

ORIGINAL

Decision No. 24992.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the investigation on the Commission's own motion into alteration and changes in construction and protection at six crossings in Santa Clara County.

Case No. 3102.

Mr. E. W. Hobbs, for Southern Pacific Company.

Mr. John P. Fitzgerald, for the County of Santa Clara.

WEITSELL, COMMISSIONER:

O P I N I O N

This investigation on the Commission's own motion deals with the proper type and protection of crossings and the apportionment of the cost thereof incident to the widening of seven grade crossings over Southern Pacific Company's tracks in Santa Clara County.

A public hearing on this proceeding was held in San Jose on September 16th, 1931.

It came to the Commission's attention, through correspondence to the Commission from both the County of Santa Clara and Southern Pacific Company, that the county had a plan under way to widen seven existing crossings over Southern Pacific Company's tracks at the following locations:

Crossing No. E-76.0	Church Avenue	Main Line
Crossing No. L-48.0	Moorpark Avenue	Santa Cruz Branch
Crossing No. EX-57.8	Pearl Avenue	Almaden Branch
Crossing No. E-55.5	Hillsdale Ave.	Main Line
Crossing No. EX-55.6	Hillsdale Ave.	Almaden Branch
Crossing No. L-48.6	Fruitdale Ave.	Santa Cruz Branch
Crossing No. E-54.2	Tully Road	Main Line

In the absence of an application from the county to widen these crossings, the Commission determined to institute this investigation in the interest of reducing hazard at these locations, as it appeared that the streets adjacent to the crossings were being widened and the crossings over the tracks remained at the original width, which resulted in a hazardous condition.

At the hearing it developed that the county had completed the work of widening the pavement on each side of the tracks and to within approximately two feet of the rails at all of the above crossings, excepting at Tully Road, and the work is under construction to widen this crossing. In each of these cases, the record shows that the widths of the improved roadways varied from three feet to nine feet wider than the crossing over the tracks, as is shown hereinafter, and that at Church Avenue the wigwag had not been moved to a proper location for the widened street, which resulted in a hazardous condition, due to the fact that the wigwag was within the limits of the improved street as projected across the railroad right of way. This same condition will prevail if the plans are carried out at Tully Road, provided, of course, that the wigwag is not moved to the proper location.

It appears that the county and railroad are in agreement as to the public necessity for widening the crossings but are not in agreement as to how the expense of the improvement should be apportioned between them, Southern Pacific Company taking the position that the county should bear the expense of widening the crossings and moving the wigwags and the county, on the other hand, contending that Southern Pacific Company should pay the expense of Widening the crossings between lines two feet outside of the outside rails, and also pay the expense of moving the wigwags.

At the hearing, the Commission's engineer testified as to the results of his inspection of the several crossings and made recommendations as to the work necessary to make the crossings safe and convenient for public use. A summary of his report regarding pavement widths follows:

Street	Crossing No.	Former Width of Crossing	Proposed Pavement Type	Proposed Pavement Width	Shoulder	Recommended Width of Crossing
Church Avenue	E-76.0	19'	Oil Mac.	18'	2-3'	24'
Moorpark Avenue	L-48.0	23'	Asp. Conc.	20'	2-3'	26'
Pearl Avenue	EX-57.8	16'	Oil Mac.	18'	2-3'	24'
Hillsdale Ave.	E-55.5	19-28'	Oil Mac.	20'	2-3'	26'
Hillsdale Ave.	EX-55.6	17'	Oil Mac.	20'	2-3'	26'
Fruitdale Ave.	L-48.6	22'	Oil Mac.	20'	2-3'	26'
Tully Road	E-54.2	19'	Asp. Conc.	20'	2-3'	26'

An engineer of Southern Pacific Company introduced similar testimony and the County Surveyor of Santa Clara County also testified as to the desires of the county in this respect. Recommendations of all three engineers are practically identical, all agreeing that the crossings should be widened to conform to the full width of the pavement and shoulders adjacent to the tracks.

In regard to two of the crossings where wigwags are at present maintained, the engineers agreed that the wigwags should be moved to a proper distance from the pavement. Southern Pacific Company at present maintains a locomotive type bell at Crossing No. L-48.6, Fruitdale Avenue. The Commission's engineer recommended that this bell be changed to a wigwag and that a wigwag be installed at Crossing No. L-48.0, Moorpark Avenue.

Southern Pacific Company, in support of its position that the expense of widening the crossings involved should be borne by the County of Santa Clara, urged that the widening of the crossings became

necessary to accommodate the increased volume of traffic on the highways, for which the railroad was in no way responsible or obligated to provide wider highways over its tracks.

We find here proposals for highway improvements as a result of a public need to meet the increased traffic requirements on the highway. None of the improvements are proposed as the result of a changed character of the railroad situation. The traffic on the railroad over these crossings has changed but little during the past ten years. In apportioning the expense of improving these crossings between the County of Santa Clara and Southern Pacific Company, due consideration must be given to the obligation of each party, as well as the benefits to be derived. It must be recognized that the railroad has a continual obligation to participate in the matter of constructing and maintaining reasonable and adequate crossings over its tracks, both at grade and at separated grades. This obligation is inherent, notwithstanding the fact that the traffic on the railroad may increase or decrease. With the increased use of the automobile, the public bodies having jurisdiction over public highways are called upon to meet present day traffic requirements, as it is apparent that the increased volume of vehicular traffic makes the widening of these crossings necessary.

In attempting to apportion the cost between the county and the railroad, in the present case, on a basis of benefits to each party, it would appear that the benefits accrue largely to the vehicular traffic.

After carefully considering the record in this case, it would not seem unreasonable to require the railroad to bear all expense incident to preparing its tracks to receive the pavement, in the way of ballast, ties and any changes in the track structure. On the other hand, the county reasonably should be required to pay

the cost of paving the highway across the entire right of way, including the section occupied by the tracks, the same as would be the case if the tracks did not exist.

It also would seem reasonable, in cases where the widening requires the moving of any protective devices which heretofore have been installed by the railroad, that the county should bear the expense of moving such protective devices to permit of widening the crossings. This condition exists at Tully Road and Church Avenue.

It is shown in this proceeding that at Moorpark Avenue and Fruitdale Avenue some suitable form of special protective device should be installed to reduce the hazard at these locations. It appears that such signals reasonably are required, under present day conditions, for the traffic using these crossings and that they have not become necessary merely as a result of the widening of the crossings, although such widening, to some extent, probably has increased the necessity for the same. In this case, it would seem reasonable to assess to the railroad the cost of providing wigwags for the protection of these two crossings.

I recommend the following form of order:

#### O R D E R

The Commission having instituted an investigation on its own motion for the purpose of determining the proper type and protection of crossings and the apportionment of the cost thereof, incident to the widening of seven grade crossings, hereinabove set forth, over Southern Pacific Company's tracks in the County of Santa Clara, a public hearing having been held, the matter having been submitted and being now ready for decision;

It is Hereby Found as a Fact that the hereinabove described and numbered crossings should be improved by constructing

the crossings equal or superior to Standard No. 2, in the Commission's General Order No. 72, to the full traveled widths of the adjacent portions of the roadways, and that additions to and alterations of protective devices should be made at certain of these crossings; therefore,

IT IS HEREBY ORDERED that Southern Pacific Company is hereby directed, within ninety (90) days from the date of this order, to:

I. Improve said crossings, by constructing the same equal or superior to our Standard No. 2, to the full traveled widths of the adjacent portions of the roadways, the minimum widths of said crossings at right angles to the center line of the road being as follows:

<u>Street</u>	<u>Crossing No.</u>	<u>Width</u>
Church Avenue	E-76.0	24'
Moorpark Avenue	L-48.0	26'
Pearl Avenue	EX-57.8	24'
Hillsdale Avenue	E-55.5	26'
Hillsdale Avenue	EX-55.6	26'
Fruitdale Avenue	L-48.6	26'
Tully Road	E-54.2	26'

II. Move the existing wigwags at the crossings of Church Avenue, Crossing No. E-76.0, and Tully Road, Crossing No. E-54.2, to locations which will conform to the clearance requirements of the Commission's General Order No. 75.

III. Protect the crossings of Moorpark Avenue, Crossing No. L-48.0, and Fruitdale Avenue, Crossing No. L-48.6, by wigwags conforming to Standard No. 3 of the Commission's General Order No. 75.

IT IS HEREBY FURTHER ORDERED that the expense of effecting the above improvements shall be apportioned as follows:

To Southern Pacific Company.

- (a) The expense of improving its tracks to the full width of the adjacent highway at each of the seven crossings above described, in such a condition as to receive the pavement.

- (b) The cost of installing wigwags, conforming with Standard No. 3 of the Commission's General Order No. 75, at Crossings No. L-48.0, Moorpark Avenue, and No. L-48.6, Fruitdale Avenue.

To the County of Santa Clara.

- (a) The expense of improving the roadway within the railroad right of way to the full width of the adjacent improved highway at each of the seven crossings referred to above. This includes the section occupied by the tracks.
- (b) The cost of moving the existing wigwags at Crossings No. E-76.0, Church Avenue, and No. E-54.2, Tully Road, to a location to conform to the requirements of the Commission's General Order No. 75.

IT IS HEREBY FURTHER ORDERED that the County of Santa Clara shall reimburse Southern Pacific Company for the cost of performing the work above assessed to said county, within thirty (30) days after receiving notice of said charges from the railroad company. If sufficient funds are not available to enable the county to make the payment in full at the time and to the party herein specified, the County of Santa Clara is hereby directed, through its appropriate boards, officers and employees entrusted with the levy and collection of taxes, to do all acts necessary to include in the next succeeding tax levy an amount sufficient to pay the sum due under the provisions of this order, with interest thereon from the date on which said amount becomes due and payable, calculated at the rate of six (6) per cent per annum, and to collect the same and thereupon to pay over to said Southern Pacific Company such sum as to make the aggregate payment by the county equivalent to the cost of performing the work

apportioned to the county in this order, plus interest thereon as prescribed.

The effective date of this order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of November, 1931.

C. J. [Signature]

Leon [Signature]

M. J. [Signature]

M. B. [Signature]

Fred G. [Signature]

Commissioners.