

Decision No. 46098**ORIGINAL**

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

In the Matter of the Application of )  
 the Board of Supervisors of the )  
 County of Santa Clara, State of )  
 California, for an order of the )  
 Public Utilities Commission author- )  
 izing the applicant to construct a )  
 public highway across a Railroad )  
 (Fitzgerald Road over S.P. Co. )  
 railroad) )  
 Application No. 28736

In the Matter of the Commission )  
 investigation concerning the )  
 Martinvale and Fitzgerald Roads )  
 grade crossings and the Earl Lloyd )  
 Frost grade crossing within the )  
 County of Santa Clara. )  
 Case No. 5236

Wilson E. Cline, for Public Utilities Commission.  
R. S. Myers, for Southern Pacific Company.  
Donald R. Currlin, Deputy County Counsel, for  
 County of Santa Clara.  
John M. Burnett, for E. N. Gross and those  
 interested in Fitzgerald Road.  
Eldon L. Dye, for California Farm Bureau  
Federation, interested party.  
Victor H. Chargin, for property owners fronting  
 on Martinvale Avenue and property contiguous  
 thereto.

O P I N I O N

The Commission, by Decision No. 41552, dated May 4, 1948, in Application No. 28736, authorized the County of Santa Clara to construct a public crossing of Fitzgerald Road with the main tracks of the Southern Pacific Company, in the vicinity of Coyote Station, to be identified as Crossing No. E-61.0, subject to the condition that upon completion thereof, the existing crossing of Martinvale Avenue (Crossing No. E-60.6) be abolished and physically closed to public use and travel.

The decision further provided that the cost of affording the required protection should be borne in such manner as agreed

between the parties. Thereafter, by petition filed April 14, 1950, the county requested rehearing upon the ground that the residents and property owners in the area of Fitzgerald Road and Martinvale Avenue were not advised as to the public hearing theretofore held and desired an opportunity to be heard. On April 25, 1950, the Commission issued an order granting a further hearing for the purpose of determining whether Decision No. 41552 should be altered, amended or revoked.

By an order dated October 3, 1950, the Commission, on its own motion, instituted an investigation for the purpose of determining whether or not public convenience and consideration of public safety required the abolishment by physical closing of the Fitzgerald Road crossing, Martinvale Avenue crossing and the Earl Lloyd Frost crossing (a private crossing), all as more fully described in said order.

A public hearing, consolidating the above proceedings, was held on July 25, 1951, before Commissioner Mitchell and Examiner Silverhart at San Jose.

The location and physical characteristics of, and the distance between, the Martinvale Avenue and Fitzgerald Road crossings are set forth in Decision No. 41552. However, the evidence herein discloses that Cobb Road has never been dedicated to the county and only the portion of Fitzgerald Road extending 6,000 feet westerly from the railroad tracks is a county highway.

An assistant transportation engineer on the Commission's staff conducted an investigation of the crossings here involved, as a result of which he prepared a report introduced into evidence as Exhibit 1. This exhibit shows that there are seven residences and other farm buildings located on Martinvale Avenue, Cobb Road and a private road known as Martin Lane; that the occupants thereof

utilize the Martinvale Avenue crossing as a means of ingress or egress; that there are 12 residences and additional farm buildings situated on Fitzgerald Road; that on April 20, 1951, from 7 a.m. to 7 p.m., 48 passenger automobiles, three trucks, and six pedestrians crossed at the Martinvale Avenue crossing, and 44 passenger automobiles, 25 trucks, eight pedestrians, two motorcycles and one bicycle moved over the Fitzgerald Road crossing. While the engineer testified there was insufficient traffic to warrant crossings at both Martinvale Avenue and Fitzgerald Road and recommended that the Martinvale Avenue crossing be closed, he stated that if one of the crossings were closed, the county would have to acquire Cobb Road and improve it so as to make it usable throughout the entire year.

The senior assistant division engineer for Southern Pacific Company's Coast Division testified that a total of 28 passenger and freight trains moved during the 24 hours of June 28, 1951, a date selected for heavy train movements; that for a similar length of time on January 31, 1951, a date chosen for light train movements, 24 passenger and freight trains proceeded in both directions; that trains go through the area herein at maximum speeds of 75 miles per hour for streamliners, 70 miles per hour for other passenger trains and 50 miles per hour for freight trains; that the approximate cost of installing the protective devices described in Exhibit 1, at Fitzgerald Road, would be \$6,300 together with several hundred dollars per annum for maintenance.

The owner of a large ranch located along Fitzgerald Road testified in support of the application. He asserted that there are six houses and a dairy on his property; that during the period from September 1 to June 30 of the following year, 100 persons are employed on his ranch; that 20 to 30 automobiles are utilized by

employees in driving to and from the ranch via Fitzgerald Road crossing; that said crossing is used during such period by large trucks and trailers which move four to five truckloads of produce a day from his ranch.

Another witness who resides in the area northwesterly of the westerly end of Fitzgerald Road testified that he hauled tomatoes out over Fitzgerald Road.

A farmer whose property fronts on Martinvale Avenue testified that fruits and vegetables grown in this area are transported to the dehydrating plants located in San Jose; that if the Martinvale Avenue crossing were closed, he would be required to travel a mile out of the way; that Cobb Road is a private road in bad condition and cannot be used. In this connection, it should be noted that photographs contained in Exhibit 1 and taken in May 1951 depict Cobb Road as a narrow, rutted unimproved dirt road with standing puddles of water thereon.

The county surveyor and road commissioner for the County of Santa Clara, who testified in support of the application at the original hearing herein, stated that he never thought there was a possibility of the Martinvale Avenue crossing being closed and that the county will continue to maintain both Martinvale Avenue and Fitzgerald Road.

Earl Lloyd Frost, called as a witness by the Commission, stated that he is and has been the owner of property along the railroad tracks for 26 years last past. Exhibit 1 shows that a private crossing of the railroad tracks, called the Frost crossing, is appurtenant to his property and is located 800 feet northwesterly of Fitzgerald Road. The exhibit further discloses that access to Fitzgerald Road from the witness's property is afforded by means of an unimproved, narrow, furrowed dirt driveway, impassable in wet weather.

The same witness testified that he and his employees utilize his private crossing in order to travel to San Jose where all their purchases are made; that his dirt road to Fitzgerald Road is mired in the winter; that the only portion of his property over which to build a road would be along the railroad right of way, which would entail destroying his walnut trees some of which are 20 and 25 years old; that walnut trees require a 15-year period in order to achieve productiveness; that if a paved road were constructed, it would then become necessary when using agricultural implements to stop upon reaching such road, uncouple such equipment and carry it over the road and there reassemble it; that irrigation activities would require the installation of culverts under a paved road; that it is more convenient and less hazardous for him to use his crossing than one at Fitzgerald Road.

The Commission's engineer did not recommend closing the Frost crossing.

Upon a careful consideration of the entire record herein, we find and conclude:

(1) The construction of a public crossing at Fitzgerald Road is in the public interest.

(2) The closure of the Martinvale Avenue crossing, prior to such time as the County of Santa Clara shall acquire Cobb Road and construct it in a manner appropriate for vehicular traffic, is not in the public interest.

(3) The closure of the Frost private crossing not only is not required by the public interest but would cause an unnecessary inconvenience to and work an undue hardship upon the users thereof.

Decision No. 41552 will be affirmed in part and modified in part, to the extent set forth in the ensuing order. The investigation in Case No. 5236 will be discontinued.

O R D E R

A public hearing having been held and based upon the evidence therein adduced and the findings and conclusions above set forth,

IT IS ORDERED:

(1) That the order set forth in Decision No. 41552, dated May 4, 1948, in Application No. 28736, is deleted in its entirety and there is substituted in place and stead thereof the following:

"IT IS ORDERED:

"(1) That the County of Santa Clara is authorized to construct a public crossing of Fitzgerald Road with the main tracks of the Southern Pacific Company, in the vicinity of Coyote Station at the location more particularly described in the application and shown on the map 'Exhibit A' attached thereto, subject to the following conditions:

- a. The above crossing shall be identified as Crossing No. E61.0.
- b. The crossing shall be constructed of a width of not less than 24 feet and at an angle of approximately 90 degrees to the railroad, with grade of approach not in excess of 6 per cent on the westerly side and as light as is physically possible on the easterly approach. Construction shall be equal or superior to the type shown as Standard No. 2 in the Commission's General Order No. 72. The crossing shall be protected by two Standard No. 8 flashing light signals of the type shown in General Order No. 75-B, together with two '2 train' indicators.
- c. The entire expense of constructing the crossing, exclusive of the protection herein ordered, shall be borne by applicant. The cost of maintenance of that portion of the crossing up to lines 2 feet outside of the outside rails shall be borne by applicant. The cost of maintenance between said lines shall be borne by Southern Pacific Company.
- d. The cost of providing the protection required herein shall be borne in accordance with agreement between the parties. Failing to reach such agreement, the Commission will on request of either party apportion such cost by further order.

- e. The cost of maintaining said lights and indicators shall be borne by the Southern Pacific Company.
- f. Within thirty (30) days after completion pursuant to this order, applicant shall so advise the Commission in writing. This authorization shall become void if not exercised within one (1) year, unless time be extended."

(2) That the investigation in Case No. 5236 is discontinued.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of August, 1951.

R. J. [Signature]  
Justus J. Cooney  
Harold P. Kala  
John L. Mitchell  
Herbert J. [Signature]  
COMMISSIONERS