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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation to Establish a Priority List, for the Fiscal Years 2024-2025 and 2025-2026, 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 23-06-020

**ASSIGNED COMMISSIONER'S SCOPING  
MEMO AND RULING**

This scoping memo and ruling (Scoping Memo) sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

**1. Procedural Background**

The Section 190 Grade Separation Program is authorized by Section 190 of the Streets and Highways Code. This competitive grant program provides \$15 million each year to local agencies for the construction of grade separation projects. The program is jointly administered by the California Public Utilities Commission (Commission) and the California Department of Transportation (Caltrans).

The intent of the Section 190 Grade Separation Program is to improve safety and expedite the movement of vehicles by eliminating highway-rail crossings at grade with a grade separation.<sup>1</sup>

The Section 190 Program is administered in accordance with provisions of the Streets and Highways Code, commencing with Section 2450. Specifically, Section 2452 of the Streets and Highways Code requires the Commission to establish the Grade Separation Program Priority List (Priority List) for projects and furnish it to the California Transportation Commission (CTC) by July 1<sup>st</sup> 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 projects and procedures for administering these funds.

Eligible projects include 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 Streets and Highways Code § 257. For a project that eliminates an existing at-grade rail crossing or alters or reconstructs an existing, grade-separated rail crossing, an allocation of up to 80 percent of the estimated cost of the project may be made, with the local agency and railroad each contributing 10 percent.

The CTC is responsible for allocating and distributing the funds to qualified projects. The CTC has delegated this responsibility to Caltrans.

Requirements for filing a fund allocation application for Priority List projects with Caltrans are set out in the *California Code of Regulations, Title 21, Division 2, Chapter 13, Grade Separation Projects-Applications for Allocations or*

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<sup>1</sup> Grade Separation means a structure which separates the vehicle roadway from the railroad tracks. S&H Code § 2453. S&H Code § 2450 et seq.

*Supplemental Allocations* (Chapter 13). A copy of Chapter 13 is attached as Appendix 1 to the instant Order Instituting Investigation (OII).

Local agencies submit project nomination applications to the Commission to nominate the project for the Priority List. The Commission, through an OII proceeding such as this one, develops a priority list of projects. Thereafter, the local agencies whose projects are selected and included on the Priority List submit requests for an allocation of funds to Caltrans. Caltrans then enters into funding agreements with the local agencies on the priority list for reimbursement of the costs to construct those selected projects.

In OII 99-07-001, the Commission established the Commission's procedure for adopting a two-year Priority List, which helped meet the applicable statutory deadlines. The procedure included initiation of a proceeding such as this instant OII, completing such a proceeding in a timely manner, and establishing the Priority List to serve for two FYs. The Commission then adopts the Priority List for the first FY by interim decision issued before that fiscal year begins, 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 ends. This two-year funding cycle restarts again with the issuance of a new OII for the creation of a new Priority List for the following two FYs.

Accordingly, on June 29, 2023, the Commission initiated this instant OII proceeding to establish the Grade Separation Program Priority List (Priority List) for the next two year-cycle, 2024-2025 and 2025-2026.

In accordance with Section 2452 of the California Streets and Highways Code, the OII solicited project nominations, by October 20, 2023, from interested parties for: (1) existing at-grade rail crossings, of city streets, county roads, or

state highways, in need of grade separation, or (2) existing grade-separated rail crossings, of city streets, county roads, or state highways, in need of alterations or reconstruction.

A prehearing conference (PHC) was held on September 25, 2023, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. After considering the record of this proceeding and the discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this Scoping Memo.

## **2. Issues**

The issues to be determined or otherwise considered are:

1. Evaluation of 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 Streets and Highways Code § 257;
2. Consider the feasibility, need, urgency, and relative priority for each of the grade separation projects that are nominated by each entity;
3. Examine the reasonableness of the process used to establish the grade-separation priority list for FY 2024-2025; and
4. Consider impacts on environmental and social justice communities, including the extent to which the nominated projects impact achievements of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

## **3. Need for Evidentiary Hearing**

There are no issues of material disputed fact. Accordingly, evidence is not needed. However, parties submitting nomination projects for inclusion on the

grade-separation priority list for FY 2024-2025 and FY 2025-2026, are required to participate in an evidentiary hearing to formally submit their projects for review and consideration.

#### **4. Schedule**

The following schedule is adopted here and may be modified by the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the investigation:

<b>Event</b>	<b>Date</b>
Draft Staff Exhibit including a recommended grade-separation priority list.	February 14, 2024
Party comments on Staff Exhibit (2 weeks)	February 28, 2024
Updated Staff Exhibit based on party comments	March 13, 2024
Evidentiary hearing	April 3, 2024
Proposed Interim Decision	April 19, 2024
Commission's Interim Decision (on FY 2024-2025)	May 30, 2024
Commission Staff and Caltrans Staff coordinate to update the Priority Grade Separation List	July 2025 to May 2026
Commission's Final Decision Adopting Priority List (on FY 2025-2026)	June 2026

As with past proceedings to establish a Priority List, the procedural schedule for updating the Priority List for the second fiscal year of each proceeding requires that this proceeding exceed the statutory limit of 18 months.<sup>2</sup>

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<sup>2</sup> See, e.g., Investigation (I.) 13-06-014, I.15-06-008, I.17-06-025, I.1906-013, and I.21-06-018.

Based on the foregoing, we anticipate we will close this proceeding when we adopt a revised Priority List for fiscal year 2025-2026, on or before June 30, 2026.

**5. Category of Proceeding and  
Ex Parte Restrictions**

This ruling confirms the Commission's preliminary determination that this is a quasi-legislative proceeding. Pursuant to Article 8 of the Rule, *ex parte* communications in quasi-legislative proceedings are permitted and not subject to disclosure requirements. All communications to the assigned ALJ must be in writing and must be copied to all persons on the service list at the same time such communications are sent to the assigned ALJ.

**6. Public Outreach**

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website. In addition, the Commission served the Order Instituting Investigation on the service list of I.23-06-020.

**7. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for the proceeding.

**8. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public

Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **9. Filing, Service, and Service List**

The official Service List has been created and is on the Commission's website. Parties should confirm that their information on the Service List is correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4<sup>3</sup>.

When serving any document, each party must ensure that it is using the current official Service List on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 requiring service on the ALJ of both an electronic and a paper copy of filed or served documents is waived. Only an electronic copy is required. A paper copy is not required.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official Service List, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

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<sup>3</sup> The form to request additions and changes to the Service list may be found at <https://www.cpsc.ca.gov/-/media/cpsc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

The Commission encourages those who seek information-only status on the Service List to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

#### **10. Receiving Electronic Service from the Commission**

Parties and other persons on the Service List are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add "@cpuc.ca.gov" to your email safe sender list and update your email screening practices, settings and filters to ensure receipt of emails from the Commission.

#### **11. Assignment of Proceeding**

Genevieve Shiroma is the assigned commissioner and David Van Dyken is the assigned ALJ for the proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is needed.



4. The category of the proceeding is quasi-legislative.

This order is effective today.

Dated September 29, 2023, at San Francisco, California.

/s/ GENEVIEVE SHIROMA

Genevieve Shiroma  
Assigned Commissioner