and Almaden Road was also proposed under the county plan. The rearrangement of roads proposed by the county did not, however, meet with the approval of the protesting property owners on Northern Road. Southern Pacific Company proposed that it would bear the entire construction costs of the subway and would also donate for highway purposes that portion of the proposed connection between Northern Road and Almaden Road

which would be constructed on property owned by Southern Pacific Company, provided the County of Santa Clara would furnish whatever additional right-of-way was required for this connecting road, the County also bearing the cost of any damage to property other than Southern Pacific owned property.

After considering the evidence in this connection, it is the opinion of the Commission that the crossing at Almaden Road should be constructed at separated grades provided the travel now using Northern Road at the point of the proposed crossing is diverted to the Almaden Road grade separation and Northern Road closed across the railroad right-of-way and it is concluded that the plan proposed by Southern Pacific Company in Exhibit No. 4 offers a satisfactory solution of this problem. Southern Pacific Company should bear the entire construction cost and the County of Santa Clara should provide whatever road changes may be necessary and assume the property damage, if any.

#### Stone Avenue Crossing.

Stone Avenue, which is to be crossed by the connecting freight lead, is at present a comparatively unimportant county road, carrying traffic of approximately 200 vehicles per day. To prevent collision of vehicles with the sides of freight cars moving over the crossing at night, an illuminated sign suspended over the track should be provided in addition to the usual crossing signs to give ample warning to the users of the highway that they are approaching a railroad track. Back-up movements of trains over this road should be preceded by a flagman on foot and the kicking or dropping of cars over the crossing prohibited.

#### Monterey Road Crossing.

Monterey Road, the main state highway which will also be crossed by this connecting track, carries a traffic normally varying from six to ten thousand vehicles per day and at the point

of crossing many of these autos travel at the full legal speed limit of forty miles per hour. At a point about 3000 feet north of where the Southern Pacific Company proposes to cross this road, Western Pacific Railroad Company now maintains a similar track crossing. The use of the two tracks apparently will be similar, Southern Pacific track being constructed to reach an industrial territory in the vicinity of Valbrick, and The Western Pacific track is used by that company to serve the industrial district at West San Jose. It appears, however, that Southern Pacific Company will probably have the heavier movement of cars across the highway. The suggestion has been made that Southern Pacific Company might, through joint use, be able to reach and serve its industries in the vicinity of its Valbrick branch over The Western Pacific track, thus avoiding necessity for an additional crossing over the important Monterey Road.

The Western Pacific Railroad crossing was granted by the Commission in connection with the other crossings of the Niles-San Jose branch in Application No. 3139 and Decision No. 4744, dated October 11, 1917, which carried the condition that when the adjacent grade crossing of Southern Pacific Company with Monterey Road was eliminated the Western Pacific Company should construct a subway carrying Monterey Road under its track. The adjacent grade crossing of Southern Pacific Company referred to in this condition is that with the existing main line at Schuetzen Park, which crossing is to be abolished in connection with this project. In the opinion of the Commission, there is considerable inconvenience to the public at crossings such as that proposed by Southern Pacific Company and in addition there is a special hazard occasioned by the possibility of fast-moving vehicles colliding with the sides of freight cars passing over such a crossing at night. Statistics introduced in this proceeding show that 24 percent of all grade crossing accidents reported in the state during the years 1926 and 1927 resulted from vehicles running into the side

of the train and that in two-thirds of such accidents the train was either standing still or moving at a speed under fifteen miles per hour. A majority of these accidents occurred at night.

The ideal solution and the solution which ultimately will probably be required is separation of grades and if the railroad elects to construct such separation at this time this Commission has no objection. If the carrier desires, however, to construct the crossing at grade and assumes the burden of adequately providing for the public convenience and public safety the Commission will for the present consent to the construction of a grade crossing, with the expressed provision, however, that if and when, in the judgment of this Commission, the public using the highway is unduly inconvenienced, or public safety is menaced, a separation of grades will be made and the railroad will bear the same responsibility for division of costs as would obtain if the grade separation were ordered at this time. Protection in the form of flood lights and wigwags so controlled as to operate only at times when actual hazard exists should be installed and, if the inconvenience to users of the highway proves too great, restrictions as to hours of use may be necessary.

#### ORDER

The Southern Pacific Company having made application to the Commission for authority to construct its railroad tracks at grade and at separated grades across certain streets, lanes, alleys and highways in the City of San Jose and in the unincorporated portion of the County of Santa Clara in the vicinity of San Jose and across the tracks of The Western Pacific Railroad Company in the vicinity of San Jose, public hearings having been held and the Commission having, in its decision No. 20559, dated December 5, 1928, disposed of that portion of the application which relates to the crossings in the City of San Jose, and the entire matter being now submitted and ready for decision,

IT IS HEREBY ORDERED that permission be and it hereby is granted to Southern Pacific Company to construct its tracks at

grade across Hillsdale Avenue, Stone Avenue and Monterey Road in the County of Santa Clara, State of California, at the locations described in the application and as shown by the blue-print maps (C.L.W.D. Drawing No. 6400, Sheets, 9, 10 and 11), attached to the application, said crossings to be constructed subject to the following conditions and not otherwise:

(1) The entire expense of constructing the crossings, together with the cost of maintenance thereafter in first-class condition for the safe and convenient use of the public, shall be borne by applicant.

(2) Said crossings of Hillsdale Avenue shall be constructed equal or superior to the type shown as Standard No. 2, in General Order No. 72 of this Commission and said crossings of Stone Avenue and Monterey Road shall be constructed equal or superior to the type shown as Standard No. 3 in said General Order. All the crossings shall be constructed of a width to conform to those portions of said road now graded, with tops of rails flush with the roadway or pavement and with grades of approach not exceeding four (4) per cent at Hillsdale Avenue nor one (1) per cent at Stone Avenue or Monterey Road. The crossings shall be protected by Standard No. 1 crossing signs, as specified in General Order No. 75 of this Commission and shall in every way be made suitable for the passage thereover of vehicles and other road traffic.

(3) Said crossing of the main line at Hillsdale Avenue shall be protected by two automatic wig-wags installed in accordance with Standard No. 3 in General Order No. 75 of this Commission and so equipped as to give warning of the approach of a second train.

(4) Said crossing of Stone Avenue shall be protected by a suspended overhead sign in accordance with Standard No. 2 of said General Order No. 75, said sign to be illuminated on both faces at night.

(5) Said crossing on Monterey Road shall be protected by the installation of flood lights so installed as to illuminate fully

the sides of any trains, cars or engines moving over said crossing, together with an illuminated overhead sign, and by two wig-wags, one on each side of said track, said illuminated signs and wigwags to be so controlled as to operate approximately twenty-five seconds in advance of a train movement over the crossing and during the time the train is actually occupying the crossing.

(6) No train, motor, engine or car shall be operated over the crossing with Monterey Road or Stone Avenue unless said train, motor, engine or car shall be under full control, with the air brakes on all cars in said train capable of being fully controlled from the engine. All movements in which a car precedes the engine over either of the crossings shall be preceded by a member of the train crew or other competent employee, on foot, protecting traffic on the highway.

(7) Nothing in this order shall be interpreted as prohibiting the construction of the crossing with Monterey Road at separated grades if the applicant so elects under terms and conditions which the Commission will provide upon supplemental application.

(8) Applicant shall not use the granting herein of a crossing at grade with said Monterey Road as defense or argument against any order of the Commission providing for a grade separation at said crossing, nor shall any capital expenditures in construction of the crossing or adjacent tracks that may be physically affected by such a grade separation be used as a ground for such defense.

(9) The Crossing (No. E-54.7) of applicant's tracks with said Monterey Road at a point approximately nine-tenths of a mile southerly from the crossing with said road herein authorized shall be removed and the pavement restored to conform to the adjacent portions of said Monterey Road.

IT IS HEREBY FURTHER ORDERED that permission and authority be and it is hereby granted to Southern Pacific Company to construct its double track main line at grade across the main line track of The Western Pacific Railroad Company in the vicinity of San Jose,

County of Santa Clara, State of California, at the point shown on M.W.D. Drawing No. 6400, Sheet 17, attached to the application, said crossing to be constructed subject to the following conditions:

(1) The entire expense of constructing a suitable crossing shall be borne by applicant. Said crossing shall be protected by a full and complete first-class interlocking arrangement, in accordance with plans hereafter to be approved by this Commission, the cost of constructing said interlocking plant to be borne by applicant.

(2) Applicant shall file, within one hundred twenty (120) days from the date of this order, a duly executed copy of the agreement with The Western Pacific Railroad Company, covering the terms of installation, operation and maintenance of said crossing and interlocking plant for the protection thereof.

(3) Pending the installation and approval of said interlocking plant, no train, engine, motor or car shall be operated across said crossing by either Southern Pacific Company or The Western Pacific Railroad Company, without first having been brought to a stop and unless a member of the train crew or other competent employee has gone upon the crossing to ascertain that it is safe so to do and shall have given a suitable signal to proceed.

IT IS HEREBY FURTHER ORDERED that permission and authority be and it hereby is granted to Southern Pacific Company to construct a crossing with Almaden Road in the County of Santa Clara, State of California, in accordance with the following conditions:

(1) Said crossing shall be constructed at separated grades substantially in accordance with the plans shown in Exhibit No. 4 filed at the hearing on December 11th, 1928.

(2) The entire cost of constructing said grade separation, with the exception of damage to property other than Southern Pacific property, and excepting the cost of any changes in roads that may be necessary, shall be borne by Southern Pacific Company.

(3) The cost of damage to property other than Southern Pacific Company property, and of making necessary changes to roads shall be borne by the County of Santa Clara.

(4) Said grade separation shall conform in all respects to this Commission's General Order No. 26-C.

(5) Northern Road, at the point of crossing with the proposed tracks of Southern Pacific Company, shall be closed to public use and travel.

IT IS HEREBY FURTHER ORDERED that the Commission's Decision No. 20559, heretofore entered in this application, be modified as follows:

(1) The table in Condition (2) on page 10 of the original of said decision shall be modified to provide for one sidewalk six (6) feet in width at the subway on Julian Street in lieu of two (2) sidewalks as provided in said table.

(2) Condition (2) on page 11 of the original of said decision shall be modified to read as follows:

"(2) The following streets and alleys in the City of San Jose shall be legally abandoned and effectively closed at the respective points of crossing with the existing or proposed tracks of applicant:

Senter Street	
San Augustine Street,	Crossing No. 1-46.6
San Fernando Street,	" No. 1-46.9
Pine Street,	" No. 1-47.2
Jerome Street	
Martin Avenue	
Fuller Avenue	
Bartlett Avenue	
Goodyear Street	
Sunnyside Avenue	
San Carlos Street (between westerly bank of Los Gatos Creek and the easterly line of Kearney Street)	
Cottage Lane	
An alley in the block bounded by Cimabar, Montgomery, Julian and Senter Streets."	

(3) Nothing in said Decision No. 20559 shall be construed as conflicting in any way with the stipulation dated December 4, 1928, between the City of San Jose and Southern Pacific Company regarding the closing of certain crossings, particularly that of

Naglee Avenue, and the Commission specifically consents to the opening of said Naglee Avenue across the tracks of Southern Pacific Company at the location proposed in this proceeding whenever said Naglee Avenue becomes a major street, in accordance with the major street plan of the City of San Jose heretofore adopted by the City Council of said City, except that the Commission reserves the right to determine the type of construction and the manner of protection of said crossing when opened.

Except as herein provided, the Commission's Decision No. 20559, heretofore entered in this proceeding, shall remain in full force and effect.

IT IS HEREBY FURTHER ORDERED that,

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

(2) If any of the crossings herein authorized shall not have been installed within two (2) years from the date of this order, the authorization herein granted, in so far as it applies to said uncompleted crossings, shall then lapse and become void, unless further time is granted by subsequent order.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings 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.

For all other purposes the authority herein granted  
shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 27<sup>th</sup> day  
of February, 1929.

Frank L. Lott

Ch. L. Lott

Emmett Lott

Lion Whitehall

W. H. Lott  
Commissioners.