

Decision No. 86233**ORIGINAL**

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

Application of the City of )  
 Livermore for an order authorizing )  
 construction of crossings at )  
 separated grades between North "P" )  
 Street and North Livermore Avenue )  
 and the tracks of the Southern )  
 Pacific Transportation Company and )  
 the Western Pacific Railroad )  
 Company; for the elimination of )  
 two railroad grade crossings; and )  
 for the relocation or modification )  
 of three railroad grade )  
 crossings. )

Application No. 53846  
 (Order reopening  
 proceeding dated  
 April 20, 1976)

Robert J. Logan, Attorney at Law, and Dan Lee,  
 for City of Livermore, applicant.

Harold Lentz, Attorney at Law, for Southern  
 Pacific Transportation Company, and  
Eugene J. Toler, Attorney at Law, for  
 The Western Pacific Railroad Company,  
 respondents.

Burke M. Critchfield, Attorney at Law, for  
Robert J. Bedford and Leslie R. Jones, doing  
 business as Livermore Car Wash; Melvin R.  
Dykman, Attorney at Law, for State of California,  
 Department of Transportation; and Paul Tull,  
 for himself; interested parties.

Robert W. Stich, for the Commission staff.

O P I N I O N

Decision No. 82374 dated January 22, 1974, as modified  
 by Decision No. 82652 dated March 24, 1974, authorized the  
 construction of certain separated grade crossings in the city of  
 Livermore (City). Those decisions also authorized the construction  
 and/or relocation of certain automatic grade crossing protection  
 associated with the project, which involved relocation of the track

of Southern Pacific Transportation Company (SP) to a location adjacent to the track of the Western Pacific Railroad Company (WP). The later decision also apportioned costs for relocation and/or reconstruction of automatic protection at existing or relocated crossings. Decision No. 82652 indicates (in Ordering Paragraph 3) that the crossing at East First Street (WP 4-48.2 and SP D-47.47) is under the jurisdiction of the State Department of Public Works, Division of Highways (now Department of Transportation, hereafter CALTRANS), and that apportionment of costs at that crossing was excluded from that order.

Construction of the SP track paralleling that of WP in Livermore has been completed and operation over the relocated track is scheduled to begin when construction of additional warning devices along the right-of-way is completed. Our Transportation Division staff, after further investigation of such crossing protection, recommended to interested parties that additional warning devices be constructed at the crossing at grade of East First Street in Livermore with the tracks of the SP (Crossing D-47.47) and the WP (Crossing 4-48.2).

Informal discussions with interested parties disclosed that the plan for additional crossing protection recommended by the Commission staff is opposed by Livermore Car Wash (Car Wash), whose business is located adjacent to the crossing. Decision No. 85730 reopened the proceeding for the receipt of evidence concerning the safety of the grade crossing at East First Street in Livermore, the need for additional warning devices, the location of the devices, if required, the cost of construction and maintenance of the devices, and the apportionment of maintenance and construction costs.

Public hearing for the purpose stated above was held before Examiner Mallory on May 3, 1976 in Livermore and May 18, and 20, 1976 in San Francisco. The reopened proceeding was submitted upon receipt of closing briefs on June 25, 1976. Evidence was submitted on behalf of the Commission staff, Car Wash, City, SP, and WP. Each witness offered a different proposal concerning the location and types of crossing protection which should be ordered by the Commission. All parties concur that additional crossing protection is required on East First Street.

Background

The Commission, by Decision No. 82374, authorized City to construct a crossing at separated grades between North "P" Street and North Livermore Avenue and the tracks of SP and WP and to concurrently eliminate two at-grade railroad crossings at North "K" Street and North "I" Street and to relocate and modify three other railroad crossings.

By Decision No. 85395 dated January 27, 1976 in Application No. 55948, the Commission authorized City to construct the East First Street Overhead at separated grades over the tracks of SP and WP (to be identified as D-47.7A and 4-48.4-A presently) and to physically close and barricade the existing at-grade crossings at East First Street (State Route 84) identified as Crossing D-47.47 (SP) and Crossing 4-48.2 (WP).

Decision No. 82374 ordered the warning devices to be installed at the East First Street crossings to consist of a minimum of two Standard No. 9 automatic gate signals (General Order No. 75-C); one to be located on the northerly side of the WP track (4-48.2) and the other on the southerly side of the SP track (D-47.47). The actual warning devices being installed at the crossings consist of one Standard No. 9 automatic gate signal (General Order No. 75-C) on the northerly side of the WP track (4-48.2) and one Standard No. 9-A automatic cantilever gate signal (General Order No. 75-C) on the

southerly side of the SP track (D-47.47) on East First Street. It was anticipated that the project authorized in Decision No. 82374 would be completed by May 1976 and at that time SP would be operating on its relocated trackage (which will also be the track closest to Car Wash's driveways).

At the present time only the WP track is in operation. It is protected by two flashing lights and bell signals (Standard No. 8 - General Order No. 75-C), as shown in Diagram 1 attached hereto. There are potentially 18 train movements daily consisting of 12 WP movements and 6 SP movements. The maximum train speeds are: WP - 45 mph and SP - 20 mph. The average daily vehicular traffic is 12,300 vehicles. There is also an average of 20 school bus crossings per day. The vehicular speed limit in the area is 25 mph.

East First Street is a two lane 40+ foot wide asphaltic concrete surface street. The WP and the SP each have one mainline track across this street. The track crossings have a skew angle of 72° measured from the perpendicular and are approximately 100+ feet in length. All quadrants of the crossing have some obscurement in visibility.

The Car Wash facility is located in the southeast quadrant of the crossings. The driveways are situated so that most vehicles must drive on top of the relocated SP mainline track in order to exit. Vehicles entering and using the car wash facility consist of passenger cars, motorcycles, pickups, campers, mobile-home vehicles, tractors, and flat-bed trucks. Traffic into the car wash appears to be steady and constant. A traffic flow chart is shown in Diagram 2 attached hereto. Without positive methods of alerting or warning motorists of an impending train in the crossing, inattentive drivers of vehicles could exit into the path of a train.

The Commission staff, in the company of representatives from the City and SP, conducted an inspection in the latter part of February 1976 of the East First Street crossing, which caused the parties to become aware of the potential hazard. During this inspection, it was noted that vehicles leaving the Car Wash facility could conceivably be involved in an accident when attempting to exit into East First Street.

The Commission staff on March 3, 1976 transmitted a letter to the affected parties of record for the purpose of reaching an amicable solution to the problem.<sup>1/</sup> A meeting was held in Livermore on March 16, 1976 with the parties (except Car Wash) to discuss and present various solutions. The only solution which was acceptable to all parties present is shown in Diagram 3. That proposal would require that a barricade of approximately 50 feet in length be installed on the easterly side (by the easterly driveway of the car wash) and that a Standard No. 9 automatic gate signal (General Order No. 75-C) with a 30 foot arm be installed by the westerly driveway of the car wash. The staff, thereafter, wrote a letter to Car Wash informing Car Wash of the proposal and requesting that any objections or representations should be made in writing no later than April 9, 1976. On March 31, 1976, Car Wash objected to the proposal presented by the staff. The response of Car Wash contained an alternate proposal and requested an opportunity to be heard. The staff, thereafter, recommended to the Commission that Application No. 53846 be reopened.

#### Staff Recommendations

The staff witness testified that since the City is now nearing completion of its railroad consolidation project, it would appear desirable that any additional protective devices to be authorized or required by the Commission should be constructed as part of the project to minimize delays.

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1/ Livermore Car Wash was not a party to the original proceeding.

The staff report states that the relocation of the SP trackage to the existing WP right-of-way may be a source of confusion to the motoring public. The two tracks of the two different railroads in the crossing will have the appearance of a double mainline track of a single railroad to the casual motorist. Motorists ordinarily will expect trains to approach from one direction. However, trains will be able to enter the crossing area from either side in either direction or can run abreast of each other, causing more hazard than the existing single track or the expected double track of a single railroad. (Diagram 2 shows the direction and pattern of traffic flow into and from the car wash as depicted in the staff Exhibit L-1.)

The staff recommends that an additional Standard No. 9 automatic gate signal (General Order No. 75-C) be required near the westerly driveway of the Car Wash and that a barricade approximately 50 feet in length be erected by the easterly driveway as shown on Diagram 3 attached. The staff witness pointed out that the crossing in issue will be closed when the adjacent overcrossing is constructed in about two or three years. At that time a barricade will be placed across East First Street paralleling the outside of the SP track. The location of the barricade proposed to be constructed as part of the crossing protection in Diagram 3 is similar in location to the barricade to be constructed when the crossing is closed.

The staff exhibit states that another solution to the problem is to provide separate access whereby exiting vehicles would have no possible contact with the crossings or trains. That proposal would provide the most satisfactory method of crossing protection for car wash customers.

#### Car Wash Recommendations

A partner-owner of Car Wash testified and presented Exhibit L-2. In his testimony and exhibit, the witness explained the

present traffic flow patterns of vehicles entering and leaving the car wash and the location of facilities within the car wash. According to the witness, the plan proposed by the staff would cause Car Wash to lose business because the proposed location of the barricade would prevent large vehicles such as trucks and house trailers from entering the open bay at the east side of the car wash. Two customers of Car Wash, an owner of a truck-tractor and an owner of a house trailer pulled by a pickup truck, confirmed the fact that such vehicles could not enter the car wash bay designed for large vehicles if the proposed barricade is erected.

Three alternate solutions were offered by Car Wash. The first is to install two gates at the property line of the car wash. The second is to erect a fifty-foot gate at the westside of the car wash entrances, and a shorter barrier on the eastside. The third proposal is similar to first proposal except that a berm perpendicular to the front property line of the car wash would be erected to divert traffic entering the car wash to the eastside. The owner of the car wash prefers his first alternate recommendation (Diagram 4, attached).

#### City of Livermore Recommendations

The City's recommendations are contained in its Exhibit L-5 (Diagram 5, attached). The City's proposal differs from that recommended by Car Wash in that, in lieu of a gate, the entrance on the eastside of the car wash would be equipped with a one-way spike barrier which would permit cars to enter, but not exit, on that side. The City also proposes that a sidewalk and street on the adjacent property of California Water Service be cut back to the property line in order to provide more space between the track and the westerly entrance to the car wash, and that a large tree on the easterly corner of the California Water Service property be removed to improve vision. The City also would install ceramic markers in the street to guide automobile traffic entering the car wash to the east entrance.

In its brief, City urges immediate action so that the project may be completed and operation by SP over the relocated track segment may begin.

Railroads' Proposals

Engineers employed by SP and WP presented the railroads' proposals.

SP witnesses testified that, in the opinion of that railroad, none of the proposals presented by the staff, Car Wash, or the City provided complete safety because under any of such proposals the location of Car Wash's entrance and exit is within the confines of the crossing. It was the opinion of the witnesses that some other access to the car wash property should be provided which does not involve the use of East First Street frontage of the car wash. SP's public projects engineer testified that if the City provided access to Car Wash through adjacent properties so that Car Wash patrons no longer used the crossing, he would recommend to the management of SP that the railroad negotiate a supplemental agreement with City to provide that SP would bear some of the cost of acquiring the necessary property.

SP recognized that this Commission may not have the requisite authority over the City and Car Wash to order the complete closure of the car wash frontage on East First Street. Therefore, the SP witnesses recommended several changes in crossing protection that differ from other proposals. SP's proposals are as follows:

1. Reverse entrance from the east to the westside of the car wash to prevent a storage problem at the entrance when crossing gates are down.
2. Add a "no left turn" sign for westbound traffic to prevent vehicles entering from that direction to be caught on the tracks when crossing gates are down on East First Street.
3. Add a painted median (Section 21651 of California Vehicle Code) down the center line of East First Street to provide traffic separation for vehicles crossing the railroad tracks.



4. Set back the sidewalk and curb in front of California Water Service to the property line; and remove a large tree on the property line between Car Wash and California Water Service which restricts visibility at the Car Wash entrance.
5. Extend the warning time between ringing of bells and the dropping of gates from the usual 10 seconds to the maximum of 40 seconds provided on General Order No. 75-C.
6. Paint all curbs red on the southside of East First Street in the vicinity of the crossing.

#### Discussion

The East First Street crossing of the SP and WP tracks is unique in that no other grade crossing in California has the combination of the following adverse safety factors:

- (a) Vehicle access to a commercial establishment is within the confines of the crossing.
- (b) The crossing involves the mainline tracks of two railroads, and two-way traffic is operated over each track.
- (c) The extreme skew of the crossing.

Any one of the above adverse safety factors would require that careful consideration be given to the safety devices for protection of vehicular traffic using the crossing. The combination of all three adverse factors requires that the Commission exercise extra care in devising adequate protection of the crossing.

To our knowledge, at no other crossing is the sole public entrance to and egress from a commercial establishment located within the confines of the crossing. Car Wash, by the very nature of its business, generates hundreds of daily vehicular movements during all hours. Vehicular traffic over the crossing would be substantially diminished if Car Wash's patrons did not use the crossing.

Each of several suggestions for changes and improvements of protection at the crossing are makeshift expedients that do not satisfactorily correct the real safety problem involving the use of the

crossing by Car Wash customers. The solutions offered by the staff and SP prevent full use of Car Wash facilities by larger vehicles and partially block entrance or egress to other vehicles. The solutions offered by Car Wash and City create stacking problems at the entrance to Car Wash whereby vehicles can be caught in the crossing when automatic gates are down.

When the nearby grade separation is completed and the East First Crossing is closed, present plans call for a barrier to be constructed on each side of the crossing paralleling the SP and WP tracks. The barrier will restrict the entry and exit of large vehicles to and from the Car Wash in a manner similar to the staff proposal herein. It appears that the construction of such a barrier may so severely restrict the public access to Car Wash that an action for inverse condemnation may prevail.

In our opinion none of the suggestions or proposals for the creation of additional protection at the crossing will provide adequate protection to Car Wash customers other than closing of the crossing to such vehicles. If Car Wash is to remain at the same location, access and egress to Car Wash must be provided by an alternate route which does not involve use of the roadway within the limits of the crossing. Because of the extreme skew of the crossing the area in question extends from the easterly property line of Car Wash to point 100 feet west of the westerly property line of Car Wash and includes the frontage of California Water Service property on East First Street.

We conclude that we do not have jurisdiction over City and Car Wash to order either of those parties to acquire additional private property, nor jurisdiction over City to require it to open an adjacent public street to provide an alternate vehicular access to Car Wash property which does not involve the use of the crossing.

Our order herein will provide for the closing of the vehicular entrances and exits of Car Wash and California Water Service within the confines of the crossing. Car Wash, City, and other parties must resolve issues of inverse condemnation in other forums.

Findings

1. Prior orders of the Commission approved projects involving the relocation of the mainline of SP within the City, construction of certain grade separations, and the improvement and/or closing of certain grade crossings.

2. The aforementioned projects involved the relocation of SP mainline track to parallel the track of WP in the area of the grade crossing at East First Street in Livermore. The Commission orders provided for the relocation and upgrading of the crossing protection at East First Street as part of the track relocation project.

3. The prior Commission orders approved the construction of a nearby grade separation project, which will not be constructed for several years because of its low priority for an appropriation from the grade separation fund. [Number 67 on Priority List of Grade Separation Projects - Fiscal Year 1976-77 (Decision No. 85991 issued June 22, 1976 in Case No. 10019.)] When that project is completed the East First Street grade crossing will be closed and barriers will be constructed paralleling the SP and WP tracks in front of Car Wash. ✓

4. Inspection by the Commission staff of the relocated SP track in Livermore disclosed the need for additional crossing protection at East First Street in Livermore. ✓

5. The relocation of the SP mainline track is completed. The use of the relocated track is contingent upon the issuance of an order herein establishing additional protection at the crossing.

6. All parties agree that additional protection at the East First Street crossing is required because of the combination of the following four adverse safety factors involving the use of the crossing:

- (a) The sole means of vehicular ingress to and egress from Car Wash is within the confines of the crossing.
- (b) Additional railroad traffic over the crossing will result from the relocation of the SP mainline track.
- (c) There will be two-way rail traffic on the paralleling tracks of WP and SP.
- (d) There is an extreme skew to the crossing.

7. The Commission staff, Car Wash, City, SP, and WP proposed various means of providing additional protection at the crossing to provide safe ingress and egress to Car Wash customers.

8. Each of the aforementioned proposals has serious impediments. The proposal to establish a barrier paralleling SP creates a safety problem for vehicular traffic approaching the Car Wash from the east and severely restricts access to Car Wash by large vehicles. The positioning of gates across the entrance and/or exit to Car Wash creates stacking problems, whereby automobile traffic may be blocked and must remain in the crossing area after gates have come down. The use of a spike barrier to restrict access to Car Wash creates problems concerning inspection, repair, and maintenance.

9. None of the proposals for additional protection at the crossing will provide adequate protection to Car Wash customers.

10. Adequate and reasonable safety at the East First Street crossing requires the closing of vehicle ingress to and egress from Car Wash and/or California Water Service within the confines of the crossing. Because of the extreme skew of the crossing, the crossing area includes that area on East First Street between the easterly property line of Car Wash and a point 100' west of the westerly property line of Car Wash. ✓

11. The protection at the crossing required in prior Commission orders and that actually being installed (consisting of one Standard No. 9 automatic gate signal on the northerly side of the WP track and one Standard No. 9-A

automatic cantilever gate signal on the southerly side of the SP track) will provide adequate and sufficient protection at crossing if vehicular access to Car Wash within the confines of the crossing is eliminated.

Conclusions

1. East First Street crossing should be closed to vehicles using the facilities of Car Wash and California Water Service.
2. This Commission does not have authority under Sections 1201-1202.5 of the Public Utilities Code to order Car Wash, City, or any other party to this proceeding to acquire additional property or to open new public streets as a means of providing alternate access to Car Wash property.
3. The order herein should be made effective in thirty days in order to provide time for parties to this proceeding to negotiate a settlement concerning alternate access to Car Wash and California Water Service properties which will not involve use of the crossing area.

O R D E R

IT IS ORDERED that Decision No. 82374 is further modified by the addition of Finding No. 7 which shall read as follows:

- "7. Access to Livermore Car Wash and California Water Service by vehicular traffic within the confines of Crossing D-47.47

and 4-48.2 in the City of Livermore shall be eliminated by physically closing the means of access or egress. Costs of erecting barriers or other necessary appurtenances shall be shared equally by the railroads and by the public agency having control over the highway within the crossing."

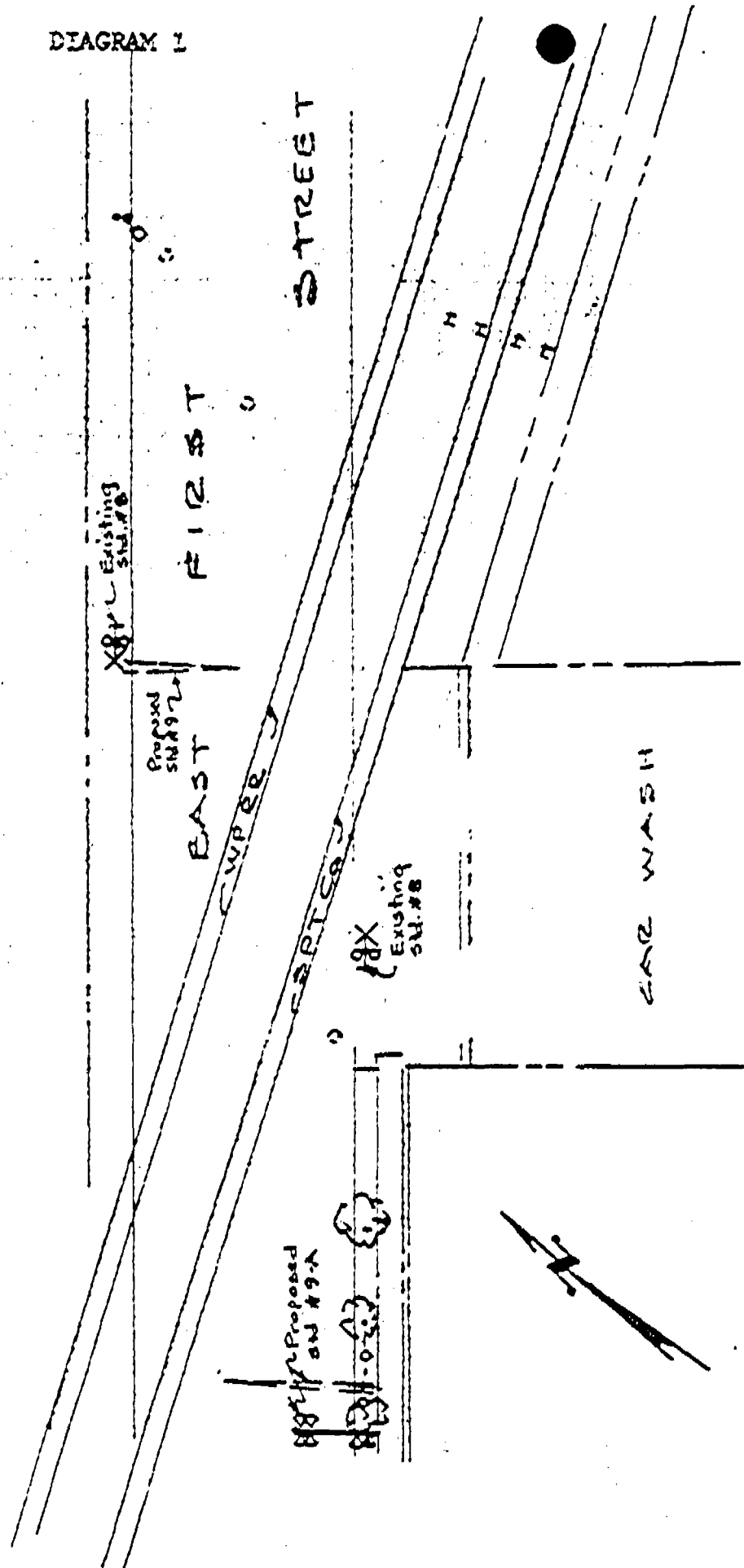
The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 10<sup>th</sup> day of AUGUST, 1976.

\_\_\_\_\_  
President  
William S. Lyons  
James L. Steigman  
Don  
\_\_\_\_\_  
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.



MAR 1, 1976  
REV - JULY 13, 1976

A.53846

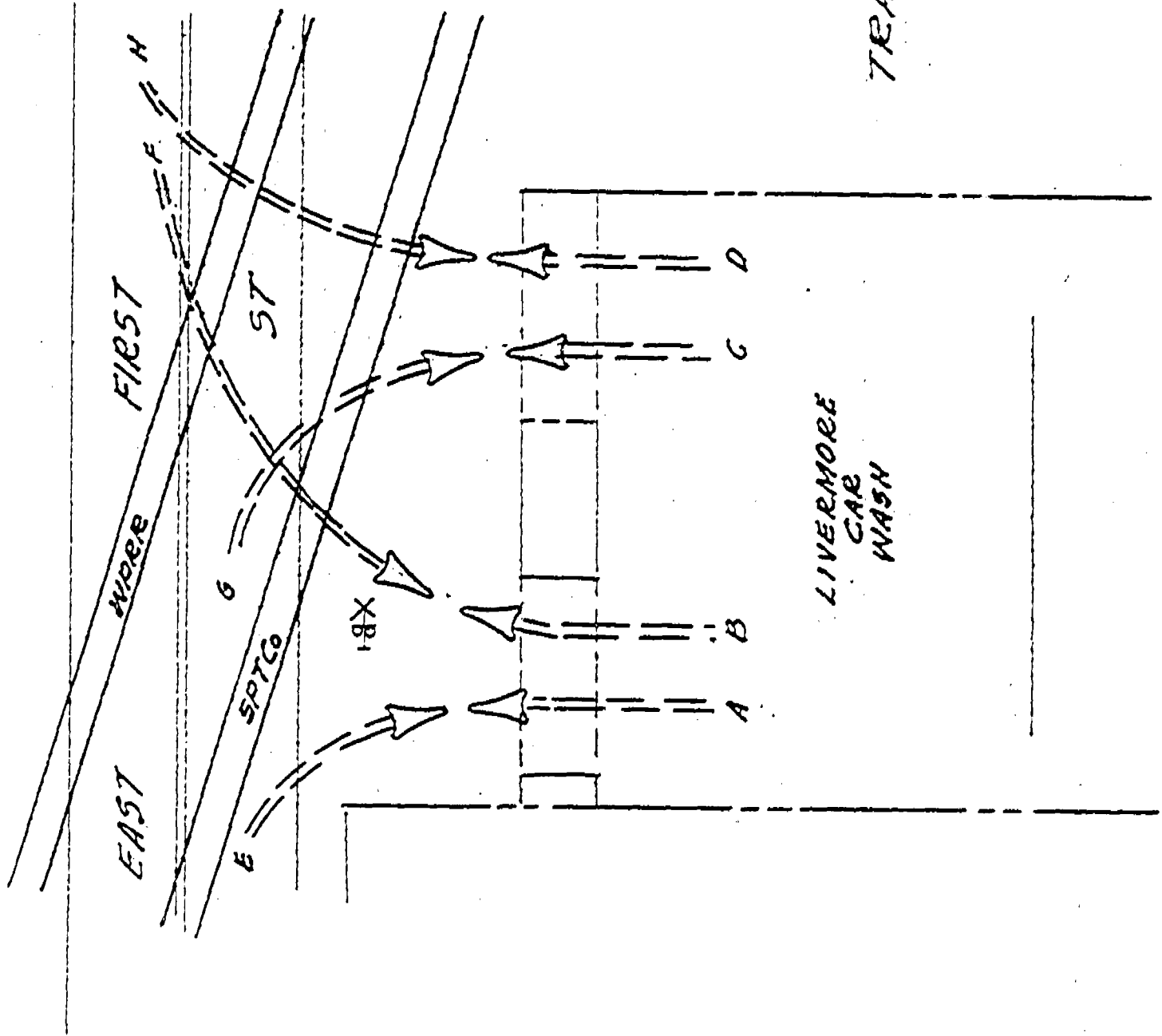
DIAGRAM 2

SUNDAY - APR. 25, 1976

10:00AM TO 1:00 P.M.

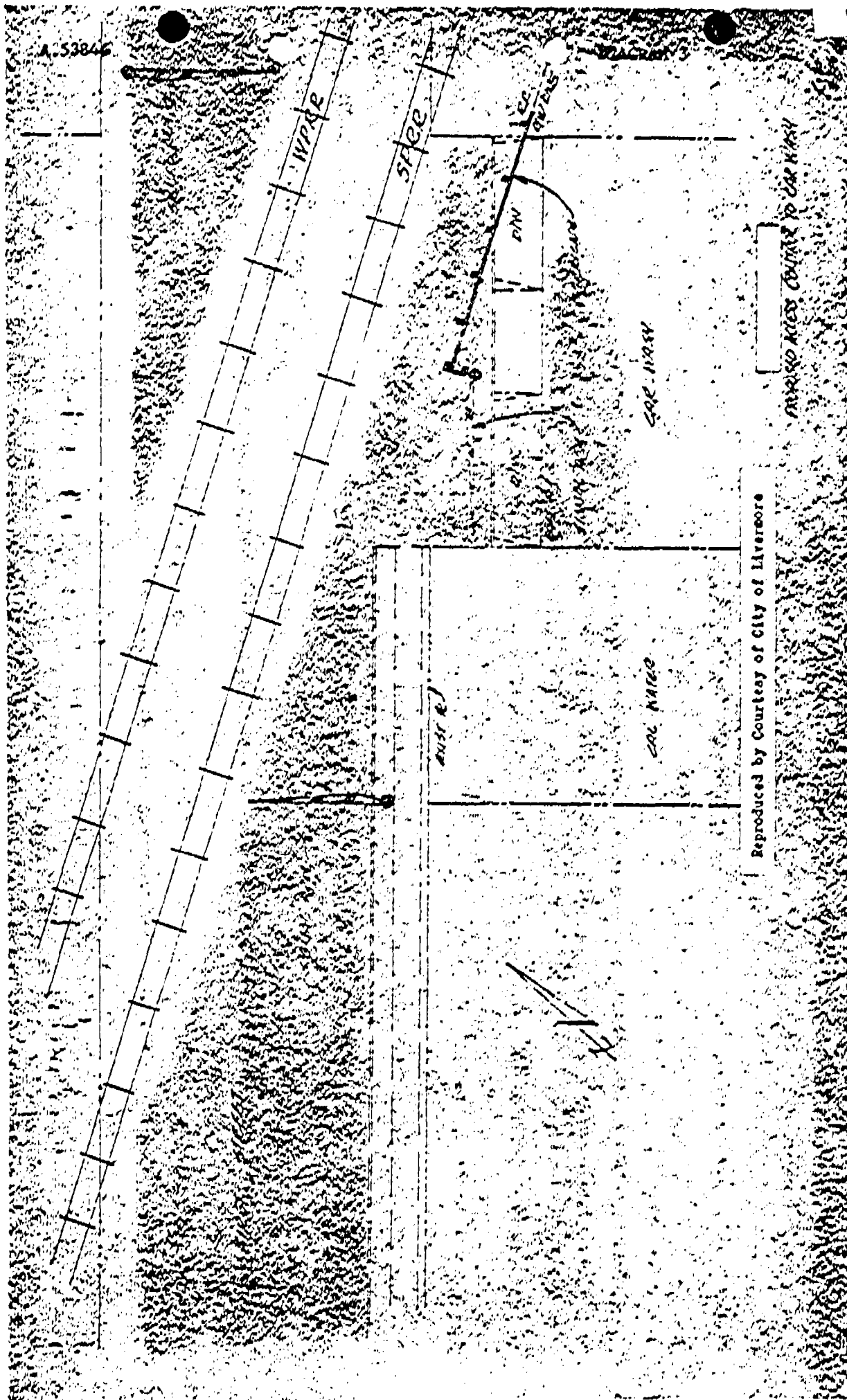
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B - 12  
C - 1  
D - 3  
E - 39  
F - 3  
G - 18  
H - 8

TRAFFIC FLOW



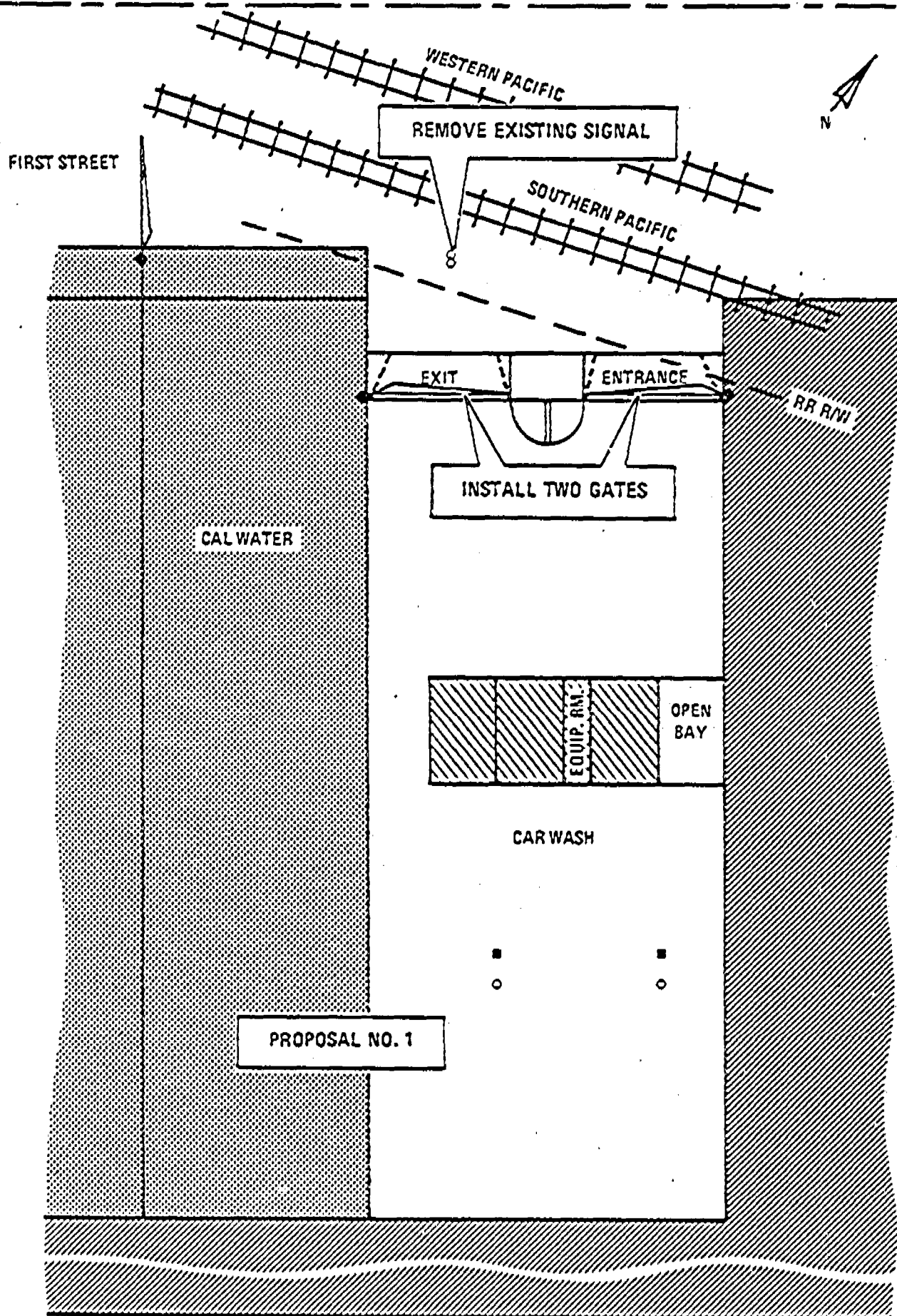


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UNLESS NOTED OTHERWISE TO CITY HALL



**DIAGRAM 5**

