

Decision 97-06-079 June 25, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of the State of California,)
Department of Transportation,)
for an order authorizing the)
Department to construct three)
new grade separations on)
Interstate 215 near the City of)
Perris in Riverside County,)
State of California.)

Application 90-01-027
(Filed January 17, 1990)

ORIGINAL

O. J. Solander, Attorney at Law, for State
of California, Department of Transportation,
applicant.
Hill, Farrer & Burrill LLP, by R. Curtis
Ballantyne, Attorney at Law, for Santa Fe
Railroad Company, protestant.
William C. Tayler, Attorney at Law, for the
County of Riverside; John Harvill, for Greater
Perris Valley Association and himself; and
Helen Toth, for herself; interested parties.
Jesus Escamilla, for Rail Safety and Carriers Division.

O P I N I O N

Background

The California Department of Transportation (Caltrans) has petitioned for modification of Decision (D.) 91-09-078, requesting that three grade crossings of the Atchison, Topeka and Santa Fe Railway Company (ATSF or railroad) ordered closed by the decision be ordered reopened. The locations of the former grade crossings are at Rider Street, Water Street, and Orange Avenue near the City of Perris in Riverside County. In the petition Caltrans states that the ordered closing of these three grade crossings was in error, and they should have remained open.

ATSF argues to the contrary that the three grade crossings were properly closed since D.91-09-078 clearly provided

for their closing, as requested by the application of Caltrans. To reopen the grade crossings now makes little sense, and is not the responsibility of ATSF.

The Commission's Rail Safety and Carriers Division staff believes that not only was the closing of the three grade crossings correct, but reopening them now would not serve a useful purpose.

Hearing

A duly noticed hearing was held before an administrative law judge on October 8, 1996 in Riverside.

Caltrans presented the testimony of Garry Cohoe, Division Chief for Riverside County Design for District 8.

The County of Riverside Department of Transportation (Riverside County) presented the testimony of Deputy Director George Johnson.

ATSF presented the testimony of Rudy San Miguel, Manager of Public Projects.

The Commission staff presented the testimony of Assistant Transportation Engineer Peter Lai.

John Harvill, local property owner and member of the Greater Perris Valley Association (Perris Valley), made a statement.

Helen Toth, a property owner living in the vicinity of the proposed grade crossings, made a statement.

The proceeding was submitted on January 10, 1997.

Positions of Parties

Cohoe explained that Caltrans does not believe the Commission erred in D.91-09-078 since the decision granted its request. However, assumptions were apparently made that did not materialize, and that is why the three grade crossings now need to be restored. Cohoe was not employed by Caltrans when the Freeway Agreement between Caltrans, Riverside County, and property-owners was reached, but based on his study of the matter, he

believes that sometime during construction Caltrans assumed access to the freeway would be by the new road between Nuevo Road and Oleander Avenue, which was constructed at the expense of the local property owners. Therefore Caltrans requested these three grade crossings to be closed. But in the current situation, in order for parties to be able to perform in accordance with the Freeway Agreement, Rider Street, Water Street, and Orange Avenue should be reopened with improved crossing protection. Cohoe believes that since the west frontage road, intended to serve the parcels west of Interstate Route 215 (I-215), has been constructed past Water Street and Orange Avenue to Rider Street at a cost of approximately \$2 million, it was intended to have the three grade crossings. Otherwise the frontage road serves no useful purpose.

Johnson testified that Riverside County would install crossing protection, street improvements, and storm drain facilities at the three grade crossings of the railroad if the Commission ordered them to be reopened. The level of improvements would be as Commission staff has suggested, and would be financed by Riverside County, with no cost to the railroad. Johnson understands that Caltrans' reason for wanting the grade crossings reopened is the Freeway Agreement. In addition, Riverside County has a Memo of Understanding (MOU) with the property owners that specifies that these grade crossings be open.

San Miguel testified that originally the railroad was to upgrade the three grade crossings, but later he was told by Caltrans representatives that they would be closed along with six other crossings. San Miguel questioned that decision, and they confirmed that the three crossings were to be closed. The industries on these three streets have access from Harvill Avenue as well as access to the I-215 freeway. The level of traffic on the three streets is very low, consisting mainly of employees coming in from Harvill Avenue, with a few feed trucks. In his opinion there is no need to reopen the grade crossings, and doing

so would be contrary to the railroad's effort to reduce grade crossings due to accidents with vehicles and pedestrians crossing the tracks. Additionally, the Federal Railroad Administration recommends that 25% of grade crossings be closed by the year 2000 and railroads nationally are attempting to meet that goal.

Lai testified that D.91-09-078 was not in error; it granted the request of Caltrans with regard to these grade crossings. He investigated the area of the three streets at issue and found that there is no landlocked land, and the closing of the streets does not inhibit access to Rider Street, Water Street, and Orange Avenue. Reopening the grade crossings would be undesirable for pedestrians and motorists, and contrary to the Commission's policy to grade separate new railroad crossings. Grade crossings must be justified by need and lack of other preferable alternatives. Unless a compelling public need is shown, they should not be reopened. In his opinion, that need has not been shown.

Harvill explained that Caltrans has misrepresented Perris Valley's position, and that Perris Valley is neither for nor against opening the three grade crossings based on the current facts. However, the current proposal of Caltrans with the deletions proposed by Riverside County make reopening the three grade crossings of little benefit to local property owners because there will be no through connection between Rider, Water, and Orange Streets. Furthermore, Caltrans has stated that the westside frontage road is substandard and wasn't intended to handle other than local traffic until Harvill Avenue is completed. Now Caltrans wants to open grade crossings that go nowhere and don't meet the needs of the local people. Given the current status of the frontage road, it does not make sense to reopen the grade crossings.

Harvill further explained that the property owners are concerned because they are already being assessed for improvements,

and they are told by Riverside County that if the grade crossings are reopened, they would be assessed one million dollars for flood control improvements. The ultimate issue should not be whether these three grade crossings are restored but whether a fourth crossing at Cajalco Road and a fully integrated highway system is achieved, as was agreed to earlier between the property owners, Riverside County, and Caltrans.

Toth stated that she opposes reopening the crossings because she has no need for them, will not benefit from them, and does not wish to be assessed for improvements related to them.

Discussion

Caltrans does not allege that the Commission erred, but rather that the error in D.91-09-078 was made due to Caltrans' request being in error. In order to support its request, we believe that Caltrans must demonstrate that reopening the grade crossings is justified and in the public interest.

We note that the main support for reopening is Caltrans, and that support is apparently based on the Freeway Agreement that specifies that these grade crossings be open.

Riverside County also supports reopening the grade crossings because its MOU requires them to be open.

However, the people most directly affected, i.e., the local property owners represented at the hearing, do not support reopening the grade crossings. They view the reopenings as providing little or no benefits to them but entailing financial obligations.

Both the railroad and staff argue against reopening the grade crossings for several reasons, the foremost being safety. The railroad opposes reopening on the grounds that the switching operations would necessitate blocking the grade crossings for up to 10 minutes, and that would encourage motorists and pedestrians to go around the crossing gates, creating obvious hazards. Even with the best crossing protection, many of the currently popular four-

wheel drive vehicles have sufficient ground clearance to enable them to jump the curbs of the crossing protection.

Lai believes that the issue whether to reopen the grade crossings should be considered under the same standards that apply to our review of new grade crossings, since the crossings in question have been closed for several years. New grade crossings must be justified by public need and lack of desirable alternates. Lai also points out that absent a lack of preferred alternates, grade crossings should not be authorized. In this case the alternate is the status quo, which has not caused significant problems.

Additionally, as the railroad points out, closing grade crossings is a national priority. These crossings would not pose the level of risk of many grade crossings, since the rail traffic consists of slow switching, and the history of accidents shows limited problems. San Miguel testified that the rail traffic travels about 10 miles per hour in this area. Nevertheless, as San Miguel also points out, the switching operations could close the grade crossings for five to ten minutes at a time, which often leads to people attempting to go around the crossing gates. The railroad is allowed to block crossings for up to 10 minutes.

The apparent reason for the west frontage road not being a through road as originally contemplated, as shown on Map A, is that Caltrans has plans for a freeway interchange at Placentia Avenue, which would interfere with the west frontage road in that area, as confirmed by a letter dated March 21, 1995 from Caltrans' Don Weaver, District Division Chief of Riverside County to Harvill,

". . . The incompatibility of the 'West Frontage Road' intersection at Placentia Avenue with the planned eventual completion of the interchange ramps at that location, i.e., the southbound exit and entrance ramps will replace the 'West Frontage Road' intersection, negating the use or effectiveness of the frontage road between Water Street and Placentia Avenue and between Placentia Avenue and Rider Street, and

thereby precluding access from the 'West Frontage Road' to either Placentia Avenue or the freeway without utilizing 'A Street' to reach Placentia Avenue or the Cajalco Expressway to the north."

Harvill notes that the MOU was for a total integrated road system with two parallel frontage roads, west and east with five adjoining connections. However, Riverside County now proposes elimination of the connections between Water Street and Rider Street, and between Rider Street and Cajalco Road, as shown on Map B. In Harvill's opinion, "...the opening of these three crossings without the fully integrated highway system that was assured that we would have in the MOU would be of no benefit to anyone in the area. And I think you can see that clearly on the map." (Trans. at 22, 1.8-13.)

We find that justification of public need for reopening these grade crossings is lacking. Although they have been closed for several years, there is no support offered from the public for reopening them. In fact, the most directly affected public does not wish to be saddled with the resultant financial obligations associated with the reopenings, and see little or no need for them.

We conclude that petitioner Caltrans has not justified modifying the decision to order reopening the three grade crossings. We believe that any benefits to the travelling public

are small, and are outweighed by the negative implications associated with all grade crossings. We also note that having promised those grade crossings in a Freeway Agreement or MOU does not necessarily constitute adequate justification of public need, and that appears to be the only justification presented to the Commission. Since the preponderance of evidence supports leaving the grade crossings closed at Rider Street, Water Street, and Orange Avenue, we will deny the petition for modification in the order that follows.

Findings of Fact

1. The grade crossings at Rider Street, Water Street, and Orange Avenue were ordered closed by D.91-09-078, as requested by Caltrans in this application.

2. Caltrans now requests that the Commission order these grade crossings be reopened.

3. The policy of the Federal Railroad Administration is to reduce the number of grade crossings.

4. The policy of the Commission is to separate all new grade crossings.

5. The affected local property owners who participated in the hearing do not support reopening these grade crossings.

6. Caltrans has not demonstrated an adequate public need to justify reopening these grade crossings.

Conclusions of Law

1. This petition of Caltrans should be denied.
2. This proceeding should be closed.

ORDER

1. The petition of the California Department of Transportation for modification of Decision 91-09-078 is denied.

2. This proceeding is closed.

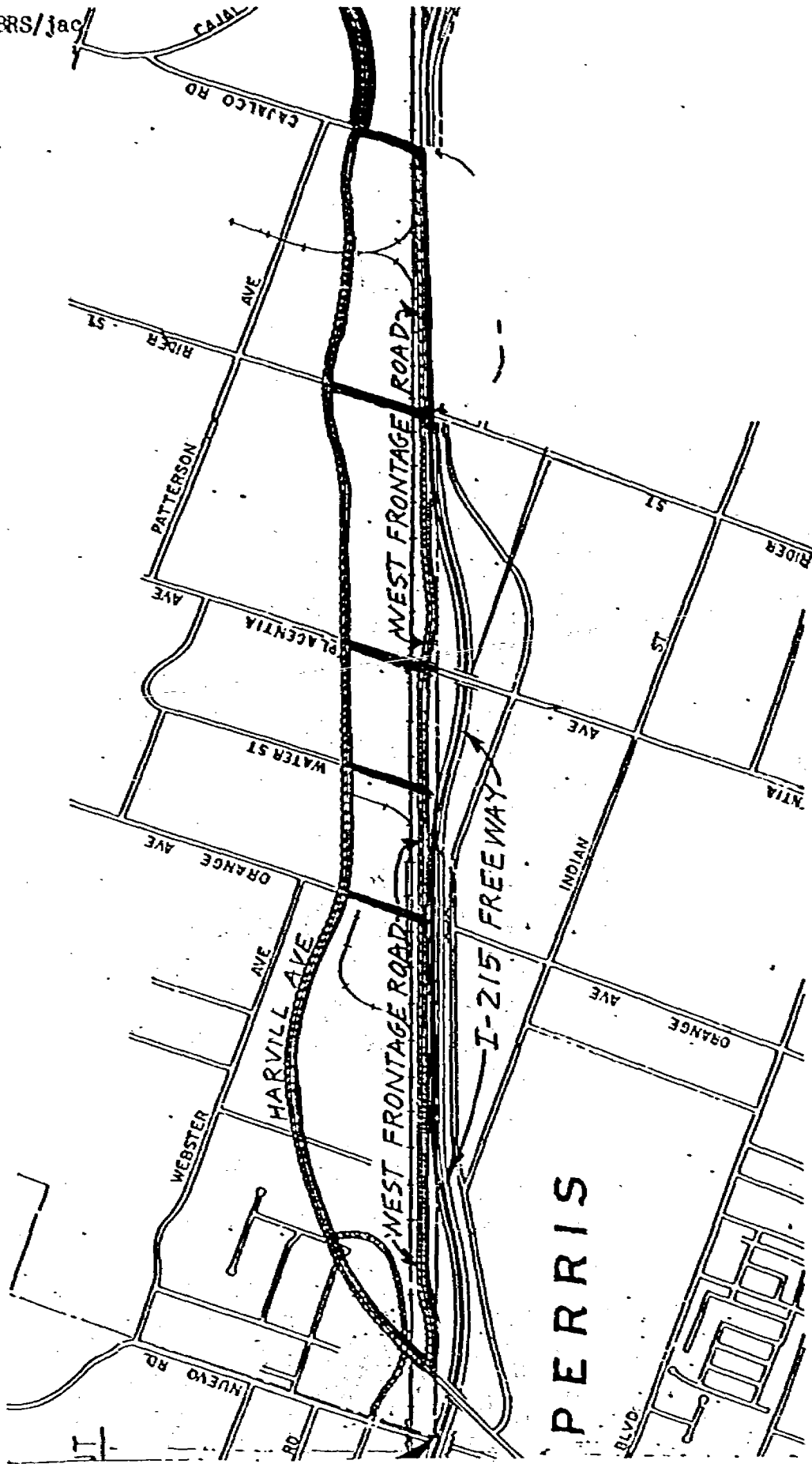
This order becomes effective 30 days from today.

Dated June 25, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

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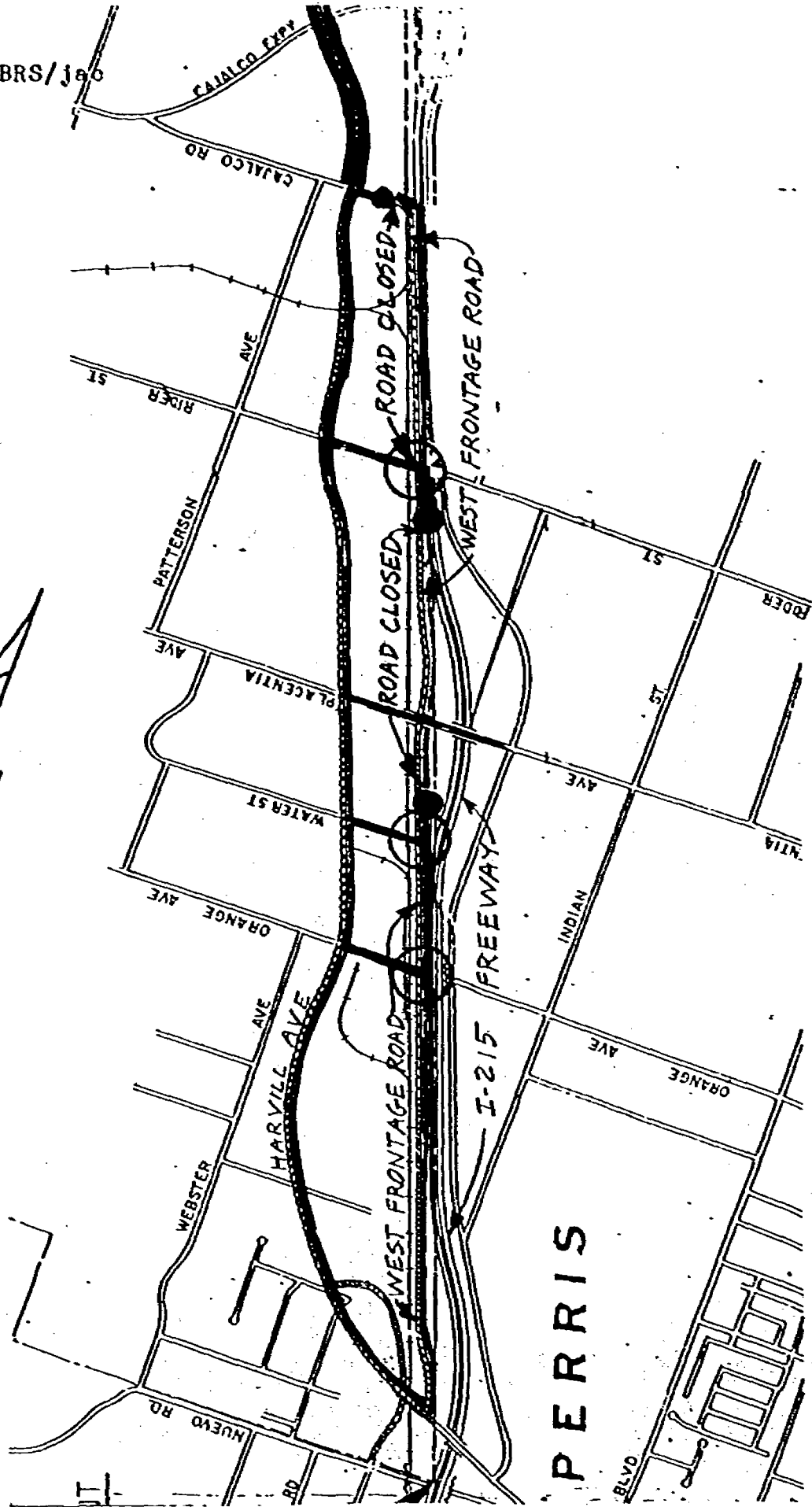
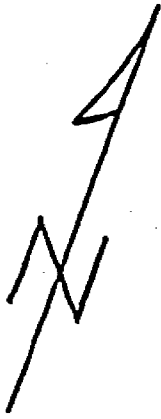
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MAP "A"
ROADS AS ORIGINALLY PROPOSED

A.90-01-027 /ALJ/BRS/jag

OLEANDER AVE ~ 1 MILE →



MAP "B"
ROADS AS CURRENTLY PROPOSED