

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of establishing a list for the fiscal years 2004-2005 and 2005-2006 of existing and proposed crossings at grade of city streets, county roads or state highways in need of separation, or projects effecting 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.

I. _____

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 years 2004-2005 and 2005-2006. The OII requests project nominations, from interested parties, for grade separation of 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 17, 2003. Nomination forms and instructions are contained in this OII.

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, and the basis for allocation and state requirements 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 filing an application with Caltrans are described in the California Administrative Code, Title 21, Chapter 2, Subchapter 13, Grade Separation Projects - Applications for Allocations or Supplemental Allocations. A copy of Subchapter 13 is attached as Appendix 1.

Decision (D.) 02-06-041, dated June 27, 2002, established the 45th and 46th Priority List for fiscal years 2002-2003 and 2003-2004. This list will expire on June 30, 2004, necessitating the establishment of a new Priority List for fiscal years 2004-2005 and 2005-2006.

The Commission will consider projects nominated by cities, counties, the League of California Cities, the County Board of Supervisors, Caltrans, or by any railroad company operating within the state for inclusion on the Priority List for fiscal years 2004-2005 and 2005-2006.

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 using formulas initially developed by the Commission in 1975. Commission adopted the current formulas adopted in I.01-07-008, filed July 12, 2001. This OII will use the priority evaluation formulas as contained in Appendix 2 - Priority Index Formulas.

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 with the actual cost data.
4. Cost data included in the renomination shall be:
 - a. Final costs for completed projects.

- 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.

On May 6, 2003, Staff mailed the notice appearing on Appendix 3 - OII Request Form Letter to railroads, light rail transit agencies, cities, counties and other interested parties. Only the parties that returned the written portion of the letter appearing on Appendix 3 will receive this OII. The OII also was published on the Commission's Daily Calendar.

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 rules and procedures implementing many of the reforms contained in Senate Bill (SB) 960 are found in Article 2.5 of the Rules of Practice and Procedure (Rules), which are posted on the Commission's website www.cpuc.ca.gov. Pursuant to Rule 4(a), the rules in Article 2.5 shall apply to this proceeding.

The assigned Administrative Law Judge will convene a pre-hearing conference (PHC) 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. This order, only as to the category, is appealable under the procedures in Rule 6.4 of the Rules of Practice and Procedure.

In I.99-07-001, the Commission established a new procedure for adopting a two-year Priority list, due to statutory time limitations that were enacted in SB 960.

For this proceeding to be completed timely, the Priority List established by this OII shall serve for both fiscal years in the investigation. The Commission authorizes Staff to revise the Priority List after the first year based upon input from Caltrans and issue the Priority List for 2005-2006. 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.

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 2004-2005 and 2005-2006 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:

- Each party that returned the Order Instituting Investigation Request Form (Appendix 3)
- Every railroad corporation operating in California
- California Department of Transportation
- California Transportation Commission
- League of California Cities
- County Board of Supervisors Association
- Light Rail Transit Agencies

3. Public agencies or railroad corporations desiring to have a crossing separation project considered for inclusion in the Priority List for fiscal years 2004-2005 and 2005-2006, to be established under S&H Code Section 2452, shall file the **original** nomination with **three** copies to:

California Public Utilities Commission
Attn: Rosa Muñoz
320 West 4th Street, Suite 500
Los Angeles, CA 90013

Applications 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 17, 2003. Applications delivered in person are due no later than 4:00 p.m. on Friday, October 17, 2003.

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), one copy to the appropriate railroad(s), light rail transit agency (see addresses contained in Appendix 4), and any other affected party.

4. 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 17, 2003**. 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.

5. 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.

6. 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.

7. 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, 2004. 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.

8. 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.

9. Appearance schedules will be mailed to the interested parties 10 days prior to the scheduled hearings. Appearances will be limited to one witness in support of each project or railroad.

10. 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) Notwithstanding the provisions of Subdivision (a) to (f), inclusive, the total of such 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 which 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."

11. Failure to supply all of the requested information or to appear before the Commission will constitute grounds for exclusion of a project from the fiscal years 2004-2005 and 2005-2006 Priority List.

This order is effective today.

Dated _____, at San Francisco, California.