

JUN 19 1996

Decision 96-06-041 June 19, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of establishing a list for the fiscal years 1996-97 and 1997-98 of existing and proposed crossings at grade of city streets, county roads, or state highways most urgently in need of separation or projects effecting the elimination of grade crossings by removal or relocation of streets or railroad tracks, or existing separations in need of alteration or reconstruction as contemplated by Section 2452 of the Streets and Highways Code.

ORIGINAL

(Filed July 19, 1995)

In 1988 we concluded that a two-year proceeding would

(See Appendix A for appearances)

INTERIM OPINION
Summary

We instituted this investigation on July 19, 1995 in order to establish a priority list of projects eligible for funding under the Grade Separation Program (for) fiscal years 1996-97 and 1997-98. The current priority list established by Decision (D) 95-06-020 for fiscal years 1995-96 expires on June 30, 1996. As in past years, this investigation is a two-year proceeding, with evidentiary hearings held only during the first year. In the second year we revise the priority list to delete those projects actually funded in the preceding year. Therefore, this interim opinion establishes the priority list for the first fiscal year of the two-year period 1996-97, and we will hold this proceeding open for one more year to issue a final decision establishing the priority list for the 1997-98 fiscal year.

2001 01 10

Decision 95-06-041 June 19, 1995

Background

Section 2450 et seq. of the California Streets and Highways (S&H) Code establishes the Grade Separation Program to fund projects throughout the state which will eliminate hazardous grade crossings. Each year, the California Transportation Commission (CTC) distributes a total of \$15 million to eligible projects. (S&H Code § 190.) Prior to July 1 of each year, the Public Utilities Commission is required to establish a priority list of eligible separation projects throughout the state most urgently in need of construction. (S&H Code 2452.) The list may contain projects for the construction of new grade crossings or alteration of existing separations, or projects which eliminate crossings by removing or relocating streets or railroad tracks.

In 1988 we concluded that a two-year proceeding would best accomplish our task of creating a priority list.

(D.88-06-050.) We established procedures under which nominations are submitted, hearings are held, and a list of projects in rank order is established during the first year. In the second year, projects which were funded the first year are deleted from the list, establishing the list for the second year.

We mailed a notice of the issuance of our Order instituting Investigation (OII) for this year's proceeding to each city and county, as well as other interested parties. The OII was served upon each city and county that responded to the notice, and upon every affected railroad corporation, the California Department of Transportation (Caltrans), the CTC, the League of California Cities, and the County Supervisors Association. Those agencies interested in submitting a nomination were furnished nomination forms and instructions. In addition, we provided notice of this investigation on the Commission's Daily Calendar.

The Office required nominations to be submitted to us on or before September 1, 1995. This deadline was later extended to October 2, 1995, by Ruling of the Administrative Law Judge (ALJ). Each nominating body was required to furnish a copy of its

nomination(s) to Caltrans and the railroad involved in the proposed project. Each nominating body was informed that it must send a representative to participate in evidentiary hearings by presenting evidence and answering questions about its nomination. Proponents were also informed that additional information could be presented in verified form at or after the hearing, but no later than April 26, 1996.

In response to our order, we received 172 nominations. The Commission's Safety and Enforcement Division evaluated the 172 nominations and inspected proposed project sites. It allocated points to each project based on formulae adopted in D.90-061058. Projects were then ranked according to total points. At the evidentiary hearing, S&E distributed its preliminary recommended priority list (Exhibit 16). The list was modified on the basis of new and revised information furnished by the nominating agencies before the submission date.

Evidentiary hearings were held in Los Angeles on April 16 through 18, 1996, and in San Francisco on April 22 through 24, 1996. The proceeding was submitted on April 26, 1996.

Disputed Issues Several unresolved issues raised during the hearing need to be decided in order to finalize the priority list. We address those issues here.

a. Use of Projections of Future Train Frequencies
Proponents of a number of projects urged the Commission to utilize projected figures for future freight and passenger train frequencies in the priority formula. These projections, generally varied significantly from current reported figures, and could affect the priority rankings in certain instances. Most often the differences between the actual and projected figures are due to anticipated changes in train operations after the pending merger of the Union Pacific and Southern Pacific Railroads, which is now under review by the federal Surface Transportation Board (STB). For

to plans by recently created commuter rail authorities or Amtrak to increase train frequencies in the near future. Staff objects to the use of such projections as being speculative. We agree, and the final priority list has accordingly been prepared with the use of actual figures. We have confronted this issue in several earlier grade crossing priority list proceedings. In D.90-06-058 (mimeoed p. 40) we stated, "It will be our policy in the future to exclude data which is not based upon reliable existing facts or facts which will occur imminently." Accord D.94-06-026 (mimeoed p. 5) and The decision whether such reliable facts have been presented by a proponent is committed to our discretion as the finder of fact, and depends upon the circumstances which pertain to a specific project. With regard to any project where the projected train operations are drawn from documents filed with the STB in the merger proceeding, we find that the necessary element of imminent certainty is missing, because the merger itself has not been approved, and because the merged railroad's train operations could differ greatly from its plans if the STB imposes competitive conditions on the merged carrier. The outcome of the STB proceeding will not be known until after the inception of the 1996-97 fiscal year, and it would be inappropriate for us to adopt figures that may never, in fact, become reality. We have similar concerns with respect to the certainty of projected train frequencies for Amtrak and commuter rail agencies. We understand that these entities are engaged in future service planning, and that in all likelihood additional passenger frequencies will become a reality at some point. However, the timing of these service improvements is always dependent upon the vagaries of funding processes, the availability of equipment, and the completion of facilities, all of which are beyond the control of the project proponents. In each instance presented to us in this proceeding, the anticipated service increases lacked the imminence we require in order to use the figures in the formula.

By contrast, we were presented with updated figures for certain projects, where passenger train frequencies increased with schedule changes at about the same time as the hearings, and we have adopted those increases for use in establishing the final priority list.

b. Projection of Increased Vehicular Traffic to be Approved for Calloway Drive Underpass (Kern County)

A similar issue is presented by a grade separation project under construction by Kern County. This project is part of the development of Calloway Drive as a major north-south thoroughfare to relieve existing traffic problems in a rapidly developing urban area. As summarized by the project proponent:

The issue here is whether the staff should utilize the low 1994 traffic count at the Calloway Drive grade crossing, or whether it should accept an estimate based on projections from a reliable computer model to determine the true traffic demand. This problem arises because Calloway Drive currently is not a continuous thoroughfare, the missing link being the bridge crossing of the Kern River. This six lane bridge is now nearing completion, and is expected to be opened to traffic in July 1996. The bridge would have been opened in July 1995 and field traffic counts would have been obtained shortly thereafter had not two unexpected factors intervened:

o A construction industry strike of several months during which all work on the bridge was suspended;

o The contract specifications allowed the contractor to suspend work without incurring a time penalty for periods when water was flowing in the Kern River. Because of unexpected heavy runoff, water flowed in the Kern River for the first time in several years, and work was temporarily suspended for this reason.

Therefore, the volume of vehicular traffic actually crossing the railroad did not reflect the realistic traffic demand, nor was it consistent with the traffic that would actually have been counted at the crossing were Calloway

Drive continuous and the six lane bridge crossing had been completed." (Exh. 16, p. 1.) We find that the traffic projections, which are based upon a regional computer model maintained by the Kern Council of Governments for the Metropolitan Bakersfield area, should be accepted by the Commission for use in the formula.

As contrasted with future plans for operational changes on the railroads, the projected traffic figures are carefully computed, and were utilized to justify a substantial public investment. That the investment (and the resultant changes in the vehicular traffic patterns) is a fact is beyond question; the bridge which will turn Calloway Drive into a busy regional thoroughfare is under construction and nearing completion. It would be unreasonable for us to ignore this fact and deny the imminent reality that the traffic volume on Calloway is on the verge of a significant increase.

c. Inclusion of Pedestrian Crossings on the Priority List

The North San Diego Transit Development Board (NCTD), a commuter rail agency with a growing number of new commuter trains, asks that we include a series of pedestrian-only grade separations on the priority list. NCTD cites the circumstance that, as the result of the success of the vehicular grade crossing separation program, the majority of fatalities statewide now involve pedestrians trespassing randomly along the railroad right of way. NCTD therefore characterizes the problem as part of an overall crossing safety issue, and urges us to include its pedestrian crossings at critically needed locations in our priority list.

We applaud NCTD's concerns about pedestrian safety, and we do not doubt that the grade separated crossings are critically needed. However, we are constrained in our ability to place such projects on the list by the literal terms of S&H Code § 2450(a), which defines a "grade separation" as a structure which separates a

vehicular roadway from the railroad tracks. We are therefore and powerless to include pedestrian-only crossings in the priority list. In its post-hearing exhibits (Exhibit 12) NCTD proposes, as the solution to this problem, that the statutory definition of "grade separation" be changed to include a "non-motorized pedestrian only path" across the tracks. We do not know at this juncture whether amendment of this statute would be an appropriate answer to the question, but we note that such a statutory amendment is the exclusive domain of the State Legislature, and that we are unable to grant NCTD's request.

d. Computation of the Distance to the Nearest Alternative Grade Crossing - South Street at Southern Pacific, City of Redding

One of the special conditions which is factored into the priority of a project under the formula is the distance from the project crossing to the nearest alternative grade crossing. An issue arose in the context of the South Street Grade Separation Project in Redding as to whether this should be interpreted to reflect the nearest physical crossing, or the nearest practical alternative crossing. We find that on the facts of this proposal, the latter interpretation should apply.

The South Street project will eliminate a dangerous at-grade crossing of the Southern Pacific Railroad, which bisects the City of Redding. Testimony at the hearing indicated that operations on the railroad line, which is the main line between Portland and Roseville, involve movement of long freight trains at reduced speeds through downtown Redding. The only nearby crossing is an adjacent at-grade crossing at neighboring Placer Street, and a freight train moving through Redding blocks Placer Street and South Street almost simultaneously. If a train is blocking these crossings, in practical effect a motor vehicle must detour to a grade-separated crossing at Cypress Street, one half mile away.

This is an especially serious problem for ambulances trying to reach Mercy Medical Center, which is immediately west of the railroad crossings, from the opposite side of the tracks. The reason for the priority list, and for the fund, is to improve or eliminate the most troublesome grade crossings in priority order. The urgency of a particular project is affected by location: if there is another usable crossing nearby, then blockage of the project crossing is of less concern, and the importance of improving the crossing is diminished. This will affect the "special circumstances" aspect of the formula.

If, however, the nearest crossing is unusable because its proximity makes it, for all intents, the same crossing as the project crossing, then it should be treated as such, that is the situation presented here. The issue was raised by an ambulance operator who has to make frequent calls to the Mercy Medical Center, and the consequences of taking a long detour can be serious. For this project, considering the configuration of the surrounding streets, common sense dictates that the nearest alternative crossing is that which can practically be used. Therefore, we will use the Cypress Street crossing as the nearest alternative crossing for purposes of prioritizing the South Street project.

Final Priority List

S&E recommends that the Grade Separation Priority List for 1996-97 attached in Appendix B be approved. We approve this list in this interim opinion.

Comments to Proposed Decision

Comments to the ALJ's proposed decision were submitted by S&E pursuant to Section 311(d) of the PU Code. The comments furnished revisions to S&E's Supplemental Report to Exhibit 1 - Separation of Railroad/Highways Grades Priority Study, which were necessary to correct certain clerical errors. New priority numbers were generated with the corrected figures, and a new Final Priority

List (Appendix B) has been substituted for the one originally appended to the proposed decision. A number of nonsubstantive editorial changes were made at the request of the ALJ in the interest of clarity.

Findings of Fact

1. Appendix B contains a list of projects timely nominated; eligible; and in accordance with the criteria previously established by this Commission for projects funded in this proceeding.

2. Notice of the availability of the OII, as furnished in this proceeding, coupled with publication in the Commission's Daily Calendar, was adequate to afford actual notice of the nomination procedure to all interested persons.

3. No party challenged the formulas used to calculate points for ranking projects nominated in this proceeding.

4. Projections of train operations after the proposed merger of the Union Pacific and the Southern Pacific Railroads are not reliable existing facts, or facts which will occur imminently, for purposes of establishing the priority list in this proceeding.

5. Projections of future passenger train frequencies for Amtrak and for rail commuter agencies are not reliable existing facts, or facts which will occur imminently, for purposes of establishing for priority list in this proceeding.

6. The traffic projections of the Kern Council of Governments for the Metropolitan Bakersfield area with respect to Calloway Drive are reliable existing facts, or facts that will occur imminently, for purposes of establishing the priority list formula.

7. For purposes of determining the nearest alternative crossing to the South Street crossing of the Southern Pacific Railroad in Redding, Placer Street should effectively be considered to be the same crossing as South Street.

Conclusions of Law

1. Trains likely to be operable in the future during a time period outside this investigation should be excluded from the train volume (T) factor.

2. Under S&H Code S 2450(a), pedestrian-only crossings cannot be included in the grade crossing priority list.

3. The priority list attached as Appendix B includes the priority of projects eligible for Grade Separation Program funds and should be established as the 1996-97 Grade Separation Priority List.

4. This order should be effective on the date signed so that our statutory deadline of issuing an order by July 1 may be met.

5. This proceeding should remain open for the purpose of establishing the 1997-98 priority list.

INTERIM ORDER

IT IS ORDERED that:

1. Pursuant to California Streets and Highways Code S. 2452, the Grade Separation Priority List attached as Appendix B is established for fiscal year 1996-97 as the list, in order of priority, of projects which the Commission determines to be most urgently in need of separation or alteration.

2. The Executive Director shall furnish a certified copy of this decision to the California Department of Transportation and the California Transportation Commission prior to July 12, 1996.

3. This investigation remains open for the purpose of establishing the priority list for 1997-98.

This order is effective today.

Dated June 19, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

APPENDIX A

List of Appearances

Applicants: Mario A. Montes, for City of San Buenaventura; Ronald Morris and Mark Yamarone, for Buena Vista Grade Separation; Ken Putnam, for City Monrovia; Ronald D. Ondrozeck, for Los Angeles County; Richard Perkins, for City of Torrance; Erik Zandvliet, for City of Downey; Allen W. Campbell, for City of Oroville; Duane Copley, for City of Davis; Robert J. Lanzone, Attorney at Law, for the Cities of San Carlos and Belmont; Margaret (Peg) Divine, for City of Belmont; Parviz Mokhtari, for City of San Carlos; Don Erickson, Mayor, and Janet Koster, for City of Dixon; David Gravenkamp, for Siskiyou County; Daniel Greeley, for City of Camarillo; David L. Ringland, for City of Hayward; DeLeuw, Cather & Co., by Robert M. Barton, for Bakersfield, Modesto, Fremont, Redding, Counties of Kern and Siskiyou; A. Charles E. Johnson, for City of Paso Robles; Jim Kerr, for the Replacement of Infrastructure at the Bradley Bridge; Ronald F. Ruettgers, for the Greater Bakersfield Separation of Grade District for the City of Bakersfield and County of Kern; Erwin Ohanesian, for Fresno County, Public Works & Development Services; Raymond G. Salazar, for City of Fresno; and Santina & Thompson, by Joe Sbranti, for City of Stockton and San Joaquin County.

Interested Parties: O. J. Solander, Attorney at Law, and Frank Hiyama, for Caltrans; and Louis Cluster, for Southern California Regional Rail Authority.

Safety and Enforcement Division: Thomas E. Enderle.

(END OF APPENDIX A)

AGENCY	STREET	FUC NUMBER	RR	SFX	PROJECT TYPE	COST \$000	PRIORITY NUMBER	PRIORITY RANK
MODESTO	KANSAS-NEEDHAM ST.	B-112.3	OTHERS	2,1	C	12500	804.1	1
FRESNO (CITY)	SHAW MARKS	2-1004.58	OTHER	2,1	C	13521	1378.5	2
BAKERSFIELD	BEAL-TRUXTRON-BAKER	2-835.6		2	C	10950	290.6	3
CALTRANS	SR 58	2-780.3		1	U	3959	142.5	4
BELMONT / SAN CARLO	HARBOR BLVD / HOLY ST	E-22.2 / E-23.2		1	U	30479	134.5	5
ONTARIO	GROVE AVE	B-521.408		1	EU	1976	119.7	6
LOS ANGELES CO.	NOGALES	3-22.4		3	U	10236	109.7	7
LOS ANGELES CO.	FAIRWAY	3-23.4		3	U	16104	93.2	8
COMPTON	ALONDRA BLVD.	BG-494.3		1	OTHER	5137	88.1	9
FREMONT	WASHINGTON PASEO	DA-30.5	OTHERS	1,3	C	14700	81.3	10
STOCKTON	MARCH LANE	4G-97.1		3	U	6092	60.9	11
BAKERSFIELD	Q ST.	B-311.8		1	U	6970	80.1	12
KERN	7TH STANDARD RD.	B-308.9		1	O	4700	67.8	13
IRVINE	SAND CANYON AVE.	101OR-182.9		4	U	7964	65.9	14
SAN BUENAVENTURA	JOHNSON DR.	E-404.2		1	U	5401	63.4	15
BAKERSFIELD	P ST.	2-886.7		2	U	6080	61.1	16
DAVIS	RICHARDS	A75.458		1	EU	7451	60.4	17
BAKERSFIELD	CALLOWAY DR.	2-892.6		2	O	5160	58.6	18
SAN JOAQUIN	WEST LANE	D-92.8		1	U	6701	56.4	19
SOLANA BEACH	LOMAS SANTA FE DRIVE	106-241.8		6	O	16009	52.1	20
OROVILLE	MYERS ST	4-204.98		3	EU	1210	50.0	21
COMPTON	COMPTON BLVD.	BG-499.8		1	OTHER	7535	49.6	22
KERN	MORNING DR.	B-317.5		1	O	7335	48.5	23
EURBANK	BUENA VISTA ST.	101VY-12.7		4	U	21102	48.4	24
CALTRANS	SR 238	4-30-48		3	EU	3736	46.9	25
LOS ANGELES CO.	NORWALK BLVD	BBJ497.28		2,3	C	21303	46.0	26
REDDING	SOUTH ST.	C-50.0		1	U	4412	45.6	27
SDMTDB	H ST.	36-7.9		2,5	O	7977	44.1	28
ONTARIO	HAVEN AVE.	3-42.3		3	U	3909	44.0	29
SISKIYOU	OLD STAGE RD	C-339.58		1	EU	590	42.8	30
CAMARILLO	ADOLFO RD.	E-417.9		1	O	7231	42.7	31
FRESNO-COUNTY	CHESTNUT AVE.	B-210.3		1	O	5123	41.5	32
SDMTDB	28TH ST.	36-2.8		2,5	O	9617	41.5	33
CAMARILLO	LAS POSAS / UPLAND	E-418.92		1	O	6381	41.5	34
SAN BERNARDINO	NATIONAL TRAILS HWY	2-30.68		2	EO	7833	40.7	35
OROVILLE	LINCOLN ST.	4-204.78		3	EU	1210	38.5	36
CALTRANS	SR 118	E-423.5		1	O	5993	38.3	37
EL PASO ROBLES	PINE ST.	E-216.59		1	EU	1360	37.5	38
KERN	OLIVE DR.	B-308.9		1	O	6795	34.1	39
CALTRANS	SR 238	4G-1.48		1	EU	2819	32.8	40
CALTRANS	SR 12	4-105.7		3	O	5610	31.3	41
TORRANCE	DEL ANO	2H-20.1		2	O	17550	30.7	42
LOS ANGELES CO.	SLAUSON AVE	BBH-487.42	OTHE	2,1	C	14615	29.6	43
HAYWARD	TENNYSON RD.	D-23.0		1	U	7836	29.5	44
SDMTDB	SEVERIN DR.	36D-14.7		2,5	O	8048	28.7	45
CALTRANS	SR 140	2-1054.0A		2	EO	5070	28.0	46
SDMTDB	32ND	36-3.4		2,5	O	10604	27.0	47
ONTARIO	ARCHIBALD AVE.	B-523.4		1	U	12398	26.1	48
CALTRANS	SR 166	E-276.8		1	O	4448	25.6	49
DOWNEY	BROOKSHIRE AVE.	BK-495.4		1	U	8105	24.3	50
LOS ANGELES CO.	IMPERIAL HWY	BBH-491.6		1	O	23263	22.6	51
LOS ANGELES CO.	FIRESTONE	3A-7.8		3	U	24700	22.1	52
DIXON	STATE ROUTE 113	A-67.6		1	U	7924	21.4	53
SDMTDB	EUCLID AVE.	36D-5.7		2,5	O	8404	21.3	54
SDMTDB	UNIVERSITY AVE.	36D-12.5		2,5	O	9217	20.5	55
LOS ANGELES CO.	BANDINI BL	3A-3.42.147.1C		2,3	O	31389	18.7	56
LOS ANGELES CO.	EL SEGUNDO BL	BBH-492.6		1	O	21476	17.9	57
MONROVIA	MYRTLE AVE.	101PA-122.4		2	U	6200	17.7	58
SDMTDB	E ST.	36-7.4		2,5	O	8096	16.2	59
CALTRANS	SR 68 (JOHN ST.)	E-119.29		1	U	5940	15.6	60
SDMTDB	ALLISON AVE.	36D-12.4		5	O	9217	15.3	61
SDMTDB	LA MESA BLVD.	36D-12.3		2,5	O	9217	14.3	62
COMPTON	WEST ALAMEDA	PROPOSED		1	U	20155	14.1	63
SDMTDB	LEMON AVE.	36D-12.2		2,5	O	9217	12.4	64
LOS ANGELES CO.	FLORES ST.	3A-9.7		3	U	7934	5.4	65
NSDCTB	PEDESTRIAN XINGS	PROPOSED		6			0.0	66

Appendix B
Page 3

UPDATED 6/4/96 TABLE 3, BY AGENCY, FOR SEPARATION MODIFICATIONS.

TABLE 3

AGENCY	STREET	PUC/NO	LRT	Veh/Yr	Trns/Yr	Cost	Cost Factor	Width Clearance	Height Clearance	Speed Reduction	Lead Limit	Accs At Near	Prob. Failure	Acc. Potential	Delay Effects	Width Clearance points	Height Clearance points	Speed Reduction points	Load Limit points	Accs At Near points	Prob. Failure points	Acc. Potential points	Delay Effects points	*****			
																								TOTAL SCF POINTS	PRIORITY Number	PRIORITY RANK	
CALTRANS	BRADLEY OVERPASS	2-1054	CA	0	11500	36	5070	9.1	42'2"	20'	0	0	2	L	H	M	0	0	0	0	0	3	10	0	19	288	48
CALTRANS	AT 238 HUES	4-30	AB	0	27000	14	1736	9.1	46'6"	15'	0	0	0	M	M	L	0	0	0	0	0	6	6	3	22	488	25
CALTRANS	AT 238 ELENVALE	4G-1	AB	0	29000	14	2819	9.1	47'4"	14'	0	0	10	L	L	L	0	0	0	0	0	3	3	3	17	328	43
CAMS	RICHARDS	A75	45B	0	24000	38	7451	9.1	24'2"	13'5"	35 TO 0	0	100	L	M	H	0	0	0	0	0	3	6	10	47	604	17
EL PASO	POBLES PINE ST.	E-216	53	0	1214	5	1360	9.1	15'11"	10'8"	5V.60T	0	20	H	M	L	2	10	5	0	1	10	6	3	37	375	39
ONTARIO	GROVE AVE	B-521	43	0	15000	57	1978	9.1	28'2"	15'	10	0	23	L	L	M	0	0	2	0	2	3	3	6	22	1197	8
GRONVILLE	LINCOLN ST.	4-204	78	0	5500	29	1210	9.1	35'2"	13'4"	0 350 TONS	0	0	L	M	L	4	8	0	0	0	3	6	3	24	365	36
GRONVILLE	MYERS ST	4-204	98	0	8100	29	1210	9.1	19'3/2"	11'0"	0 350 TONS	0	0	L	M	L	4	8	1	0	1	3	6	3	26	508	21
SAN BERNARDINO	NATIONAL TRAILS	12-30	68	0	5238	64	7833	9.1	12'2"	13'11"	9%	0	39	M	H	L	2	8	2	0	3	6	10	3	34	437	35
SSC/YOU	OLD STAGE RD	C333	58	0	1818	26	590	9.1	21'10"	16'4"	15	0	28	M	H	L	10	0	2	0	3	6	10	3	34	428	30

I.95-07-003 *

(END OF APPENDIX B)