

ORIGINAL

Decision No. 82933

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the safety, maintenance, operation, use and protection or closing of the publicly used crossing at grade of Blanchard Road with the Coast Route Main Line tracks of the Southern Pacific Transportation Company, approximately at milepost 63, in the City of San Jose, County of Santa Clara.

Case No. 9286
(Filed November 2, 1971;
amended June 7, 1972)

Harold S. Lentz, Attorney at Law, for Southern Pacific Transportation Company; Roy W. Hanson, Deputy City Attorney, for the City of San Jose; Gerald J. Thompson, Attorney at Law, for the County of Santa Clara; Melvin R. Dykman, Attorney at Law, for Department of Public Works, Division of Highways; and Frank A. Passantino, Carmen Patane, and Louie A. Lasich, for themselves; respondents.
William Figg-Hoblyn and Walter H. Kessenick, Attorneys at Law, and Edward C. Cole, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the status, safety, maintenance, operation, and use of the crossing in Santa Clara County of Blanchard Road and the Coast Route Main Line tracks of the Southern Pacific Transportation Company (Southern Pacific).

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in San Jose on March 22, 1972. At the conclusion of the hearing the examiner ordered the temporary abatement of the proceeding so that the Commission staff (staff) could seek an amended Order Instituting Investigation to bring into the proceeding necessary parties who had not been made respondents in the original Order Instituting Investigation. The amended Order Instituting Investigation was issued on June 7, 1972. An additional public hearing was held before Examiner Donald B. Jarvis in San Jose on February 13, 1973. The matter was submitted subject to the filing of transcript and briefs which were filed by May 4, 1973.

The material issues presented in this proceeding are:

(1) Is any part or all of Public Utilities Code Section 1202.3^{1/} unconstitutional? (2) Is the crossing here involved a public one, a publicly used one, or a private one? (3) Does the Commission have jurisdiction to determine whether there has been implied dedication of Blanchard Road to public use? (4) What type of crossing protection is required for the Blanchard Road crossing?

Sections 1201 and 1202 provide in part as follows:

"1201. No public road, highway, or street shall be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway, or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission. This section shall not apply to the replacement of lawfully existing tracks. The commission may refuse its permission or grant it upon such terms and conditions as it prescribes.

^{1/} Unless noted to the contrary, all code section references are to the Public Utilities Code.

"1202. The commission has the exclusive power:

- (a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or vice versa.
- (b) To alter, relocate, or abolish by physical closing any such crossing heretofore or hereafter established."

Section 7537 provides that:

"The owner of any lands along or through which any railroad is constructed or maintained, may have such farm or private crossings over the railroad and railroad right of way as are reasonably necessary or convenient for ingress to or egress from such lands, or in order to connect such lands with other adjacent lands of the owner. The owner or operator of the railroad shall construct and at all times maintain such farm or private crossing in a good, safe, and passable condition. The commission shall have the authority to determine the necessity for any crossing and the place, manner, and conditions under which the crossing shall be constructed and maintained, and shall fix and assess the cost and expense thereof."

Section 1202.3 provides that:

"Notwithstanding any other provision of this chapter, in any proceeding under Section 1202, in the case of a crossing involving a publicly used road or highway not on a publicly maintained road system, the commission may apportion expense for improvements to the county in the case of unincorporated territory, city or other political subdivision if the commission finds (a) that the owner or owners of private property served by such publicly used crossing

agree to expressly dedicate and improve, and the affected public agency agrees to accept, a right-of-way or roadway over such property for a reasonable distance from such crossing as determined by the commission, or (b) that a judicial determination of implied dedication of such road or highway over the railroad right-of-way to public use, based on public user in the manner and for the time required by law, has taken place.

"If neither of these conditions is found to exist, the commission shall order the crossing abolished by physical closing.

"In no event shall a railroad be required to bear costs for the improvement of a publicly used crossing in excess of what it would be required to bear in connection with the improvement of a public street or highway crossing."

If Blanchard Road is a public or publicly used one and part of a publicly maintained road system, the Commission's jurisdiction in the matter is governed by Section 1202. If the road is a private one, not publicly used, the Commission's jurisdiction stems from Section 7537. If the road is not part of a publicly maintained road system and is (a) a public^{2/} or publicly used road or (b) a publicly used private road, Section 1202.3 would be applicable.

Section 1202.3 does not mandate the closing of all publicly used crossings which do not meet criteria established therein.^{3/} It only applies "in any proceeding under Section 1202". Thus, Section 1202.3 delegates to the vagaries of individual litigants the police power of the State. Once a proceeding involving Section 1202 is

2/ It is possible to have a public road which is not part of a publicly maintained road system; e.g., an unimproved and not maintained dirt road in a rural area.

3/ We assume that the legislature could enact a general statute for the public safety which would mandate the closing of certain types of grade crossings. Since Section 1202.3 is not such a statute, we do not pass upon the question of any constitutional infirmities which may be therein if it were intended to apply to all publicly used crossings which do not meet the criteria therein.

commenced (whether investigation, complaint, or application) and the record indicates the applicability of Section 1202.3, and that the provisions of subsections (a) and (b) have not been met, the Commission is precluded from exercising any judgment in the matter and is required to close the crossing.^{4/} The power to cause the closing of a grade crossing cannot be made dependent on the act of a litigant who chooses to bring a proceeding involving Section 1202. (U.S. Const., Amend. XIV; Cal. Const., Art. I, §§ 11, 13, 21; Art. IV, § 16; Blumenthal v Board of Medical Examiners (1962) 57 Cal 2d 228, 235-36; State Board v Thrift-D-Lux Cleaners (1953) 40 Cal 2d 436, 448; O'Kane v Caturia (1963) 212 CA 2d 131, 137; Schechter v United States (1935) 295 US 495, 529-30; Panama Refining Co. v Ryan (1935) 293 US 388, 421.) In the circumstances the Commission finds the mandatory closure provision to be unconstitutional.

We next consider the question of whether the unconstitutional portion of Section 1202.3 is severable from the rest of the section. It has been held that "The test of severability is whether the invalid parts of the statute can be severed from the otherwise valid parts without destroying the statutory scheme, or the utility of the remaining provisions". (Blumenthal v Board of Medical Examiners, supra, at p. 238; Curtis v Board of Supervisors of Los Angeles County (1972) 7C 3d 942, 964.)

^{4/} "If neither of these conditions is found to exist, the commission shall order the crossing abolished by physical closing." (Emphasis added.)

The provisions of subportions (a) and (b) of Section 1202.3 are the predicates for not applying the unconstitutional mandatory closure portion. With the elimination of the unconstitutional portion, subportions (a) and (b) have no independent significance because the Commission may apply the criteria contained therein as well as other criteria under Section 1202(a). Furthermore the last paragraph of Section 1202.3 is unenforceable because of vagueness. There is no statutory standard establishing the costs a railroad is required to bear in connection with the improvement of a public street or highway crossing. This is left to the determination of the Commission under Section 1202(a).^{5/} In the circumstances, we hold that the

^{5/} In the Osborne Street case 67 CPUC 140, the Commission, at pages 143-44, cited and applied the following language from the Center Street case (Decision No. 27320):

"As a general principle, it seems equitable that where traffic conditions are materially changed at a crossing, the expense of providing additional (emphasis added) or improved protective devices should be borne one-half by the railroad and one-half by the public. Other and special conditions should be decided upon the merits in each particular case."

The Commission further held that:

"[w]hen a grade crossing is widened and additional protective devices are installed, and there are no special conditions which require a different result, the cost of relocating existing protective devices and installing new protective devices shall be shared proportionally by all parties involved." (67 CPUC at p. 645.)

The policy set forth in the Osborne Street decision is still in effect. It applies to all crossings within the purview of Section 1202(a) and does not differentiate among publicly used crossings, public streets, or highway crossings.

provisions of Section 1202.3 are not severable and that the unconstitutionality of the portion heretofore indicated makes the entire section invalid. (Blair v Pitchers (1971) 5 C3d 258, 282; In re Perez (1966) 65 C2d 224, 231-32; People v Yosemite Lumber Co. (1923) 191 Cal 267, 279; Verner, Hilby & Dunn v City of Monte Serreno (1966) 245 CA 2d 29; O'Kane v Caturia, supra.)

In the light of our conclusion that Section 1202.3 is unconstitutional and therefore, inapplicable to the proceeding at bench, we turn to a consideration under Sections 1202 and 7537 of the facts herein presented.

Blanchard Road runs in a southwest-northeast direction. It ends at its northeast terminus at the point where it intersects State Highway 101. Immediately adjacent to the point of intersection with Highway 101, Blanchard Road passes through a state weigh station located on property owned by the State of California which is operated by the Department of Public Works.^{6/} Immediately adjacent to the southwest of the weigh station is the Southern Pacific right-of-way, which includes the tracks of Southern Pacific's Coast Route Main Line. Immediately adjacent in a southwesterly direction to the railroad right-of-way is property owned by private individuals. The property on the northwest side of Blanchard Road is part of the city of San Jose, which boundary runs to the center of Blanchard Road. The property from the center of Blanchard Road to the southeast is in the county of Santa Clara.

^{6/} Since the hearing the name of the Department of Public Works has been changed to the Department of Transportation.

Blanchard Road is the sole access to a number of orchard ranches occupied by 13 families. The use of the road increases during fruit-picking season. Blanchard Road is approximately 15 feet wide, with approach grades of approximately 5 percent at the crossing. The daily train traffic consists of two passenger and 18 freight trains. Southern Pacific's operating rules provide that trains approaching the crossing from the north^{7/} have a speed limit at the crossing of 35 miles per hour, which increases just beyond the crossing, at Milepost 63.2, to 70 miles an hour for passenger trains and 60 miles an hour for freight trains. The operating rules also provide that trains approaching from the south^{8/} have a speed limit at the crossing of 70 miles an hour for passenger trains and 60 miles an hour for freight trains, which limits decrease just beyond the crossing, at Milepost 62, to 65 miles an hour for passenger trains and 60 miles an hour for freight trains. Approximately 40 vehicles per day pass over the crossing when there are no fruit-picking activities in the orchards. More vehicles use the crossing during fruit-picking season. Protection at the crossing presently consists of private crossing signs on each side.^{9/}

The record indicates that it would take a vehicle approximately 9.6 seconds to clear the crossing from a full stop at one of the crossing signs. A train traveling at 60 miles per hour will go 843 feet in 9.6 seconds and one traveling at 35 miles per hour will go 491 feet in that period of time.

7/ Eastbound in railroad parlance.

8/ Westbound in railroad parlance.

9/ Vehicle Code Section 21360; see also Section 21362.

Within 18 months preceding the hearings herein there was one train-automobile collision which resulted in the death of a woman and her child who were in the automobile. The evidence reveals that it is very often foggy at the crossing. One witness testified that the train engineer quite often sees an automobile at the crossing before the driver sees the train causing the engineer to give a whistle blast to alert the driver. Because of the conditions at the crossing, the local school bus does not go over the crossing. The driver stops the bus in the weigh station and assists the children in crossing the tracks.

There is differing evidence about visibility at the crossing.^{10/} Part of the difference stems from the fact that the evidence presented by the staff related primarily to a person seated in an automobile at one of the stop signs at the crossing, whereas Southern Pacific's evidence related primarily to two six-foot persons standing at the crossing. Since a principal reason for considering crossing protection is to reduce the possibility of accidents involving trains and motor vehicles, we find that the evidence which indicates the visibility of a person seated in a motor vehicle at one of the stop signs at the crossing is more probative and will be used for the purposes of this proceeding.

A staff witness testified that a person driving an automobile approaching the crossing from the east, stopping at the sign,

^{10/} At the first hearing the evidence indicated the presence of a Southern Pacific tool shed in the vicinity of the crossing. The shed obstructed the view toward the south. At the time of the second hearing, the shed had been removed and we do not consider it.

would be able to see a train approaching from the south at approximately 300 feet^{11/} and one approaching from the north at approximately 400 feet. The Commission is of the opinion and finds that the visibility conditions at the crossing together with the incidence of fog, grade of the roadway, volume of traffic, and other physical conditions at the crossing require that crossing protection be installed there.

The final question to be determined herein is who should be required to pay the costs of installing and maintaining the crossing protection hereinafter ordered. The answer depends upon whether Section 1202 or 7537 is applicable to the facts at bench. If Blanchard Road is a "public or publicly used road or highway" Section 1202 is applicable.

The term private road has been used in two different contexts in California. In early California law, the legislature classified roads into public and private and enacted legislation dealing with how they were to be established and maintained. These so-called private roads were a type of public road. (Sherman v Buck (1867) 32 Cal 241; County of Madera v Raymond G. Co. (1903) 139 Cal 128.) Thereafter, the legislature enacted legislation which has evolved into Section 490 of the Vehicle Code. That section provides:

"'Private road or driveway' is a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other members of the public."

^{11/} This testimony was given before the tool shed was removed. However, the witness also testified that if the shed were removed a train would be visible "a little distance" before it "depending on which angle you are looking at." (RT 76.) In the circumstances, we are of the opinion that the removal of the shed does not materially affect the distance estimate, which is an approximation.

While the terminology of private road used in Vehicle Code Section 490 was new and different from that at common law, the concept was not. The common law and older cases referred to this type of road as a private way. (County of Madera v Raymond G. Co., supra, at pp. 134-35.) The more recent California cases apply the Vehicle Code Section 490 terminology. (City of Oakland v Burns (1956) 46 Cal 2d 401, 405, 408; Sills v Forbes (1939) 33 CA 2d 219.) This decision applies Vehicle Code Section 490 and utilizes its terminology. However, it should be kept in mind that in dealing with some of the older California cases, which are in point and still probative today, the term private way is the equivalent of the term private road as it is used today.

The distinction between a public and private road "does not depend upon the number of people who use it, but upon the fact that every one may lawfully use it who has occasion". (Sherman v Buck, supra, at pp. 253-54.) The public may acquire such a right by adverse use. (Brick v Keim (1962) 208 CA 2d 499; Arnold v City of San Diego (1953) 120 CA 2d 353.)

The record contains a survey map of the Oliver Blanchard Subdivision which was recorded on December 17, 1917. The subdivision map contained a provision in which the subdividers "hereby dedicate to the public use, the roads or avenues as shown on said map." The map also contains a certificate on behalf of the Board of Supervisors accepting the filing with the proviso that "It is further ordered that none of the roads shown on said subdivision and offered for public use be accepted on behalf of the public." Blanchard Road and the crossing here involved appear on that map. Another map received in evidence, which is based on State Board of Equalization Land Identification Map No. 872-43-2D, indicates that some of the land immediately

adjacent to the Southern Pacific right-of-way to the southwest at the crossing was turned over to the county of Santa Clara in 1914 for county road purposes to replace a portion of the old county road (now State Highway 101) which had been appropriated for the railroad roadbed. This map also designates the crossing as a county road crossing.

The record also indicates that until 1946 the records of the Transportation Division of the Commission indicated that the crossing was a public one. In 1946, someone crossed out, in pencil, the designation of public crossing and changed it to that of private crossing. The record shows and we also take official notice that the Commission took no official action with respect to the status of the crossing. In addition, the Commission has no records which would indicate a reason for the change which was penciled in on the Transportation Division record.

There is no evidence which would indicate that the property owners along Blanchard Road ever attempted to claim private dominion over it at any time since 1917. The record indicates that after the property abutting the northwest side of Blanchard Road was annexed to the city of San Jose, the city painted white lines and keep clear markings to delineate the road right-of-way on the portion of Blanchard Road between State Highway 101 and the Southern Pacific right-of-way.

The Commission has the power to determine "all questions of fact essential to the proper exercise of...[its] jurisdiction". (Limoneria Co. v Railroad Commission (1917) 174 Cal 232, 242; Palermo L. and W. Co. v Railroad Commission (1916) 173 Cal 380, 385; People v Western Air Lines (1954) 42 Cal 2d 621; Investigation of Golconda Utilities Co. (1968) 68 CPUC 296, 300-01.) We find, in the light

of the record, that the Blanchard Road crossing is a crossing of a publicly used road and a railroad within the purview of Section 1202. (Sherman v Buck, supra; Arnold v City of San Diego, supra; Investigation of Three Grade Crossings in Monterey County (1965) Decision No. 69868 as amended by Decision No. 70249 in Case No. 8049, unreported (65 CPUC 57), writ of review denied April 22, 1966, SF 22255; Application of Napa Union High School Dist. (1926) 29 CRC 151, 153-54.) In the circumstances we find that the cost of providing protection at the crossing should be allocated as follows: Southern Pacific, 50 percent; city of San Jose, 16-2/3 percent; county of Santa Clara, 16-2/3 percent; and State Department of Transportation, 16-2/3 percent. The allocation to the Department of Transportation is based upon the fact that its weigh station abuts the crossing and its relationship thereto makes it an affected state agency within the meaning of Section 1202(c). The Commission further finds that the costs of maintenance for the automatic protection shall be borne in the same proportions. (Section 1202.2.) Expenses of improving the roadway, if any, should be borne entirely by the entities having jurisdiction over their respective portions thereof. No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Blanchard Road runs in a southwest-northeast direction. It ends at its northeast terminus at the point where it intersects State Highway 101. Immediately adjacent to the point of intersection with Highway 101, Blanchard Road passes through a state weigh station located on property owned by the State of California which is operated by the Department of Transportation. Immediately adjacent to the southwest of the weigh station is the Southern Pacific right-of-way, which includes the tracks of Southern Pacific's Coast Route Main Line. Immediately adjacent in a southwesterly direction to the railroad right-of-way is property owned by private individuals. The property on the northwest side of Blanchard Road is part of the city of San Jose, which boundary runs to the center of Blanchard Road. The property from the center of Blanchard Road to the southeast is in the county of Santa Clara.

2. Blanchard Road is the sole access to a number of orchard ranches occupied by 13 families. The use of the road increases during fruit-picking season. During fruit-picking season approximately 40 families live on the ranches. Blanchard Road is used for bringing in supplies and trucking out fruit.

3. Blanchard Road is approximately 15 feet wide, with approach grades of approximately 5 percent at the crossing. The daily train traffic consists of two passenger and 18 freight trains. Southern Pacific's operating rules provide that trains approaching the crossing from the north have a speed limit at the crossing of 35 miles per hour, which increases just beyond the crossing at Milepost 63.2, to 70 miles an hour for passenger trains and 60 miles an hour for freight trains. The operating rules also provide that trains approaching from the south have a speed limit at the crossing of 70 miles an hour

for passenger trains and 60 miles an hour for freight trains, which limits decrease just beyond the crossing at Milepost 62, to 65 miles an hour for passenger trains and 60 miles an hour for freight trains. Approximately 40 vehicles per day pass over the crossing when there are no fruit-picking activities in the orchards. More vehicles use the crossing during fruit-picking season. Protection at the crossing presently consists of private crossing signs on each side.

4. It takes a vehicle approximately 9.6 seconds to clear the Blanchard Road crossing from a full stop at one of the crossing signs. A train traveling at 60 miles per hour will go 843 feet in 9.6 seconds and one traveling at 35 miles per hour will go 491 feet in that period of time.

5. Within 18 months preceding the hearings herein there was one train-automobile collision which resulted in the death of a woman and her child who were in the automobile.

6. It is very often foggy at the crossing. A train engineer quite often sees an automobile at the crossing before the driver sees the train causing the engineer to give a whistle blast to alert the driver. Because of the conditions at the crossing, the local school bus does not go over the crossing. The driver stops the bus in the weigh station and assists the children in crossing the tracks.

7. A person driving an automobile approaching the crossing from the east, stopping at the sign, would be able to see a train approaching from the south at approximately 300 feet and one approaching from the north at approximately 400 feet.

8. The visibility conditions at the crossing together with the incidence of fog, grade of the roadway, volume of traffic, and other physical conditions at the crossing require that crossing protection be installed there.

9. The public safety, welfare, convenience, and necessity require that the crossing at grade of Blanchard Road and the Southern Pacific tracks be protected by two Standard No. 8 flashing light signals supplemented by automatic gate arms; that the roadway on each side of the crossing be improved to a distance of 100 feet beyond the nearest rail; that the crossing be maintained free of brush within the railroad right-of-way; and that no railroad cars or equipment should be parked within 200 feet of the crossing.

10. A survey map of the Oliver Blanchard Subdivision was recorded on December 17, 1917. The subdivision map contained a provision in which the subdividers "hereby dedicate to the public use, the roads or avenues as shown on said map." The map also contains a certificate on behalf of the Board of Supervisors accepting the filing with the proviso that "It is further ordered that none of the roads shown on said subdivision and offered for public use be accepted on behalf of the public." Blanchard Road and the crossing here involved appear on that map. Another map, based on State Board of Equalization Land Identification Map No. 872-43-2D, indicates that some of the land immediately adjacent to the Southern Pacific right-of-way to the southwest at the crossing was turned over to the county of Santa Clara in 1914 for county road purposes to replace a portion of the old county road (now State Highway 101) which had been appropriated for the railroad roadbed. This map also designates the crossing as a county road crossing.

11. Until 1946 the records of the Transportation Division of the Commission indicated that the crossing was a public one. In 1946, someone crossed out, in pencil, the designation of public crossing and changed it to that of private crossing. The Commission took no official action in 1946 with respect to the status of the crossing and there are no Commission records which would indicate the reason for the penciled change.

12. There is no evidence which would indicate that the property owners along Blanchard Road ever attempted to claim private dominion over it at any time since 1917. The record indicates that after the property abutting the northwest side of Blanchard Road was annexed to the city of San Jose, the city painted white lines and keep clear markings to delineate the road right-of-way on the portion of Blanchard Road between State Highway 101 and the Southern Pacific right-of-way.

13. The Blanchard Road crossing is a publicly used one within the purview of Section 1202.

14. The costs of installing two Standard No. 8 signals, automatic gates, and the circuitry required in connection therewith should be paid as follows: Southern Pacific, 50 percent; city of San Jose, 16-2/3 percent; county of Santa Clara, 16-2/3 percent; and State Department of Transportation, 16-2/3 percent.

15. The maintenance costs for said automatic protective devices should be divided in the same proportion as the costs of construction have been apportioned herein, in accordance with the provisions of Section 1202.2.

16. The costs of improving the crossing and the roadway on each side of the crossing to a distance of 100 feet beyond the nearest rail should be borne as follows:

- (a) If it is necessary to disrupt or change the surface of said crossing in the installation of the Standard No. 8 signals, automatic gate arms, or the circuitry in connection therewith, Southern Pacific should be ordered to provide guard rails or planking at said crossing. Southern Pacific should be ordered to pay 100 percent of the costs of preparing the track within the crossing and any paving work within lines 2 feet outside of the outside rails.

- (b) The city of San Jose should pay 50 percent and the county of Santa Clara should pay 50 percent of the costs, if any, of improving the roadway on the southwest side of the crossing to a distance of 100 feet from the rail nearest to the crossing, commencing at a distance 2 feet outside of said rail.
- (c) The State Department of Transportation should pay 100 percent of the costs, if any, of improving the roadway on the northeast side of the crossing to a distance of 100 feet from the rail nearest to the crossing, commencing at a distance 2 feet outside of said rail.

Conclusions of Law

1. Section 1202.3 is unconstitutional because it attempts to delegate to individual litigants the police power of the State. The unconstitutional portions of Section 1202.3 are not severable from the other parts of that section.

2. The Blanchard Road crossing is a publicly used one within the purview of Section 1202.

3. The Commission should order that the crossing be protected by two Standard No. 8 flashing light signals supplemented by automatic gate arms; that the roadway on each side of the crossing be improved to a distance of 100 feet beyond the nearest rail; that the crossing be maintained free of brush within the railroad right-of-way; and that no railroad cars or equipment be parked within 200 feet of the crossing.

4. The Commission should order the costs of installing two Standard No. 8 signals, automatic gates, and the circuitry required in connection therewith to be paid as follows: Southern Pacific, 50 percent; city of San Jose 16-2/3 percent; county of Santa Clara, 16-2/3 percent; and State Department of Transportation, 16-2/3 percent.

5. The Commission should order the costs of maintaining the automatic protective devices ordered herein allocated in the same proportion as the costs of construction of those devices.

6. The costs of improving the crossing and the roadway on each side of the crossing to a distance of 100 feet beyond the nearest rail should be borne as follows:

- (a) If it is necessary to disrupt or change the surface of said crossing in the installation of the Standard No. 8 signals, automatic gate arms, or the circuitry in connection therewith, Southern Pacific should be ordered to provide guard rails or planking at said crossing. Southern Pacific should be ordered to pay 100 percent of the costs of preparing the track within the crossing and any paving work within lines 2 feet outside of the outside rails.
- (b) The city of San Jose should pay 50 percent and the county of Santa Clara should pay 50 percent of the costs, if any, of improving the roadway on the southwest side of the crossing to a distance of 100 feet from the rail nearest to the crossing, commencing at a distance 2 feet outside of said rail.
- (c) The State Department of Transportation should pay 100 percent of the costs, if any, of improving the roadway on the northeast side of the crossing to a distance of 100 feet from the rail nearest to the crossing, commencing at a distance 2 feet outside of said rail.

O R D E R

IT IS ORDERED that:

1. Within six months after the effective date of this order, Southern Pacific Transportation Company (Southern Pacific) shall install at the crossing of its railroad tracks and Blanchard Road, in the county of Santa Clara, two Standard No. 8 signals, automatic gates, and the circuitry required in connection therewith. The costs of such installations shall be borne as follows: Southern Pacific, 50 percent; city of San Jose, 16-2/3 percent; county of Santa Clara, 16-2/3 percent; and State Department of Transportation, 16-2/3 percent.

2. The annual maintenance costs for the automatic protective devices required by paragraph 1 of this order shall be paid as follows: Southern Pacific, 50 percent; city of San Jose, 16-2/3 percent; county of Santa Clara, 16-2/3 percent; and State Department of Transportation, 16-2/3 percent.

3. The width of the crossing shall be not less than 24 feet and grades of approach not greater than 5 percent. Crossing construction shall be equal or superior to Standard No. 2 (General Order No. 72-B).

The approach roadway shall be improved to meet the city and county standards for a distance of 100 feet from the nearest rail on each approach with a minimum width of 24 feet.

4. The costs of improving the crossing and the roadway on each side of the crossing to a distance of 100 feet beyond the nearest rail shall be borne as follows:

- (a) If it is necessary to disrupt or change the surface of said crossing in the installation of the Standard No. 8 signals, automatic gate arms, or the circuitry in connection therewith, Southern Pacific shall provide guard rails or planking at said crossing. Southern Pacific shall pay 100 percent of the costs of preparing the track within the crossing and any paving work within lines 2 feet outside of the outside rails.
- (b) The city of San Jose shall pay 50 percent and the county of Santa Clara shall pay 50 percent of the costs, if any, of improving

the roadway on the southwest side of the crossing to a distance of 100 feet from the rail nearest to the crossing, commencing at a distance 2 feet outside of said rail.

- (c) The State Department of Transportation shall pay 100 percent of the costs, if any, of improving the roadway on the northeast side of the crossing to a distance of 100 feet from the rail nearest to the crossing, commencing at a distance 2 feet outside of said rail.

5. Southern Pacific shall maintain the area in its right-of-way at and in the immediate vicinity of the crossing so that such area is free of brush.

6. Southern Pacific shall not park any railroad cars or other equipment within 200 feet of the aforesaid crossing.

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

Dated at San Francisco, California, this 29th
day of MAY, 1974.

Verdon L. Stinson
President
William J. Szwed
[Signature]
[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.