BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of establishing a list for the fiscal years 2008-2009 and 2009-2010 of existing and proposed crossings at grade of city streets, county roads or state highways in need of separation, or projects affecting the elimination of grade crossings by removal or relocation of streets or railroad tracks, or existing separations in need of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways Code.	FILED PUBLIC UTILITIES COMMISSION XXX SAN FRANCISCO OFFICE INVESTIGATION 07-07-XXX

ORDER INSTITUTING INVESTIGATION

Summary

This Order Instituting Investigation (OII) is for the purpose of establishing the Grade Separation Priority List (Priority List) for the fiscal year (FY) 2008-2009 and possibly for FY 2009-2010. The OII requests project nominations, from interested parties, for existing or proposed crossings at grade of city streets, county roads, or state highways in need of separation, or projects affecting the elimination of grade crossings by removal or relocation of streets or railroad tracks, or existing separations in need of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways (S&H) Code. Completed nomination applications must be filed with the California Public Utilities Commission (Commission) by Friday, October 19, 2007. Nomination

forms and instructions are contained in this OII and are available on-line at the Commission's website at: www.cpuc.ca.gov/static/hottopics/4railsafety/index.htm.

Background

By July 1 of each year, the Commission is required, pursuant to S&H Code Section 2452, to establish and furnish to the California Transportation Commission (CTC) a priority list of existing and proposed crossings at grade in need of separation, including the elimination of existing or proposed grade crossings, the elimination of grade crossings by removal or relocation of streets or railroad tracks, and existing grade separations in need of alteration or reconstruction. The Priority List, based on criteria established by the Commission, includes projects on city streets, county roads, and state highways, which are not freeways as defined in S&H Code Section 257.

Funding for projects included on each annual Priority List is provided by S&H Code Section 190. Additional funds may be available as a result of the passage of Proposition 1B[1] which includes $250 million for improving highway-rail crossings and constructing grade separations.

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[1] Relevant Proposition 1B language:

(j) (1) Two hundred fifty million dollars ($250,000,000) shall be deposited in the Highway-Railroad Crossing Safety Account, which is hereby created in the fund. Funds in the account shall be available, upon appropriation by the Legislature, to the Department of Transportation for the completion of high-priority grade separation and railroad crossing safety improvements. Funds in the account shall be made available for allocation pursuant to the process established in Chapter 10 (commencing with Section 2450) of Division 3 of the Streets and Highways Code, except that a dollar for dollar match of nonstate funds shall be provided for each project, and the limitation on maximum project cost in subdivision (g) of Section 2454 of the Streets and Highways Code shall not be applicable to projects funded with these funds.

Footnote continued on next page

The basis for allocation and state requirements for both funding sources ($15 million allocated under S&H Code Section 190, and the Proposition 1B funds allocated to the Highway-Railroad Crossing Safety Account) are contained in S&H Code Sections 2450-2461. For a project that eliminates an existing crossing or alters or reconstructs an existing grade separation, an allocation of 80% of the estimated cost of the project is made, with the local agency and railroad each contributing 10%. For a project that plans a grade separation of a proposed new crossing (currently no existing crossing), an allocation of 50% of the estimated project costs is made, with the remaining 50% contributed by the local agency. Subsequent to the Commission's issuance of the Priority List, the California Department of Transportation (Caltrans) accepts applications for an allocation of funds on or before April 1, of each fiscal year. Requirements for Priority List projects filing an allocation application with Caltrans are described in the California Administrative Code, Title 21, Division 2, Chapter 13, Grade Separation Projects - Applications for Allocations or Supplemental Allocations. A copy of Chapter 13 is attached as Appendix 1.

Our typical procedure in regards to developing the Priority List of projects is to promulgate the list for the first fiscal year by issuing an interim decision,

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(2) Notwithstanding the funding allocation process described in paragraph (1), in consultation with the department and the Public Utilities Commission, the California Transportation Commission shall allocate one hundred million dollars ($100,000,000) of the funds in the account to high-priority railroad crossing improvements, including grade separation projects, that are not part of the process established in Chapter 10 (commencing with Section 2450) of Division 3 of the Streets and Highways Code. The allocation of funds under this paragraph shall be made in consultation and coordination with the High-Speed Rail Authority created pursuant to Division 19.5 (commencing with Section 185000) of the Public Utilities Code.

and then to revise the list for the second year by deleting projects for which funds were actually allocated in the first year. We adopt the revised list by final decision in the second year of the proceeding, close the proceeding and begin the funding cycle again the following year by instituting a new proceeding. Pending legislative action or additional regulation to accommodate the Proposition 1B Highway-Railroad Crossing Safety Account allocation, the Commission may deviate from its prior practice (the adopted two-year process) and open a formal proceeding next year to receive project nominations for FY 2009-2010.

Interim Decision (D.) 06-06-012, dated June 15, 2006, established the 49th Priority List for FY 2006-2007. On June 21, 2007, by D. 07-06-030, the Commission issued its final decision establishing the 50th Priority List for FY 2007-2008, and furnished the list to Caltrans and CTC before July 1, 2007. That final list will expire on June 30, 2008, necessitating the establishment of a new Priority List for FY 2008-2009 and possibly, 2009-2010.

The Commission will consider projects nominated by cities, counties, a separation-of-grade district, and any public entity that provides rail passenger transportation services for inclusion on the Priority List for FY 2008-2009 and 2009-2010.

Revisions to Ranking Formula

In accordance with S&H Code Section 2452, the Commission is responsible for establishing criteria to be used in determining the priority of projects nominated for separation or alteration. The Commission does so using formulas initially developed by the Commission in 1975, but modified since that time. There are two formulas used: one for ranking projects proposing new grade separation structures, and one ranking projects proposing alteration or reconstruction of existing structures. Commission adopted the most recent

priority evaluation formulas in I.01-07-008, issued July 12, 2001, which were used for the last six years.

In September 2006, Assembly Concurrent Resolution (ACR) 151, authored by Assembly Member Barbara Matthews, was approved by the Legislature. ACR-151 requests the Commission revise the prioritization formula used to establish the priority list for grade separation projects to add a factor for delays that disproportionately affect emergency vehicles, especially in rural areas.

On October 20, 2006, Staff sent a letter to over 400 local agencies and other interested parties requesting comments on the formula or their interest to receive future communications on this subject. Staff also created a website where parties could receive additional information. Fifty-two respondents requested to be added to the correspondence list; however, Staff received a total of only three comments on the formula used for establishing the priority list. A second round of comments was also solicited, received and considered for the formula revisions. Four parties responded to the second solicitation with written comments. Staff's report with its recommendation for the revised formula was mailed to all parties on June 26, 2007. A copy is attached as Appendix 7.

This OII proposes the use of slightly revised priority evaluation formulas, as recommended by Staff and as contained in Appendix 2 - New Priority Index Formulas. Staff proposes the revised formulas herein as justified and responsive to comments received in Staff's inquiry in the matter, as well as legislative inquiries regarding a perceived deficiency in the formulas.

Ranking Projects Under Construction

S&H Code Section 2460.7 authorizes a local agency to construct a project on the Priority List prior to the time that it reaches a high enough position for funding. The following conditions will be applied to prioritize grade separation projects on which construction has commenced:

1. The project must have been on the priority list for the fiscal year during which construction commenced.

2. The project must be renominated for the fiscal year during which funding consideration is desired.

3. The renomination must include the same data as included in the nomination for the fiscal year during which construction commenced, but shall also include the actual cost data.

4. Cost data included in the renomination shall be:

   a. Final costs for completed projects, or
   b. Current anticipated final costs for projects still under construction.

5. All projects renominated under the provisions of Section 2460.7 shall also comply with the filing requirements in this order.

Notice and Distribution

After the OII is adopted, the Commission staff will mail the notice appearing in Appendix 3 - OII Interested Party Notice Letter to the known railroads, light rail transit agencies, cities, counties and other interested parties. Parties interested may then download the OII from the Commission's website www.cpuc.ca.gov. The OII will also be published on the Commission's Daily Calendar. Project nomination forms and instructions are found in Appendix 5 – GSN-1 Form and in Appendix 6 –GSN-2 Form, of the OII.

Preliminary Scoping Information

The scope of this proceeding will include all issues raised in this order, but will not be limited to these issues. Any party may suggest related issues (i.e., issues involving the existing and proposed crossings at grade of city streets, county roads, or state highways) for the Commission consideration. The applicable rules and procedures are found in the Rules of Practice and Procedure which are posted on the Commission's website at www.cpuc.ca.gov.

Specifically as to the prioritization formulas, parties are encouraged to evaluate the proposed prioritization formulas and provide any comments regarding the formulas by August 31, 2007.

The assigned Administrative Law Judge will convene a prehearing conference to develop a service list for this proceeding and to further delineate issues related to scope and schedule for this proceeding.

This proceeding is categorized as quasi-legislative because it establishes a priority list affecting an entire regulated industry.

In I.99-07-001, the Commission established a new procedure for adopting a two-year Priority list, due to statutory time limitations.

For this proceeding to be completed timely, the Priority List established by this OII shall serve for both fiscal years in the investigation, unless legislative or administrative regulations are modified prior to issuance of the interim decision, which warrant a new investigation for the next fiscal year (in which case a final decision would be issued in this case and the proceeding closed). Under the current process, the Commission staff is authorized to revise the Priority List after the first year based upon input from Caltrans (removal of already funded projects) and issue the Priority List for 2009-2010. This process complies with the statutory deadline of S&H Code Section 2452 that requires the Commission to certify an annual Priority List on or before July 1.

We note that should statutory or regulatory changes occur to accommodate the Proposition 1B- Highway-Railroad Crossing Safety Account allocation, the Commission may deviate from the adopted two-year process and open a formal proceeding in July 2008 to receive project nominations for FY 2009-2010.

Any party interested in participating in this investigation who is unfamiliar with the Commission's procedures should contact the Commission's

Public Advisor Office in Los Angeles at (213) 576-7055 or in San Francisco at (415) 703-2074.

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted for the purpose of establishing a new Grade Separation Priority List (Priority List) for fiscal years 2008-2009, and possibly 2009-2010, of existing or proposed railroad grade crossings of public streets, roads, or highways most urgently in need of separation, projects proposing the elimination of grade crossings by removal or relocation of streets or railroad tracks, and existing separation structures most urgently in need of alteration or reconstruction as required by Streets and Highways (S&H) Code Section 2452.

2. The Executive Director shall serve a copy of this order on the following:

- Every railroad corporation operating in California
- California Department of Transportation
- California Transportation Commission
- League of California Cities
- California State Association of Counties
- Light Rail Transit Agencies

3. Interested parties are invited to file comments regarding the revised formulas proposed for evaluation of projects nominated under this proceeding, by August 31, 2007. The final established formulas to be used to evaluate projects will be issued by further order.

4. Local agencies desiring to have a crossing separation project considered for inclusion in the Priority List for fiscal years 2008-2009, and possibly 2009-2010, to be established under S&H Code Section 2452, shall file the **original** GSN-1 or GSN-2 nomination forms with **three** copies to:

California Public Utilities Commission
Attn: Rosa Muñoz, P.E.

320 West 4th Street, Suite 500
Los Angeles, CA 90013

Applications on GSN-1 Forms or GSN-2 Forms may be mailed or delivered in person. All nominations are due to the California Public Utilities Commission in Los Angeles postmarked no later than Friday, October 19, 2007. Applications delivered in person are due no later than 4:00 p.m. on Friday, October 19, 2007.

Applications postmarked or delivered after the deadline will not be processed. Applications are not accepted via fax. Each party is also required to provide two copies of its nomination(s) to **California Department of Transportation** (Caltrans):

Caltrans - Division of Rail
Attn: Lauren Clausen
Rail Crossing Safety & Track Branch
P.O. Box 942874
Sacramento, CA 94274-0001

Each party is also required to provide one copy to the appropriate railroad(s), or light rail transit agency (see addresses contained in Appendix 4), or any other affected party.

5. Each nomination shall include the following:
    a. For existing or proposed crossings nominated for separation or elimination, a completed Nomination Form GSN-1 (Appendix 5).
    b. For existing grade separation nominated for alteration or reconstruction, a completed Nomination Form GSN-2 (Appendix 6).
    c. A legible location map of the project, on 8 1/2" x 11" sheet of paper showing the existing railroads and roadway system.
    d. Two current 8”x10” photographs of the crossing(s), one from each direction of approach, shall be included with the original nomination. Other nomination copies may contain photocopies of the photographs.

e. Data submitted in the nomination must be based on **verifiable facts occurring on or before October 19, 2007**. Speculative data involving events anticipated to occur at some time in the future will not be considered. Applications for separations or elimination of existing at grade crossings with estimated data (vehicle counts, train counts, blocking delay, etc.), *other than the project costs*, will not be processed or included on the Priority List.

6. Nomination(s) shall not include multiple projects that are separate and distinct and clearly severable. The combining of severable projects precludes the Commission from effectively determining which projects are most urgently in need of separation or alteration as required by S&H Code Section 2452. Projects for the elimination of existing grade crossings shall not be combined with projects to eliminate proposed grade crossings, as a single nomination. All consolidation projects (that involve two or more existing at grade crossings) must satisfy these criteria to be considered.

7. All project proposals to eliminate existing grade crossings shall include, for each crossing: the crossing location, crossing geometrics, average daily vehicle and train volumes, blocking delay, speed limits and accident data (see sections B through G of GSN-1 Form in Appendix 5). Applications that have missing or incomplete data will not be used for the priority evaluation.

8. A nominating party may elect to exclude pre-construction costs (engineering, right-of-way, preparation of environmental impact reports, and utility relocation) if those costs are less than the local agency's share of the total costs (S&H Code Section 2454). In order for pre-construction costs to be eligible for exclusion, the funds must have been expended on or before February 28, 2009. The nominating party may be required to submit evidence in support of the fact that the funds have been expended. To the extent that pre-construction costs are excluded from a project's cost for the purpose of a nomination, the costs

as nonparticipating, that is, the railroad will not be required to contribute 10 percent of the excluded pre-construction costs.

9. In addition to submitting the Grade Separation Nomination Form (GSN-1 or GSN-2), each party, or its representative, nominating a crossing for inclusion in the Priority List is **required to appear in person at the hearings** to present evidence concerning the nomination. Supplemental data may be submitted at the hearings in support of a nomination. The data may include facts not known at time of nomination. The Staff must receive verification of all supplemental data no later than one week after the last scheduled day of hearing. Appearance schedules will be mailed to the interested parties 10 days prior to the scheduled hearings, usually held in the Commission's Los Angeles and San Francisco offices. All parties will be notified of the dates and locations of the hearings.

10. Appearances will be limited to one witness in support of each project or railroad.

11. Parties anticipating the need for an allocation greater than $5,000,000 shall be prepared to present evidence at the hearings to justify the additional award.

S&H Code Section 2454 (g) states:

> "(g) (1) Notwithstanding the provisions of Subdivision (a) to (f), inclusive, the total of these allocations for a single project shall not exceed five million dollars ($5,000,000) without specific legislative authorization, except that the amount for a single project may be increased to either (1) an amount that includes the federal construction cost index increase each year since 1976, or (2) an amount that does not exceed one-third of the total funds appropriated for grade separation projects for the year of allocation, whichever amount is less, as determined each year by the Public Utilities Commission."

12. Failure to supply all of the requested information or to appear before the Commission will constitute grounds for exclusion of a project from the Priority List.

This order is effective today.

Dated _____, at San Francisco, California.