



COM/MBK/jds/asf 8/29/2025

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

8/29/25

11:20 AM

12506010

Order Instituting Investigation to Establish a Priority List, for the Fiscal Years 2026-2027 and 2027-2028, 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 25-06-010

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 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 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.¹

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

The California Public Utilities Commission (Commission) and the California Department of Transportation (Caltrans) jointly administer the program under Streets and Highways Code Sections 2452 *et seq.* Streets and Highways Code Section 2452 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 1st 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 the 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 California Transportation Commission (CTC) allocates and distributes 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 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 that complies with the applicable statutory deadlines. The procedure includes initiation of a proceeding, completing the proceeding in a timely manner, and establishing the Priority List to serve for two FYs. The Commission 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, and adopting a revised Priority List by final decision before the second FY ends. This two-year funding cycle restarts with the issuance of a new OII for the creation of a new Priority List for the following two FYs.

Accordingly, on June 12, 2025, the Commission initiated this instant OII proceeding to establish the Grade Separation Program Priority List (Priority List) for the next two-year cycle, namely FYs 2026-2027 and 2027-2028.

In accordance with Section 2452 of the California Streets and Highways Code, the OII solicited project nominations, by October 24, 2025, 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 was held on August 18, 2025, 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 OII and discussion at the prehearing conference, 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 in creating the Grade Separation Program Priority List are:

1) Do the project nominations include sufficient information to evaluate each nominated project's eligibility as either construction of a new grade separation to replace an existing at-grade rail crossings or alteration or reconstruction of existing grade separation on city streets, county roads, and state highways, which are not freeways as defined in Streets and Highways Code § 257;

2) Are each of the grade separation projects that are nominated by each entity feasible, necessary, and critical;

3) What should be the relative priority for each project;

4) Is the process to establish the grade-separation priority list for FY 2026-2027 and 2027-2028 reasonable; and;

5) Are there 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 2026-2027 and FY 2027-2028, must 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:

| Event | Date |
|--|-----------------------|
| Last day to request party status in order to submit a project proposal | October 13, 2025 |
| Project proposal submission due date for the 2026-2027 and 2027-2028 FYs | October 24, 2025 |
| Draft staff exhibit including a recommended grade-separation priority list released for party comments | February 11, 2026 |
| Party comments on staff exhibit (2 weeks) | February 25, 2026 |
| Updated staff exhibit based on party comments | March 11, 2026 |
| Evidentiary hearing | March 20, 2026 |
| Proposed Interim Decision | April 20, 2026 |
| Commission's Interim Decision (on FY 2026-2027) | May 30, 2026 |
| Commission Staff and Caltrans Staff coordinate to update the Priority Grade Separation List | July 2027 to May 2028 |
| Commission's Final Decision Adopting Priority List (on FY 2027-2028) | June 2028 |

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.² Based on the foregoing, we anticipate we will close this proceeding when we adopt a revised Priority List for fiscal year 2027-2028, on or before June 30, 2028.

5. Category of Proceeding and Ex Parte Communications

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

Under Public Utilities Code Section 1711(a), where feasible and appropriate, before determining the scope of the proceeding, the Commission sought the participation of those likely to be affected, including those likely to derive benefit from, and those potentially subject to, a decision in this proceeding. This matter was noticed on the Commission's daily calendar on June 13, 2025. Where feasible and appropriate, this matter was incorporated into engagements conducted by the Commission's External Affairs Division with local governments and other interested parties. In addition, the Commission served the Order Instituting Investigation on the service list of I.25-06-010.

² See, e.g., Investigation (I.) 13-06-014, I.15-06-008, I.17-06-025, I.1906-013, I.21-06-018 and 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 responses 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 <https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/public-advisors-office> 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.

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 1.4.³ Any agencies intending to submit a project for the Priority List must move for party status by October 13, 2025.

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 must serve documents and pleadings using

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

electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 that requires 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 to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

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

Matthew Baker is the assigned Commissioner, and Leah Goldberg 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.

Dated August 29, 2025, at San Francisco, California.

/s/ MATTHEW BAKER

Matthew Baker
Assigned Commissioner