

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**

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May 10, 2024

Agenda ID #22552
Quasi-Legislative

TO PARTIES OF RECORD IN INVESTIGATION 23-06-020:

This is the corrected proposed decision (PD) of Commissioner Matthew Baker. The original PD was mailed on April 30, 2024. Subsequent to the filing of the PD, the assigned Administrative Law Judge was alerted that Appendix A to the PD, listing the project rankings, contained multiple formatting errors rendering the document unreadable. This cover letter reflects the refiling of this PD and Appendix with corrected formatting. No changes have been made to the content of the PD or Appendix. The filing of this PD will restart the clock for a new 30-day comment period.

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 20, 2024 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

Chief Administrative Law Judge

MLC: avs

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER MATTHEW BAKER**
(Mailed 5/10/2024)

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

DECISION ESTABLISHING THE CALIFORNIA GRADE SEPARATION FUND PRIORITY LIST FOR FISCAL YEAR 2024-2025

Summary

This decision establishes and adopts the California Grade Separation Fund Priority List for Fiscal Year (FY) 2024-2025, as required by California Streets and Highways Code § 2452 *et. seq.* In accordance with our adopted procedure, this proceeding will remain open until we issue our final decision establishing the California Grade Separation Priority List for FY 2025-2026 and opening a new investigation for the next cycle proceeding for the establishment of future Grade Separation Priority Projects.

1. Background

1.1. Factual Background

The California Public Utilities Commission (Commission) initiated this proceeding by issuing Order Instituting Investigation (I.) 23-06-020 on June 29, 2023, to evaluate and establish the California Grade Separation Program Priority List for Fiscal Year (FY) 2024-2025 and FY 2025-2026.

California Streets and Highways (S&H) Code § 2452 requires the Commission to establish annual California Grade Separation Program Priority Lists (Priority List(s)) for certain rail crossing projects, including projects to construct new grade separations to replace existing at-grade crossings and projects to alter or reconstruct existing grade separations.

The Commission's adoption of Priority Lists establishes the relative priorities for allocation of funds to qualified projects that eliminate or otherwise improve hazardous railroad crossings under California S&H Code § 2450 *et seq.* By July 1st of each year, the Priority List adopted by the Commission is provided to the California Transportation Commission (CTC) for use in the FY beginning on that date to fund the qualified projects in accordance with that Priority List. The CTC has delegated this authority to the California Department of Transportation (Caltrans).¹

Every two years, the Commission issues a new Order Instituting Investigation (OII), to establish the Priority Lists for the next two Fiscal Years. The Commission adopts the Priority List for the first FY by interim decision

¹ S&H Code § 190 requires the State's annual budget to include \$15 million for funding grade separation projects. According to Caltrans staff, approximately \$5 million in funding from FY 2020-2021, \$15 million in funding from FY 2022-2023, and \$15 million in funding from FY 2023-2024 will carry over to the FY 2024-2025 application cycle. This means that approximately \$50 million in funding should be available for the FY 2024-2025 program cycle.

issued before that FY begins. The Commission then updates and revises that Priority List for the second FY by deleting projects for which funds were actually allocated in the first FY and adopting a revised Priority List by final decision before the second FY begins. The two-year funding cycle thereafter begins again with the issuance of a new OII to establish new priority lists for the following two FYs.

Commission procedure also requires local agencies to furnish planned grade separation nomination projects 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 California Grade Separation Program and holds hearing(s), as needed, so that nominating agencies may present each proposal, answer questions about its proposal details, and confirm accuracies of the proposals, as appropriate. Attendance and participation in these hearing(s) is mandatory for any nomination project proponent. For each FY, the Commission's Rail Safety Division (RSD) staff, using currently adopted formulas, adjusts and ranks the draft Priority List in accordance with evidence received at the hearings, and presents the list to the Commission as the Priority List for adoption by interim decision.²

² The Priority List is a comparative evaluation of all qualified projects nominated and accepted for inclusion in this investigation, with the priority index value based on one of the two formulas that RSD staff uses to rank projects, as published in Appendix A: one formula for crossings nominated for separation or elimination, and the other for existing grade separations in need of alteration or renovation. The formulas incorporate crossing inventory and accident data submitted in the nomination forms and verified by RSD staff. RSD staff reviews each application for qualification and creates the prioritized list from the nomination data entered into a Microsoft Excel spreadsheet that calculates the priority index value for each project.

1.2. Procedural Background

Written notification of the opportunity to file nominations for separation of existing railroad grade crossings, or alteration or reconstruction of existing separations, pursuant to S&H Code § 2451, was provided to railroads, light rail transit agencies, cities, counties, and others through the issuance of the OII using the service list compiled at the conclusion of the previous Priority List proceeding. The notice advised them of the deadline to file a nomination for each grade separation project they sought to include in the FY 2024-2025 Priority List.

On September 25, 2023, a remote prehearing conference (PHC) was held. The assigned Commissioner, Genevieve Shiroma, did not attend but her advisor was in attendance. On September 29, 2023, the Commissioner issued a scoping memo that included a schedule for the proceeding. Project proponents submitted their nomination proposals to RSD on October 20, 2023.

On February 14, 2024, RSD staff released the draft Staff Exhibit with the initial priority designations for each project being considered in this proceeding for FY 2024-2025 and FY 2025-2026. Parties' comments on the draft Staff Exhibit were due on February 28, 2024, and a final Staff Exhibit list was released on March 13, 2024. On March 29, 2024, the proceeding was formally reassigned from Commissioner Genevieve Shiroma to Commissioner Matthew Baker. On April 3, 2024, a remote virtual evidentiary hearing was conducted.

The proceeding initially used the service list for I.21-06-018. Additionally, between October 5, 2023, and October 18, 2023, the City of Rancho Cucamonga, City of Palo Alto, City of Santa Ana, and Yolo County all filed separate motions for party status. The motions were granted between October 17, 2023, and October 19, 2023.

1.3. Submission Date

This matter was submitted on April 3, 2024, upon holding the evidentiary hearing.

2. Establishment of the Fiscal Year 2024-2025 Priority List

RSD staff produced a preliminary draft for the FY 2024-2025 Priority List on February 14, 2024, using the existing formulas and evaluating each nominated project.

During the April 3, 2024 evidentiary hearing, each party (city, county, or transportation authority) was afforded the opportunity to introduce their respective proposed projects and answer any questions about them. The hearing was transcribed by a court reporter. Due to complications incurred by the parties with electronic filings in previous cycles, electronic filings were not required for this cycle. RSD staff presented the Administrative Law Judge (ALJ) with paper copies of filings. The ALJ stamped and admitted each into evidence with the Commission's Docket office.

RSD finalized the FY 2024-2025 Priority List to include 36 nominations – all proposed projects were found to be qualified. As discussed above, the statutory procedure for creating the FY 2024-2025 Priority List was properly followed. Appendix A of this decision shows the 2024–2025 Priority List prepared and recommended by RSD staff.

This interim decision finds that RSD's recommendation is reasonable and therefore adopts the attached Priority List for purposes of allocating funds in the California Grade Separation Fund (*see* Appendix A to this decision).

3. 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.

4. Procedural Matters

This decision affirms all rulings made by the ALJ and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

5. Comments on Proposed Decision

The proposed decision of Commissioner Matthew Baker 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 _____.

6. Assignment of Proceeding

Matthew Baker is the assigned Commissioner and David R. Van Dyken is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Written notification of the opportunity to file nominations for separation of existing railroad grade crossings, or alteration or reconstruction of existing separations, pursuant to S&H Code § 2451, was provided to railroads, light rail transit agencies, cities, counties, and others on the service list compiled at the conclusion of the previous 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 FY 2024-2025 Priority List.

2. RSD received a total of 36 timely nominations for proposed projects to be included in the current FY 2024-2025 Priority List.

3. RSD staff evaluated and ranked all project nominations accepted in this proceeding in priority, and the methodology utilized by RSD to rank the nominations in priority order is that which we have adopted in I.23-06-020.

4. RSD finalized the FY 2024-2025 Priority List to include 36 nominations.

5. The Priority List attached as Appendix A consists of proposed projects nominated and ranked in priority order by RSD staff in accordance with our adopted methodology in this proceeding.

6. Our adopted procedure requires that, upon adoption of the California Grade Separation Priority List for FY 2024-2025, the proceeding must remain open for a subsequent phase of the proceeding to adopt the subsequent decision adopting a Grade Separation Priority List for FY 2025-2026 and opening a new investigation for the next cycle proceeding for establishment of future Grade Separation Priority Lists.

Conclusions of Law

1. Appendix A should be adopted as the FY 2024-2025 Priority List in this proceeding as the Interim Decision.

2. The effective date of this Interim Decision must be no later than June 30, 2024, to comply with S&H Code § 2452.

3. This proceeding should remain open.

O R D E R

IT IS ORDERED that:

1. This interim decision adopts the California Grade Separation Priority List attached as Appendix A and establishes the Fiscal Year 2024-2025 priority list of projects which the Commission determines to be most urgently in need of separation, alteration, or reconstruction.

2. The Commission's Rail Safety Division staff shall furnish copies of this interim decision to the California Department of Transportation and the California Transportation Commission by no later than July 1, 2024.

3. The Commission's Rail Safety Division staff shall take all necessary actions to establish the California Grade Separation Priority List for Fiscal Year 2025-2026 in a timely manner, as required by law.

4. Investigation 23-06-020 shall remain open until we issue our final decision in this proceeding.

This order is effective today.

Dated _____, at San Luis Obispo, California.

APPENDIX A

**CA Grade Separation Program Priority List
For Fiscal Year 2024-2025**