

Decision 10-06-005 June 3, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of establishing a list for the fiscal years 2010-2011 and 2011-2012 of existing crossings at grade of city streets, county roads or state highways in need of separation, or existing separations in need of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways Code.

Investigation 09-07-028
(Filed July 30, 2009)

**INTERIM DECISION ESTABLISHING GRADE SEPARATION
FUND PRIORITY LIST FOR 2010-2011 FISCAL YEAR**

Summary

This Interim Decision establishes the California Grade Separation Fund Priority List for Fiscal Year 2010-2011, as required by Section 2452 of the Streets and Highways Code. In accordance with our adopted procedure, we order Investigation 09-07-028 to remain open until we issue our final decision establishing the Grade Separation Priority List for Fiscal Year 2011-2012.

Background and Introduction

We initiated this proceeding by issuing Order Instituting Investigation (OII) 09-07-028 on July 30, 2009, to create the Grade Separation Program Priority List (List) for Fiscal Years 2010-2011 and 2011-2012. The List establishes the relative priorities for allocation of funds to qualified projects for eliminating or altering hazardous railroad crossings under Streets and Highways Code

Section 2450 *et seq.* These projects include construction of new grade separations to replace existing at-grade crossings, or alteration or reconstruction of existing grade separations. Section 190 of the Streets and Highways Code requires the State's annual budget to include \$15 million for funding these projects.

Section 2450 *et seq.* set out the procedure for administering these funds. Section 2453 gives the California Transportation Commission (CTC) responsibility for allocating (distributing) the funds to qualified projects, but the CTC has delegated this responsibility to the Department of Transportation (Caltrans). Section 2452 requires this Commission to establish the priority list for projects and furnish it to the CTC by July 1 of each year for use in the fiscal year beginning on that date.

The procedure we have adopted is to promulgate the list for the first fiscal year by interim decision issued before that fiscal year begins, and then to revise the list for the following fiscal year by deleting projects for which funds were actually allocated in the first, adopting the revised list by final decision before the second fiscal year begins. The two-year funding cycle begins again with the issuance of an OII for the creation of a new list for the following two fiscal years.

Our procedure requires local agencies to furnish planned grade separation project nominations to this Commission in response to an announcement made a year prior to the cycle. The Commission reviews each nominated project to ensure that it is eligible for the Grade Separation Program, and holds a series of hearings so that nominating agencies may present each proposal, answer questions about its content, and confirm its accuracy. Attendance and participation in these hearings is mandatory for any project proponent. The Commission's Consumer Protection and Safety Division (CPSD) staff (Staff) adjusts the draft priority list in accordance with evidence received at the

hearings, and the list is presented to the Commission for adoption by interim decision. That is the task we undertake today.

Procedural History

After OII 09-07-028 was issued, CPSD notified railroads, light rail transit agencies, cities, counties, and other interested parties that nominations were due by October 16, 2009, for grade separation projects proposed to be included in the current priority list. CPSD received a total of 89 timely nominations for projects to be included in the current list.¹ By ruling issued on January 4, 2010, the assigned Administrative Law Judge (ALJ) established a procedural schedule for concluding the FY 2010-2011 part of the proceeding. After evaluating each nominated project, Staff produced a preliminary priority list on January 28, 2010, from the data furnished in the written nominations.

The ALJ held hearings in San Francisco and Los Angeles between March 15 and 19, 2010. At the conclusion of the hearings the list was finalized to include all 91 nominations and the receipt of updated information at the hearings. CPSD issued a revised priority list incorporating the updates on April 9, 2010, and the matter was submitted as of that date.

The Fiscal Year 2010-2011 Priority List

The statutory procedure for creating the fiscal year 2010-2011 List was properly followed, and all corrections to the draft were properly made. We will adopt the final List without change for purposes of allocating funds in the Grade Separation Fund.

¹ Two additional nominations were subsequently accepted from the City of Santa Fe Springs.

Categorization and Need for Hearing

This proceeding has been categorized as quasi-legislative. Hearings were held in accordance with our adopted procedure for establishing the biennial Grade Separation Priority List.

Comments on Proposed Decision

The proposed decision of Commissioner Simon in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Victor D. Ryerson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Written notification of the opportunity to submit nominations for separation of existing railroad grade crossings, or alteration or reconstruction of existing separations, pursuant to Streets and Highways Code Section 2451, was given to railroads, light rail transit agencies, cities, counties, and others on the service list compiled at the conclusion of the previous Grade Separation Priority List proceeding, and the notice advised them of the deadline to file a nomination for each grade separation project they sought to include in the Fiscal Year 2010-2011 priority list.

2. Staff ranked all nominations accepted in this proceeding in priority, and the methodology utilized by CPSD to rank the nominations in priority order is that which we have adopted in I.09-07-028.

3. The Grade Separation Priority List attached as Appendix B consists of projects that were received for the record, properly supported, and put in

priority order by Staff in accordance with our adopted methodology in this proceeding.

Conclusions of Law

1. Appendix B should be adopted as the Fiscal Year 2010-2011 Grade Separation Priority List in this proceeding.
2. The effective date of the Interim Order must be no later than June 30, 2010, in order to comply with Streets and Highways Code Section 2452.
3. This proceeding should remain open for the purpose of creating the Fiscal Year 2011-2012 Grade Separation Priority List.

I N T E R I M O R D E R

IT IS ORDERED that:

1. Pursuant to California Streets and Highways Code Section 2452, the Grade Separation Priority List attached as Appendix B is established for Fiscal Year 2010-2011 as the list, in order of priority, of projects which the Commission determines to be most urgently in need of separation, alteration, or reconstruction.
2. The Executive Director shall furnish certified copies of this decision to the California Department of Transportation and the California Transportation Commission by not later than July 1, 2010.
3. Investigation 09-07-028 shall remain open until we issue our final decision.

4. Staff shall take all necessary actions to establish the Grade Separation Priority List for Fiscal Year 2011-2012 in a timely manner, as required by law.

This order is effective today.

Dated June 3, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners