

ORIGINAL

Decision No. 86808

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the COUNTY OF LOS ANGELES to construct a pedestrian crossing, vicinity of El Segundo Boulevard and Route 405 Freeway at the Southern Pacific Transportation Company El Segundo Branch, proposed crossing No. BBF-498.68-D, in the City of El Segundo, County of Los Angeles.

Application No. 55746
(Filed June 16, 1975)

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Melvin R. Dykman, Attorney at Law, for the State of California Department of Transportation, intervenor.
William E. Still, Attorney at Law, for Southern Pacific Transportation Company, interested party.
Wayne J. Louderback, for the Commission staff.

FINAL OPINION

Statement of Facts

Wiseburn School District is situated just south of Los Angeles International Airport. One of its schools, Dana Junior High, at Aviation Boulevard and 135th Street, provides seventh and eighth grade education for approximately 1,800 students in the district. That part of the district figuring in the issue before this Commission spans unincorporated territory as well as portions of the city of Hawthorne. The area is bounded on the north by Imperial Highway, on the west by Aviation Boulevard, on the east by Felton Street and Inglewood Avenue, and on the south by Rosecrans Avenue. The area is bisected by El Segundo Boulevard, a heavily traveled six-lane road running east and west through the district. The district is

also severely compartmented by two man-made obstacles to local movement: a Southern Pacific Transportation Company (Southern Pacific) right-of-way bearing a single track railbed diagonally traverses the entire district, crossing Aviation Boulevard on the west and El Segundo Boulevard in the center, just east of the San Diego Freeway; and in turn the San Diego Freeway bisects the entire school district on a north-south axis.^{1/} Today approximately 140 students attending Dana live north of El Segundo Boulevard. Their school commute patterns provide the foundation for the allocation issues involved in this case.

Since 1926 the district has bussed students. Today most of the 140 students living north of El Segundo Boulevard are bussed to and from Dana each day, some almost a mile and a half. In good weather perhaps 20 to 40 will walk, and a few are driven by parental car pools. In recent years the district has had financial problems. In 1971 and 1972 the district proposed elimination of the bussing, trying to save the approximate \$20,000 annual cost of the three buses involved. Strong community opposition stymied these efforts. Seeking to develop a way to make the proposed elimination of buses more palatable to the parents, the district superintendent embarked upon an effort to improve the sidewalks along both Aviation and El Segundo Boulevards. After attaining some degree of success, he enlisted the aid of a representative of the Los Angeles County Road Department, and together they sought the safest pedestrian and bicycle routes to try to remove students from the main heavily traveled roads. Their study resulted in a suggested central route running south on Isis Street (an internal residential street leading to El Segundo Boulevard) to El Segundo Boulevard, east on El Segundo to the vicinity of the southbound entry to the San Diego Freeway, and thence across El Segundo to be funneled into a pedestrian-bike crossing of the Southern Pacific right-of-way

^{1/} See Appendix A.

debouching to other residential streets south of El Segundo Boulevard and the Southern Pacific right-of-way, and leading southwards towards 135th Street and Dana.^{2/} The assistance of a county supervisor was obtained and the pedestrian-bike crossing project was taken over by Los Angeles County (Los Angeles).

In June 1975, Los Angeles sought authority from this Commission to construct an eight-foot wide pedestrian-bike crossing over the single track right-of-way of Southern Pacific. Advised of the application the California Department of Transportation (Caltrans) informed the Commission that Caltrans had no objection to authorization of the project (1) provided no funds available to the Commission under Section 1231 of the Public Utilities Code were used to assist Los Angeles in the construction of the crossing protection, and (2) no contribution be made from Section 1231.1 funds for the cost of maintenance of the automatic protection devices.^{3/} Caltrans contended that use of Sections 1231 and 1231.1 funds for construction and maintenance of protection devices at a pedestrian-bike crossing at this location and under these circumstances would be an unconstitutional diversion of gas tax funds.

While making clear that it was its expectation to utilize Sections 1231 and 1231.1 funds in the project, Los Angeles requested authority to proceed immediately with the construction, leaving settlement of potential cost reimbursement matters to be deferred to a later date. The Commission adopted this proposal, and by Decision No. 84900 on September 10, 1975, issued an interim opinion and order authorizing Los Angeles to construct the project.

^{2/} See Appendix B.

^{3/} Sections 1231 and 1231.1 pertain to the use of Highway fund monies for the construction and maintenance, respectively, of grade crossing protection. Pursuant to Commission order, cities, counties, and cities and counties, are reimbursed for certain of these expenditures.

Thereafter the project was constructed, the protection equipment was set in position, and the facility was opened for use.

Pursuant to the interim opinion and order contained in Decision No. 84900, a duly noticed public hearing on the issue of eligibility for allocation of funds under Sections 1231 and 1231.1 for installation and maintenance of the automatic crossing protection was held in Los Angeles on January 20 and 27, and February 10, 1976, before Examiner John B. Weiss. At conclusion of the hearing the parties desired to brief the issues; however, they joined in a request to delay submission - a request granted by the examiner. After receipt of briefs, the case was submitted on August 1, 1976.

It is the position of Los Angeles that construction of the pedestrian-bike crossing has a beneficial effect on motor vehicle traffic safety, traffic capacity, and traffic patterns in the immediate vicinity of the facility, and therefore the requisite crossing protection qualifies under applicable law for Sections 1231 and 1231.1 funds. At the hearing Los Angeles presented three witnesses in support of its contention. The superintendent of Wiseburn School District testified that construction of the crossing would benefit traffic safety by reducing the number of children on Aviation and El Segundo Boulevards, both heavily traveled roads, and that the anticipated elimination of buses and of some car pools would enhance traffic capacity on Aviation and El Segundo Boulevards, and make for better traffic patterns. A county civil engineer, presently state and railroad coordinator for the county railroad department, testified that about 130 students presently bussed, primarily by way of Aviation Boulevard, would now, as a result of construction of the crossing, have access as pedestrians or cyclists through essentially residential central streets, the crossing of El Segundo Boulevard and the new railroad pedestrian-bike crossing, to residential street

approaches to Dana Junior High, thus avoiding travel on Aviation and El Segundo Boulevards. The third Los Angeles witness, a county traffic engineer, testified that he did not believe the increased pedestrian and bicycle traffic crossing El Segundo Boulevard to reach the railroad pedestrian-bike crossing would have any significant adverse effect on traffic traversing El Segundo Boulevard, and that the railroad pedestrian-bike crossing would have a beneficial effect on traffic safety and traffic capacity on Aviation and El Segundo Boulevards.

On the other hand, Caltrans presented conflicting views. A senior transportation engineer of the State traffic department testified that construction of the pedestrian-bike crossing does not result in any significant increase in safety for children or for traffic on El Segundo Boulevard, and results in very little increased safety on Aviation Boulevard - with or without bussing (At time of conclusion of the hearing, February 10, 1976, buses were still in operation although the crossing was opened November 12, 1975. The school district had still to persuade the parents to give up bussing.) It was the expert opinion of the Caltrans traffic engineer that concentration of pedestrians and bicyclists at the intersection of El Segundo Boulevard and the entry ramp to the San Diego Freeway (where the entrance to the pedestrian-bike crossing of the Southern Pacific right-of-way is situated) would be detrimental to safety of motorists, pedestrians, and cyclists, and by increasing stop time at that point, would impede traffic in that a steady and constant flow could not result. In his expert opinion, the crossing increases the potential for accidents between vehicle and vehicle, and vehicle and pedestrians and bicyclists.

Caltrans also presented a state bridge agreement engineer who testified that there presently are no funds in the Sections 1231 and 1231.1 accounts in that the residue present at beginning of the year had been expended, and that the Governor had blue-lined out the

\$500,000 item for funding in the 1975-76 budget, and the State Legislature did not restore the funds.

Finally, it should be noted that the pedestrian-bike crossing at issue here is situated on a state highway right-of-way and is a temporary facility. An encroachment permit granted by Caltrans to allow construction provides that Los Angeles must at its own expense remove the facility when construction commences on the Route 105 Freeway (the Century Freeway), now in the environmental impact report stage of planning.

Discussion

The question framed by this phase of Application No. 55746 is whether or not the crossing protection included in the pedestrian-bike crossing of the Southern Pacific track and right-of-way in the vicinity of El Segundo Boulevard adjacent to the south on-ramp to the San Diego Freeway qualifies under Public Utilities Code Sections 1231 and 1231.1 for allocation of highway fuel tax funds. The determinative issue behind the question, however, is whether the rail-crossing facility itself qualifies as "related public facilities for non-motorized traffic" as that term is used in Article XXVI, 1(a), of the California Constitution, which in turn raises the question whether motor vehicular traffic capacity, safety, and patterns in the immediate vicinity of the project are benefited by the project.

Article XXVI of the California Constitution was adopted in 1938 with the intention of effectively and permanently preventing diversion of gasoline tax, registration fee, and weight fee funds to uses other than maintenance and development of routes for motor travel and support of the Department of Motor Vehicles. In 1973 the California Attorney General, in response to the following question: "Does Article XXVI of the Constitution permit the appropriation of motor vehicle fuel taxes for use on pedestrian, equestrian, or

bicycle lanes or trails?", concluded that the "...taxes were meant for use in connection with activities directly related to motorized-vehicular traffic", and that Article XXVI "...permits the use of motor vehicle fuel taxes for the construction and maintenance of pedestrian, equestrian, and bicycle lanes and trails separated from but adjacent to or approximately paralleling existing or proposed highways if such separation increases the traffic capacity or safety of the highway."^{4/} (Emphasis added.)

In 1974, in response to pressures to expand use of highway fuel tax funds to include public mass transit systems, the constitution was amended to permit use of some of these funds, under specific conditions, for mass transit, but the fundamental policy of restricting use of the highway fuel tax funds to enhancement of the public streets and highways was retained, albeit extended to their "related public facilities for non-motorized traffic".^{5/}

Today, therefore, before highway fuel taxes can be authorized under Sections 1231 and 1231.1 to help defray or pay the cost of construction and maintenance of grade crossing protection equipment, the project itself must be found to be in the class of

^{4/} 56 Ops. Atty. Genl. 243, 247.

^{5/} Article XXVI, Section 1 in pertinent part reads:

"Section 1. Revenues from taxes imposed by the state on motor vehicle fuels for use in motor vehicles upon public streets and highways, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:

- (a) The research, planning construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for non-motorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes."

"related public facilities for non-motorized traffic", and to so find there must be shown at least some significant beneficial effect on motor vehicular traffic capacity, traffic safety, and traffic patterns on the highway in the immediate vicinity of the project (City of Sacramento (Decision No. 53619 dated October 29, 1974 in Application No. 83645)). By immediate vicinity it seems clear that the highway must be one "adjacent to or approximately paralleling" the project at issue.^{6/} Accordingly, in the case before us we are concerned only with the effect of the project at issue upon motor-vehicular traffic capacity, traffic safety, and traffic patterns on El Segundo Boulevard in the area adjacent to the southbound ramp of the San Diego Freeway. We are not concerned, in the narrow context of Sections 1231 and 1231.1 funds, with any peripheral effect on Aviation Boulevard, some one-quarter mile away at the nearest point to the project at issue, or other roads not in the vicinity.

In the case at hand it is transparent that the pedestrian-bike rail crossing project was neither conceived nor intended to achieve any beneficial effect upon motor-vehicular traffic capacity, traffic safety, or traffic patterns in the project vicinity. Rather it was conceived and propounded simply to make more palatable to the parents of the school district the district's proposal to do away with the bussing of seventh and eighth graders to Dana Junior High School, thereby making possible an annual \$20,000 savings to the district. By inducing and procuring from Los Angeles a pedestrian-bike crossing of the Southern Pacific track as an alternative to walking or cycling a more round-about route via Aviation or Isis-El Segundo-Aviation Boulevard, the school district and its superintendent hoped to attain their budgetary objective.

^{6/} Supra, Note 2.

The central funnel route across the railroad as provided by this project may on balance somewhat improve the safety factor for the students involved,^{7/} but to contend, as Los Angeles would have us find, that the pedestrian-bike crossing project incidentally benefits the highway traffic capacity, or improves traffic safety or traffic patterns, for motor-vehicular traffic on El Segundo Boulevard stretches credulity too far.

It may well be that there exists a twilight zone where the line of demarcation between benefit and burden to the free flow of traffic, or traffic safety, or traffic patterns on a highway might be difficult of discernment, but in considering the facts present here we have no such problem. Unlike the situation in City of Oxnard (Decision No. 85950 dated June 15, 1976 in Case No. 5495), wherein it was shown that if the crossing there at issue did not exist, some of the children using the crossing would be driven to and from school via adjacent public streets because the parents considered the streets to be unsafe, thus substantially

7/ On balance, it is difficult to determine which alternative is clearly safer. Testimony was conflicting. The school district superintendent asserted that the Aviation Boulevard route has sidewalks only part of the distance, with the balance of the walkway being in landscaping or on dirt. The Caltrans traffic expert testified that it was safe to walk the entire distance on Aviation Boulevard from Imperial in the north to Dana Junior High at 135th Street - all behind curbs. The central funnel route requires walking on Isis and part of El Segundo Boulevard, as well as the crossing of El Segundo Boulevard, to reach the rail crossing, together with subsequent passage on residential streets to 135th Street and thence to Dana. Both routes involve exposure to and crossing major heavily traveled roads and are equally long. Both involve narrow pathways which pedestrians and bicyclists must share. On balance, it would appear, however, that the central funnel route over the rail crossing is probably safer for the students.

burdening the streets adjacent to that project, in the case at hand, there is no evidence that motor-vehicular traffic in the immediate vicinity of the project has been or would be in any way increased or decreased as a result of the project. The students continue to be bussed, but the buses do not run in the immediate vicinity of the project. Despite availability of bussing there are car pools, but these too, because of the particular configuration of the streets and highways caused by the location of the San Diego Freeway and the Southern Pacific right-of-way, do not pass over El Segundo Boulevard in the immediate vicinity of the project. If and when the school district is able to stop bussing, the three buses removed would not affect the traffic situation in the vicinity of the project. It would appear probable that with elimination of bussing more parental car pools would result, particularly in view of the distance from the remote northern areas near Imperial Boulevard and 120th Street, but few if any of these would utilize El Segundo Boulevard in the immediate vicinity of the project. The burdens would be on Aviation Boulevard instead.

Since completion of this rail crossing project it is being used, but in no way on the scale anticipated. For one thing, it was reported that the Dana Junior High School principal considers the eight-foot wide pedestrian-bike crossing too narrow to safely accommodate both bicycles and pedestrians and therefore will not direct pedestrian students to use the facility. Nonetheless, both student and adult pedestrians and cyclists from north of El Segundo

Boulevard are using the facility.^{8/} To do so they must either cross or use El Segundo Boulevard to reach the facility, thus impacting on motor-vehicular traffic on that boulevard in the immediate vicinity of the facility. It is obvious that any additional pedestrian or bicycle traffic crossing heavily traveled El Segundo Boulevard^{9/} at this location next to the southbound on-ramp of the San Diego Freeway, necessarily means more stop and wait time for motorists on the six-lane boulevard. Any such additional burden on the free flow of traffic cannot be characterized as being in any way beneficial to motor-vehicular traffic. When and if the bussing ceases, and if the school district succeeds in persuading an approximate additional 100 students to cross busy El Segundo Boulevard to utilize this pedestrian-bike rail crossing facility, it would merely mean even greater additional impediments to the free flow of traffic, as well as a significant additional detriment to not only the children's safety, but to motor-vehicular safety.

^{8/} A Caltrans directional traffic study made on a school day, January 19, 1976 showed 29 persons proceeding south and 31 persons proceeding north over the rail crossing. Of the southbound, 13 cyclists crossed El Segundo Boulevard to reach the facility, and 6 pedestrians and 10 cyclists approached from the west on El Segundo Boulevard. Of the northbound, 5 pedestrians and 6 cyclists crossed El Segundo Boulevard; 5 pedestrians and 12 cyclists turned left onto El Segundo Boulevard after leaving the facility; and 3 cyclists turned east onto El Segundo Boulevard after leaving the rail crossing.

^{9/} The traffic volume on El Segundo Boulevard heading west in the three traffic lanes available during the morning commute period is approximately 1,600 cars an hour. No figures were presented on the eastbound flow.

This latter aspect was succinctly placed in perspective by the following testimony of the Caltrans traffic expert:

"The oftener you stop, the more accidents you have. The more time you have crossing, the greater the danger," and "If you have one kid crossing the street you have one potential problem. If you have 50 kids crossing, your potential is greater."

In the past, El Segundo Boulevard in this vicinity has been relatively free of vehicular accidents.^{10/} The reason attributed for this was stated as being the relatively free flow of motor-vehicular traffic.

In summary, the clear import of the evidence adduced at the hearing is that while the rail crossing pedestrian-bike facility otherwise qualifies as "a related public facility for non-motorized traffic", the addition of pedestrian and bicycle traffic on and across El Segundo Boulevard in the vicinity of the project in order to utilize the project provides no beneficial effect on motor-vehicle traffic capacity, traffic safety, or traffic patterns in the immediate vicinity of the project. Rather, motor-vehicular traffic will be impeded, motor-vehicular traffic safety will be lessened, and motor-vehicular traffic patterns essentially will be unchanged. Failing therefore to meet the tests set forth in City of Sacramento, supra, as derived from the opinion of the Attorney General, the project crossing protection cannot qualify for the use of highway transportation funds under Sections 1231

^{10/} Caltrans presented a collision study showing four accidents over the past three years, three of which were in the area immediately adjacent to the southbound on-ramp to the San Diego Freeway on El Segundo Boulevard, i.e., the area adjacent to the rail crossing entrance on El Segundo Boulevard.

and 1231.1 of the California Public Utilities Code, and Los Angeles is not eligible, as to this crossing, for reimbursement of construction or maintenance costs for the crossing protection.

One final matter requires mention. At the hearing Caltrans raised the issue of current availability of funds for allocation under Sections 1231 and 1231.1, but we need not here address the matter; it was resolved earlier in City of Oxnard, supra, a case wherein Caltrans was a party. In its brief in this case, Caltrans tacitly has dropped the issue as moot.

Findings

1. Wiseburn School District in Los Angeles County operates Dana Junior High School, and provides bussing to over 100 students from the residential area north of El Segundo Boulevard who attend Dana.
2. Approximately 40 additional students from the northern area walk, ride bicycles, or utilize car pools to and from Dana.
3. Wiseburn School District, experiencing financial difficulties, desires to eliminate bussing from this northern area in order to save approximately \$20,000 annually.
4. In face of parental opposition to elimination of bussing, grounded in the necessity - should bussing be ended - of students' walking or riding long, round-about distances, primarily along heavily traveled Aviation Boulevard, the district conceived and induced Los Angeles County to provide a pedestrian-bike crossing at grade over the Southern Pacific Transportation Company El Segundo Branch line track, so as to provide a centrally funnelled route for students to Dana avoiding Aviation Boulevard.
5. By the interim opinion and order contained in Decision No. 84900 dated September 10, 1975, the Commission ex parte granted Application No. 55746 filed by Los Angeles County, and authorized construction of the pedestrian-bike crossing at grade across the track of Southern Pacific Transportation Company's El Segundo Branch

Line adjacent to the El Segundo Boulevard southbound on-ramp to the San Diego Freeway, and provided that matters concerning allocation of funds for installation and maintenance of the automatic crossing protection pursuant to provisions of Sections 1231 and 1231.1 of the Public Utilities Code should be set for subsequent hearing.

6. The crossing project was completed and opened to the public on November 12, 1975.

7. The requisite hearing on the allocation issues was held in Los Angeles January 22 and 27, and February 10, 1976.

8. To utilize the crossing facility over the railroad, pedestrian and cyclists necessarily must approach or depart the facility on or cross heavily traveled El Segundo Boulevard in the vicinity of the rail crossing facility, thereby causing stoppage and waiting time for motor-vehicular traffic using El Segundo Boulevard, and consequently lessening traffic capacity of El Segundo Boulevard.

9. Such additional stoppage and waiting adds to the potential for motor-vehicular accidents, thus reducing the safety of motor-vehicular traffic in the vicinity of the rail crossing facility.

10. Motor-vehicular patterns in the El Segundo Boulevard vicinity of the rail crossing facility are essentially unchanged by addition of the facility.

11. Wiseburn School District, thus far unsuccessfully, continues to plan to eliminate bussing presently available to over 100 students from north of El Segundo Boulevard, and to encourage these students to utilize and cross El Segundo Boulevard in the vicinity of the rail crossing facility so as to use the rail crossing facility enroute to and from Dana Junior High School.

12. If bussing is eliminated, additional resultant pedestrian and bicycle traffic on and crossing El Segundo Boulevard to reach the rail crossing facility will cause additional stopping and waiting for motor vehicular traffic, thereby further lessening motor-vehicular traffic-capacity on El Segundo Boulevard in the vicinity of the rail crossing facility.

13. Such additional stopping and waiting will significantly add to the potential for motor-vehicular accidents, thus reducing further the safety of motor-vehicular traffic in the rail crossing facility vicinity.

14. Additional car pools would probably result should the present bussing be eliminated as planned; however, these pools primarily would place burdens upon motor-vehicular traffic safety and patterns on Aviation Boulevard and other county thoroughfares not in the immediate vicinity of the rail crossing facility.

Conclusions

1. Although the rail crossing facility otherwise qualifies as "related public facilities for non-motorized traffic" as that term is used in Article XXVI, Section 1(a), of the California Constitution, motor-vehicular traffic and safety on El Segundo Boulevard in the immediate vicinity of the rail crossing facility are not benefited by the rail crossing, but rather are adversely affected.

2. Los Angeles County, as to the pedestrian-bike rail crossing of the Southern Pacific Transportation Company's Branch Line track (No. BBF-498.68-D), is not eligible for California Public Utilities Code Sections 1231 and 1231.1 funds to reimburse it for construction costs or maintenance contributions for the rail crossing protection.

3. No allocation of funds under Sections 1231 and 1231.1 shall be made.

FINAL ORDER

IT IS ORDERED that no allocation of funds under Sections 1231 and 1231.1 shall be made relative to this rail crossing.

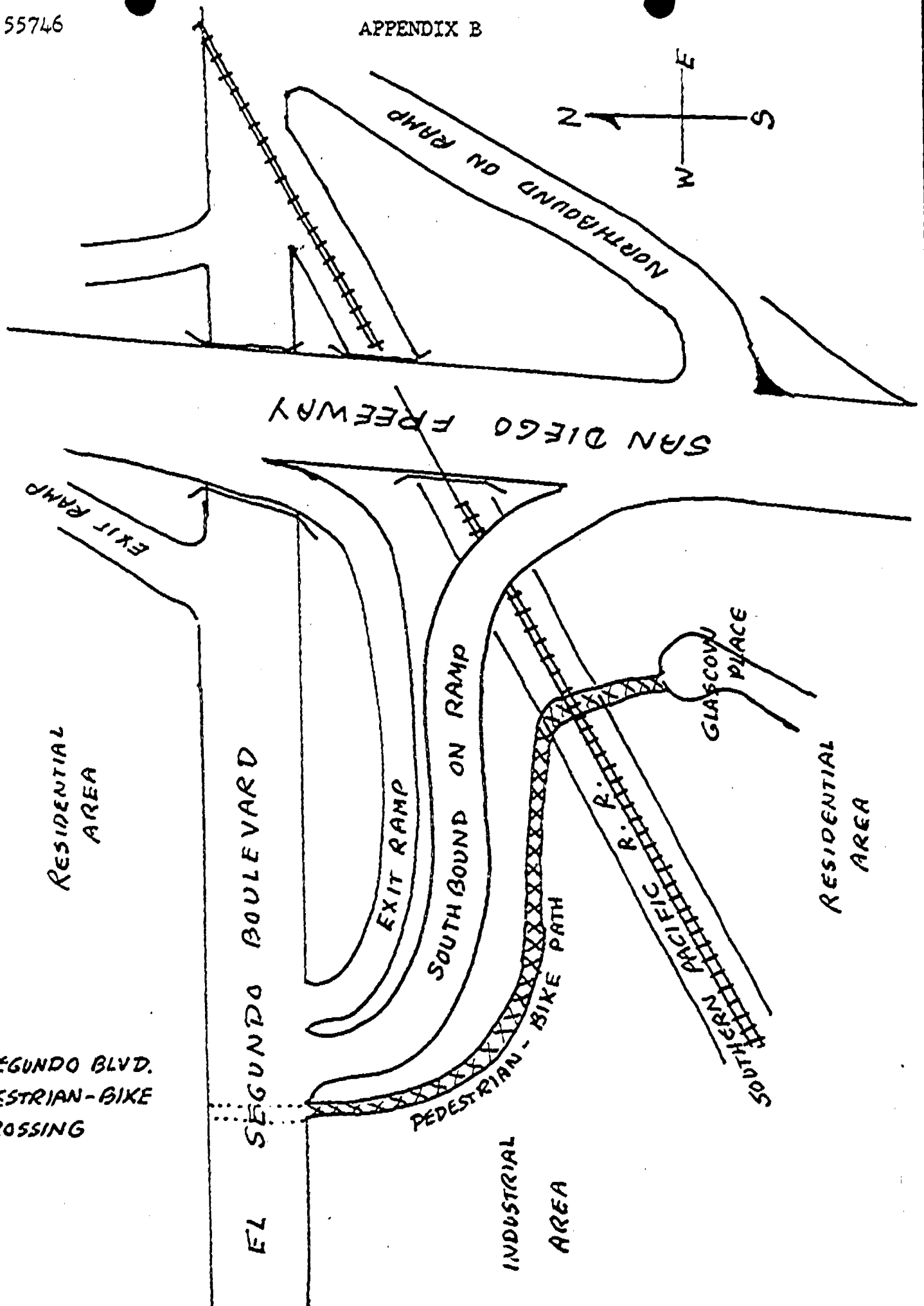
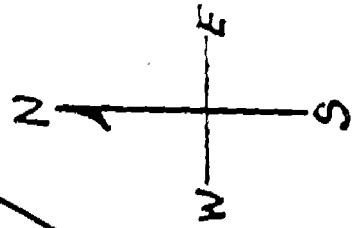
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 5th day of JANUARY, 1977.

Robert Belmont
President
William J. ...
...
...
Commissioners

A.55746

APPENDIX B



EL SEGUNDO BLVD.
PEDESTRIAN-BIKE
CROSSING

RESIDENTIAL
AREA

EL SEGUNDO BOULEVARD

EXIT RAMP

SOUTH BOUND ON RAMP

PEDESTRIAN - BIKE PATH

INDUSTRIAL
AREA

GLASGOW
PLACE

RESIDENTIAL
AREA

SOUTH BOUND RAMP

SAN DIEGO FREEWAY

NORTHBOUND ON RAMP