

Decision 19-06-029 June 27, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation for the Purpose of Establishing a List for the Fiscal Years 2018-2019 and 2019-2020 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 California Streets and Highways Code.

Investigation 17-06-025

**DECISION ESTABLISHING THE CALIFORNIA GRADE SEPARATION FUND
PRIORITY LIST FOR FISCAL YEAR 2019-2020**

Summary

This decision establishes the California Grade Separation Fund Priority List for Fiscal Year (FY) 2019-2020, as required by California Streets and Highways Code Section 2450 *et seq.* No projects from the FY 2018-2019 Grade Separation Program Priority List adopted by Decision 18-06-015, the interim decision in this investigation, have allocations this fiscal year. Therefore, no projects are deleted from the FY 2018-2019 Priority List to create the FY 2019-2020 Priority List. Investigation 17-06-025 is closed.

1. Background

Section 2452 of the California Streets and Highways (S&H) Code require 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 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 crossings, or alteration or reconstruction of existing grade separations. The CTC is responsible for allocating (distributing) the State funds to qualified projects, a responsibility it has delegated to the California Department of Transportation (Caltrans).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 that 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. The two-year funding cycle begins again with the issuance of a new OII for the creation of a new Priority List for the following two FYs.

¹ S&H Code § 2450 *et seq.*

² S&H Code § 2453.

The procedures adopted by the Commission to process this OII requires local agencies to provide planned grade separation project nominations to this Commission in response to a request for nominations in the Ordering Paragraphs of the new OII. The Commission's Safety and Enforcement Division (SED) then reviews each nominated project to ensure that it is eligible for the Grade Separation Program. Next, in response to a "Ruling Requesting Information" from the assigned ALJ, SED files and serves a draft Priority List. The Commission then holds a series of hearings so that nominating agencies may present each proposal, answer questions about its content, and confirm the proposal's accuracy. Attendance and participation in these hearings is mandatory for any project proponent. In response to a Ruling Requesting Information from the assigned ALJ, SED then adjusts the draft Priority List, as needed, in accordance with evidence received at the hearings, as appropriate. This draft Priority List is then filed and served. The Priority List includes projects for construction of new grade separations of existing at-grade rail crossings of public streets, roads, or highways, and alteration or reconstruction of existing grade separation structures.

1.1. Procedural Background

The Commission initiated the current proceeding by issuing Investigation (I.) 17-06-025 on June 29, 2017, to create the Priority List for FYs 2018-2019 and 2019-2020. SED received a total of 36 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 of the current OII. After evaluating each nominated project, SED produced a preliminary Priority List from the data furnished in the nominations, filing and serving this list in response to a Ruling Requesting Information from the assigned ALJ. Evidentiary

hearings were then held, in which the Commission gathered further evidence regarding the nominated projects. Again, in response to a Ruling Requesting Information from the assigned ALJ, SED then filed and served a revised Priority List, which included 36 nominated projects, based on the evidence presented at the hearings.³ By interim Decision (D.) 18-06-015, the Commission adopted SED's Priority List for FY 2018-2019. The initial Priority List established the relative priorities for funding qualified highway rail crossings projects which the Commission determines to be the most urgently in need of separation, alteration or reconstruction, in the current OII.

2. Establishment of the FY 2019-2020 Priority List

Caltrans notified SED that no allocations have been made to the projects listed in the Priority List adopted in D.18-06-015. Therefore SED has retained all the projects from the FY 2018-2019 Priority List in order to prepare a revised Priority List for FY 2019-2020, which is appended to this decision as Attachment A. The Commission adopts this FY 2019-2020 Priority List prepared by SED. Adoption of the FY 2019-2020 Priority List closes this biennial proceeding.

3. 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 priority list.

³ In D.16-06-012 at 4, "... the 2016-2017 Priority List was finalized by SED to include 38 nominations. All of the nominated projects were included in the Priority List."

4. Waiver of Comments

The 30-day comment period is waived because this decision grants or authorizes an uncontested matter.

5. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Hazlyn Fortune is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The FY 2018-2019 Priority List was established by the interim decision in this OII, D.18-06-015.
2. No projects on the FY 2018-2019 Priority List received allocations.
3. SED has prepared the Priority List for the second fiscal year, FY 2019-2020 (Attachment A to this decision).

Conclusions of Law

1. The FY 2019-2020 Grade Separation Priority List (Attachment A to this decision) should be adopted.
2. I.17-06-025 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 2019-2020 Grade Separation Priority List included in Attachment 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 a certified copy of this decision to the California Department of Transportation and the California Transportation Commission.

3. Investigation 17-06-025 is closed.

This order is effective today.

Dated June 27, 2019, at San Francisco, California.

MICHAEL PICKER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners