



PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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May 26, 2023

Agenda ID #21638
Quasi-Legislative

TO PARTIES OF RECORD IN INVESTIGATION 21-06-018:

This is the proposed decision of Commissioner Genevieve Shiroma. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 29, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:smt

Appendix

Decision **PROPOSED DECISION OF COMMISSIONER SHIROMA**
(Mailed 5/26/2023)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Establish a Priority List, for the Fiscal Years 2022-2023 and 2023-2024, of Existing At-Grade Rail Crossings, of City Streets, County Roads or State Highways, in need of separation, or Existing Grade-Separated Rail Crossings in need of Alterations or Reconstruction in Accordance with Section 2452 of the California Streets and Highways Code.

Investigation 21-06-018

DECISION ESTABLISHING THE CALIFORNIA GRADE SEPARATION FUND PRIORITY LIST FOR FISCAL YEAR 2023-2024

Summary

This decision establishes and adopts the California Grade Separation Fund Priority List for Fiscal Year (FY) 2023-2024, as required by California Streets and Highways Code Section 2450 *et seq.* Two projects from the FY 2022-2023 Grade Separation Program Priority List adopted by Decision 22-06-030, the interim decision in this investigation proceeding, have already received funding allocations this fiscal year. Therefore, those two projects are deleted from the FY 2022-2023 Priority List to establish the FY 2023-2024 Priority List we adopt by this decision, *see* Appendix A.

Investigation 21-06-018 is closed.

1. Background

1.1. Factual Background

Section 2452 of the California Streets and Highways (S&H) Code requires the California Public Utilities Commission (Commission) to establish the Grade Separation Program Priority List (Priority List) for qualified projects and furnish it to the California Transportation Commission (CTC) by July 1 of each year for use in the fiscal year (FY) beginning on that date. The Priority List establishes the relative priorities for allocation of State funds to qualified rail crossing projects most urgently in need of separation or alteration, to meet the program goals of eliminating hazardous railroad crossings.¹ These projects include construction of new grade separations to replace existing at-grade rail crossings, or alteration or reconstruction of existing grade-separated rail crossings.

The CTC is responsible for allocating (distributing) the State funds to qualified projects, a responsibility it has delegated to the California Department of Transportation.² Section 190 of the S&H Code requires the State's annual budget to include \$15 million for funding of these Priority List projects.

Every two years, the Commission issues a new Order Instituting Investigation (OII), in which it determines the Priority List for the next two FYs. The Commission adopts the Priority List for the first FY by interim decision issued before the next FY begins. The Commission then revises the Priority List for the second FY by deleting projects for which funds were actually allocated in the first FY, adopting a revised Priority List by final decision before the second FY begins. Thereafter, a new two-year funding cycle begins again with the

¹ S&H Code § 2450 *et seq.*

² S&H Code § 2453.

issuance of a new OII for the adoption of a new Priority List for the following two FYs.

1.2. Procedural Background

On June 25, 2021, the Commission initiated the current proceeding by issuing Investigation (I.) 21-06-018 to establish the Priority List for FYs 2022-2023 and 2023-2024. The Commission's Rail Safety Division (RSD) received a total of thirty-eight timely nominations from railroads, light rail transit agencies, cities, counties, and other interested parties for projects to be considered for inclusion in the first Priority List for this OII. After evaluating each project, RSD reviewed the nomination materials, the data submitted in support of the nomination, and all filings in this proceeding to develop its recommended preliminary Priority List. RSD's recommended preliminary Priority List has been filed in this proceeding, as ordered by the assigned Administrative Law Judge (ALJ).

A prehearing conference was held on September 30, 2021. On October 18, 2021, the assigned ALJ issued a ruling noticing a workshop to explore changes to the formulas that are used to establish the priority list rankings. On October 25, 2021, the assigned Commissioner issued the scoping ruling. The following parties filed motions for party status to the proceeding from March 23, 2022, through March 28, 2022: Orange County Transportation Authority, City of South San Francisco, City of Menlo Park, City of Riverside, City of Oakland, San Bernardino County Transportation Authority, City of Sunnyvale, City of Oxnard, City of San Jose, Sutter County, City of San Bruno, City of Santa Barbara, City of Stockton, and City of Fresno. All motions for party status were granted.

On April 4, 2022, the assigned ALJ held a virtual evidentiary hearing. Parties were instructed to file their project nominations by April 15, 2022;

however, the deadline was extended to April 22, 2022, to accommodate parties that needed additional time to file materials with the Commission. On May 26, 2022, the assigned ALJ accepted parties' project nominations into the record of this proceeding. On June 23, 2022, the Commission adopted Decision (D.) 22-06-030 that established a Priority List for the 2022-2023 FY. On March 9, 2023, the Commission adopted D.23-03-002, correcting errors from the Priority List for the 2022-2023 FY.

2. Establishment of the FY 2023-2024 Priority List

Since our issuance of the interim decision, D.22-06-030, which adopted RSD's recommended Priority List for FY 2022-2023, two projects on that list have already been funded. Those two projects are removed from the revised Priority List for FY 2022-2023, which is updated and appended to this decision as Appendix A and adopted. Adoption of the FY 2023-2024 Priority List closes this biennial proceeding.

The two projects for which allocations have been made and which are removed from the 2022-2023 Priority List³ are:

³ The funding for the two projects in this table are pending Governor budget adoption.

FY 2022-2023 Ranking	Project Name
20	Cedar Avenue San Bernardino County Transportation Authority
24	Claribel Road Stanislaus County

3. Updating Formulas for the 2024-2025 and 2025-2026 FYs

As mentioned in D.22-06-030, on November 9, 2021, RSD conducted a workshop on November 21, 2021, to afford parties an opportunity to raise issues regarding the revisions of the formulas by which the Priority List is established. Due to the limited extent of comments received and lack of supporting data, RSD has determined that there is not sufficient data to justify changes to the current formulas. Therefore, changes to the current formulas are not deemed reasonable for this cycle, and the formulas will remain unchanged FY 2024-2025 and 2025-2026.

4. Discussion and Analysis

RSD staff evaluated each nominated project's eligibility as either construction of new grade separations to replace existing at-grade rail crossings or alteration or reconstruction of existing grade separations on city streets, county roads, and state highways, which are not freeways as defined in S&H Code § 257. Staff considered the feasibility, need, urgency and relative priority for each of the grade separation projects that were nominated and applied existing formulas to provide a ranking for each project. The existing formulas were discussed as part of a workshop where parties provided input. The ranking process used to establish the grade-separation priority list for

FY 2022-2023 was transparent and visible to the public and therefore reasonable. All projects regardless of location were evaluated for safety. Environmental and Social Justice (ESJ) communities are supported by projects in this proceeding. Goal 3 and Goal 6 of the ESJ Action Plan are impacted by the projects in this proceeding. Goal 3 as stated is to “Strive to improve access to high-quality water, communications, and transportation services for ESJ communities”. Goal 6, as stated, strives to “Enhance enforcement to ensure safety and consumer protection for all, especially for ESJ communities.” Both goals 3 and 6 are supported by this proceeding therefore funding for these projects should be adopted by the Commission.

5. Categorization and Need for Hearing

This proceeding has been categorized as quasi-legislative. A hearing was held in accordance with the Commission’s adopted procedure for establishing the biennial Priority List.

6. Comments on Proposed Decision

The proposed decision of Commissioner Genevieve Shiroma 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. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Hazlyn Fortune is the assigned ALJ in this proceeding.

Findings of Fact

1. The FY 2022-2023 Priority List was established by the interim decision in this OII, D.22-06-030.

2. On March 9, 2023, the Commission adopted D.23-03-002, correcting errors from the Priority List for the 2022-2023 FY.

3. Two projects on the FY 2022-2023 Priority List received allocations, funding is pursuant to pending Governor budget adoption.

4. RSD has prepared and filed the revised Priority List for the second FY 2023-2024 (Appendix A to this decision).

Conclusions of Law

1. The FY 2023-2024 Grade Separation Priority List (Appendix A to this decision) should be adopted.

2. I.21-06-018 should be closed.

O R D E R

IT IS ORDERED that:

1. Pursuant to California Streets and Highways Code Section 2450 *et seq.*, the Fiscal Year 2023-2024 Grade Separation Priority List attached as Appendix A to this decision, is adopted, as the list of projects, in order of priority, which the California Public Utilities Commission determines to be the most urgently in need of grade separation, alteration, or reconstruction.

2. The California Public Utilities Commission’s Executive Director must furnish an electronic copy of this decision to the California Department of Transportation and the California Transportation Commission no later than July 1, 2023.

3. Investigation 21-06-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.