

Decision No. 88236

DEC 13 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of Fresno, State of California, for an order authorizing the construction of a crossing at separated grades, to be known as Chestnut Grade Separation, over the tracks of the Southern Pacific Transportation Company, in connection with the improvement of Chestnut Avenue to a four-lane divided roadway between Jensen Avenue and Central Avenue, adjacent to the unincorporated city of Malaga, in the county of Fresno.

Application No. 56874
(Filed November 15, 1976)

J. Stephen Lempel, Attorney at Law,
for County of Fresno, applicant.
Harold S. Lentz, Attorney at Law,
for Southern Pacific Transportation
Company, respondent.
Stephen Wong, Jr., for the Commission
staff.

O P I N I O N

This is an application of the county of Fresno (County) for authority to construct a grade separation of Chestnut Avenue over the Southern Pacific Transportation Company (SP) tracks at existing grade crossing No. B-210.3 adjacent to the unincorporated community of Malaga, 2.7 miles south of the southern limits of the city of Fresno. The existing grade crossing and flashing light signals will be eliminated upon completion of the overpass project. The Chestnut grade separation will carry Chestnut Avenue over the SP main line, one spur track, one future track, Golden State

The issue on this record between County and SP involves the scope of the project the railroad can be required to contribute to. The principal project item at issue is a north-south frontage road, north of the railroad and adjacent and substantially parallel to the east side of Chestnut Avenue, which the County proposes to build to connect Front Street with Calvin Street in the community of Malaga (Malaga frontage road). The additional cost of construction and land acquisition attributable to the proposed construction of this frontage road will approach \$150,000. The proposed Malaga frontage road is shown on Exhibit B to the application and is depicted in yellow on Exhibit 2. The community of Malaga and the proposed frontage road are discussed below (see Appendix A).

Presentation of County

The County's presentation discloses that the railroad grade separation is being proposed in connection with improvement of Chestnut Avenue between Jensen Avenue and Central Avenue, a distance of about 2.5 miles. The purpose of the separation is to remove existing safety hazards and alleviate vehicular delay. The proposed separation is Priority No. 41 on the 1977-1978 Grade Separation Priority List (D.87496 (1977), Appendix E).

The bridge structure will be a four-span continuous cast concrete box girder bridge with a length of approximately 504 feet, height of approximately 30 feet, and a total width of 83 feet, 8 inches. The profile or grade line of the structure and approaches is six percent, the maximum grade recommended by the State for this type of project. Based on the required height clearance the grade separation from break-of-grade to break-of-grade is the minimum length possible. The roadway will consist of a 14-foot-wide lane, a 12-foot-wide lane, an 8-foot-wide shoulder, and a 5-foot-wide sidewalk on each side of a 4-foot raised concrete median divider. The minimum vertical and horizontal clearances, both permanent and during construction, will not be less than those specified in the

Located in the general area of Chestnut Avenue north of the grade crossing is the city of Clovis, the Fresno Air Terminal, Fresno State University, and the Millerton Lake Recreational area. Included are residential areas, strip commercial development, and an industrial area. Chestnut Avenue provides convenient access to the industrial area traffic to and from Freeway 99. The present railroad grade crossing is very near Golden State Boulevard and any train that might occupy the crossing assertedly would cause a great deal of confusion, congestion, and delay on both Golden State Boulevard and Chestnut Avenue.

Golden State Boulevard is a four-lane divided expressway. It is a short commuter route between the cities of Fowler and Selma and the work area of Fresno. It carries about 5,000 vehicles per day in the area of Chestnut Avenue. Without raising Golden State Boulevard to the level of the proposed overpass (at a cost of more than \$700,000) it would not be possible to make a proper intersection with Chestnut Avenue without the proposed overpass transversing Golden State Boulevard. The length of the entire separation from break-of-grade to break-of-grade would be the same whether Golden State Boulevard and Golden State Frontage Road exist or not. If they did not exist, the main difference would be that the concrete bridge structure would be shorter and the south fill longer.

Golden State Frontage Road is classified as a service road. It now provides direct access from Central Avenue on the south to commercial businesses on the frontage road extending about two miles northwest of the crossing area involved. About 400 trucks a day travel from and to businesses on this frontage road. Also, there is direct access from Freeway 99 to frontage road businesses. Heavy commercial traffic from Freeway 99 travels east on Central Avenue, turns left (north) on Chestnut Avenue to Golden State Frontage Road, and continues northwesterly on the frontage road. It would be possible to construct the project so that the overpass

stated that the diversion of heavy industrial and commercial traffic through Malaga would affect it adversely and make it more difficult to maintain as a viable residential area. Assertedly, with more vehicles the old rectangular street pattern with short blocks and numerous intersections could increase an already higher than normal accident rate.

At the present time Front Street, Ward Street, Grand Street, and Calvin Street in Malaga connect with Chestnut Avenue. The proposed separation project would disconnect all but Calvin Street.^{4/} The proposed frontage road would continue Front Street around two bends and make a new connection with Calvin Street which would become the main connector between the community of Malaga and Chestnut Avenue.^{5/} It was testified that adverse impacts would be caused by cutting off the three access points from Malaga to Chestnut Avenue because the result would be to channel all residential, commercial, and industrial traffic through a residential neighborhood, principally along Olney, Gould, and Calvin Streets. Front Street is two short blocks from Calvin Street. County presented no traffic count to show the number of vehicles that might be diverted through residential streets, the mixture of passenger traffic and truck traffic, or vehicle origin or destination information.

Possible alternatives to the proposed Malaga frontage road include: (1) ramping the affected streets in Malaga to the

4/ Ward Street and Grand Street intersect at right angles a short distance east of Chestnut Avenue and now have access to Chestnut Avenue. That intersection would be permanently disconnected from Chestnut Avenue and would be reconstructed in a manner to prevent traffic on Ward Street or Grand Street from going on or off of the proposed frontage road.

5/ Exhibit 2 indicates that Harding Street, further north in Malaga, also connects with Chestnut Avenue (at Muscat Avenue) and would continue to do so.

On brief, County states that in designing the project to include construction of the Malaga frontage road and reconstruction of Golden State Frontage Road it was aware of and considered provisions of the Public Resources Code^{7/} which require, among other things, that public agencies consider feasible alternatives or feasible mitigation measures available which would substantially lessen potentially significant environmental effects of proposed projects. County contends that although the Commission is not required by law to include the two frontage roads as parts of the project, the Commission will be required to include some kind of mitigating measures in the project in the event those roads are not included.

County argues that in the apportionment of costs the Public Utilities Commission is not limited by Section 2450 (formerly Section 2400), Chapter 10 of the Streets and Highways Code, which contains the following definitions:

"For purposes of this chapter.

"(a) 'Grade separation' means the structure which actually separates the vehicular roadway from the railroad tracks.

"(b) 'Project' means the grade separation and all approaches, ramps, connections, drainage and other construction required to make the grade separation operable and to effect the separation of grades..."

County contends that it was not the legislative intent of Chapter 10 to restrict the costs allocatable to railroads whose tracks cross the public right-of-way and necessitate grade separations, and that such an interpretation would constitute an unlawful restriction on the Commission's exclusive power to prescribe the proportions of grade separation expenses under the Public Utilities Code. The

^{7/} County cited from Public Resources Code Sections 21000(g), 21002, 21002.1(b), and 21068.

Presentation of SP

Evidence on behalf of SP was presented through the SP assistant engineer. One of his regular duties is to take vehicular traffic counts with a mechanical counter that makes a tape record of vehicles crossing a rubber hose in the street. In connection with this proceeding he made a traffic count on Thursday, March 31, 1977 across Front Street, about 50 feet northwest of the intersection of Olney Street in Malaga. This would include all traffic using the Chestnut Avenue-Front Street intersection. Exhibit 4 sets forth the results of the mechanical count taken from the tapes. For a 24-hour period the count was 240 vehicles. The mechanical counter takes the axle count and records one vehicle for each two axles. Accordingly, an automobile registers as one vehicle. A six-axle truck combination registers as three vehicles. To the extent that vehicles with more than two axles were involved the vehicle count was overstated. The witness was of the opinion that the businesses in Malaga, from and to which vehicles traveled, were not seasonal in nature. He believed that the count of 240 vehicles per day reflects the average daily count for the location involved. He said he took photographs on March 3 from the middle of Front Street. In a period of about an hour he encountered only one vehicle.

County called the assistant traffic engineer, Department of Public Works, to testify in rebuttal. This witness was of the opinion that a single day's count would not be considered an average daily traffic figure. He said that average daily traffic is a term used to indicate an average over a period of a year and includes corrections for daily and seasonal variances throughout the year. County has a controlled counting program to measure variances for different conditions. However, County made no vehicular counts within Malaga.

larger project may include general street improvements the County may desire to make at the same time, which may not be required to make the grade separation operable and to effect the separation of grades.

It is the position of SP that the California Environmental Quality Act cannot be used as a contrivance to enable the County to nullify and usurp the exclusive power of the Commission under Section 1202 of the Public Utilities Code to apportion costs between the railroad and the County. SP contends that the County cannot unilaterally, by including or excluding an item from its environmental assessment and negative declaration, declare what must be approved or disapproved as part of the project. SP points out that reconstruction of Golden State Frontage Road was not included in the County's environmental assessment and negative declaration and that the railroad is not being asked to contribute to it. SP states that no one is contending that the County should not build the proposed Malaga frontage road. It is the railroad's position that a finding by the Commission that the frontage road is not a part of the project which the Commission must approve pursuant to Public Utilities Code Section 1202, and as to which it must apportion costs in accordance with Section 1202.5, does not prevent the County from constructing the Malaga frontage road.

Discussion

County has demonstrated that the proposed Chestnut Avenue grade separation should be authorized substantially as proposed. The need for the proposed highway overcrossing to alleviate existing and projected traffic hazards surpasses potential adverse effects.

The proposed Malaga frontage road would only connect Front Street with Calvin Street. These streets are already connected by other streets over distances not exceeding two short blocks. The evidence shows that on a specific weekday there were

2. County and SP are in agreement with respect to the necessity for the grade separation project. The issue involved in this proceeding is cost apportionment.

3. The proposed grade separation project calls for a bridge structure of sufficient length to carry Chestnut Avenue over the SP main line, one spur track, one future track, Golden State Boulevard, and Golden State Frontage Road.

4. The proposed overcrossing from break-of-grade to break-of-grade is the minimum length possible for the required bridge height of 30 feet, regardless of whether Golden State Boulevard or Golden State Frontage Road exist or not.

5. Upon completion of the proposed grade separation project, the existing grade crossing will be physically eliminated. In addition, the intersection of Chestnut Avenue and Golden State Boulevard and the intersection of Chestnut Avenue and Golden State Frontage Road will be physically eliminated.

6. Approximately 26 trains a day operate through the crossing. The maximum train speed is 70 miles per hour.

7. The estimated daily vehicular count at the existing grade crossing is 7,150 for 1977. The actual count on January 7, 1976 was 6,416. It is estimated that in 20 years the daily figure will reach 20,000.

8. During the 5 1/2 years prior to the hearing there were six accidents involving vehicles with trains. Another involved a rear-end collision while a train was occupying the crossing. In addition, there were 65 vehicular accidents at the intersection of Golden State Boulevard and Chestnut Avenue.

9. The community of Malaga lies east of Chestnut Avenue and north of the railroad. It is a small low-income residential community with several industrial uses on Front Street between Central Avenue and Chestnut Avenue.

17. The geographic or physical scope of an environmental assessment and negative declaration by a public agency pursuant to the California Environmental Quality Act does not fix the scope of a project for purposes of cost apportionment under Section 1202.5(b) of the Public Utilities Code.

18. The definitions of "grade separation" and "project" in Sections 2450(a) and (b), respectively, of the Streets and Highways Code, are reasonable for the purpose of determining the scope of the Chestnut Avenue Grade Separation Project to which the railroad should be required to contribute.

19. The proposed Malaga frontage road is not required to make the grade separation structure operable.

20. The proposed Malaga frontage road is not required to effect the separation of grades.

21. The proposed Malaga frontage road is not part of the project for which Commission approval is required.

22. Respondent SP, in accordance with Section 1202.5(b) of the Public Utilities Code, cannot be required to contribute to the cost of constructing the Malaga frontage road.

23. The County, regardless of the order which follows, can proceed to construct the Malaga frontage road.

24. The cost of the authorized project should be apportioned as follows: 90 percent of the cost to be borne by the County and 10 percent of the cost to be borne by SP. This apportionment of costs is in accordance with the provisions of Section 1202.5(b) of the Public Utilities Code.

25. The environmental effect of the proposed project without the Malaga frontage road is as follows:

- (a) The possible environmental effect of the project is primarily temporary in nature.
- (b) The continuing need for the project in the interests of public safety and convenience to alleviate existing and potential traffic problems surpasses any possible environmental effects of the project.

3. In the event the parties are unable to agree upon the exact amount of the cost of the authorized project, such cost shall be ascertained by the Commission after further hearing.

4. In the event the County employs federal funds for the project, the apportionment of costs shall be in accordance with federal law and the rules, regulations, and orders of the federal agency administering such law.

5. During the period of construction, the existing at-grade crossing, and any temporary detour crossings, shall continue to be provided with automatic gate crossing protection coordinated with adjacent vehicular traffic signals.

6. Clearances should be in accordance with General Order No. 26-D.

7. Walkway areas should conform to General Order No. 118. Walkway areas adjacent to any trackage subject to rail operations should be maintained free of obstructions and should promptly be restored to their original condition in the event of damage during construction.

8. The existing at-grade crossing of Chestnut Avenue (Crossing B-210.3) should be abandoned and physically closed upon completion of the grade separation and its opening to vehicular traffic.

9. Within thirty days after completion of the project the applicant shall notify this Commission in writing of that fact and of compliance with the conditions herein.

10. The authorization herein granted shall expire within three years after the date hereof if not exercised within that time unless time be extended, or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

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

Dated at San Francisco, California, this 13th day of DECEMBER, 1977.

Robert Bateman
President
William Agnew
Leon D. Sturgeon
Robert D. Swartz
Clair T. DeWitt
Commissioners

APPENDIX A
 COUNTY OF FRESNO
 PROPOSED
 CHESTNUT AVE. GRADE SEPARATION
 PRINCIPAL FEATURES INVOLVED
 IN APPLICATION No. 56874

— Existing
 - - - Proposed

