

# CHAPTER 28 – Resolutions of Necessity

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## CHAPTER 28 – Resolutions of Necessity

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### ARTICLE 1     **General**

Right-of-way needed for the State Highway System (SHS) is generally acquired through purchase at fair market value. Where the State cannot reach an agreement with the property owner on the value or amount of land to be acquired, Caltrans is allowed to request a condemnation action from the California Transportation Commission (CTC). This allows for the timely delivery of Caltrans' programs by securing the property rights needed to proceed with the transportation project.

Each year a number of property owners request an appearance before the CTC to challenge the resolution of necessity (RON) that will authorize acquisition of their property through eminent domain.

A resolution of necessity is a formal document adopted by the CTC that authorizes Caltrans to acquire property by eminent domain.

### ARTICLE 2     **Statutes**

When the State is required to condemn property, condemnations must be authorized by a resolution of the CTC in accordance with the *California Streets and Highways Code*, Section 102 and pursuant to *California Code of Civil Procedure*, Section 1245.230.

#### **Right to Appear Before the California Transportation Commission**

Under Eminent Domain Law, a property owner whose property is to be considered for a resolution of necessity has the right to appear before the CTC to contest the resolution on any of the following grounds (*California Code of Civil Procedure*, Sections 1245.030, 1245.230 and 1245.235):

- Does public interest and necessity require the proposed project?
- Is the proposed project planned or located in the manner that will be most compatible with the greatest public good and the least private injury?

- Is the property sought to be condemned necessary for the proposed project?

In addition, an offer to purchase in accordance with *California Government Code*, Section 7267.2 must have been made to the owner of record.

## **ARTICLE 3      Policy**

### **Requests for Appearance Need Study**

Each year a number of property owners appear before the CTC to challenge the resolution of necessity that will authorize acquisition of their property by eminent domain. If the property owners address issues or alternatives that Caltrans did not adequately consider during the project development process or during the preparation preceding the resolution of necessity, doubt might be cast on the need for the property acquisition as proposed and important projects may be unnecessarily delayed. Consequently, when the resolution of necessity involves the appearance of the property owner before the CTC, Caltrans' management must thoroughly weigh and explore the issues so that Caltrans' positions are fully justified.

### **Project Reviews**

To accomplish a thorough evaluation of the issues and to look for opportunities for resolution, Caltrans with concurrence from the CTC, has established a two-tiered review of the project. The first evaluation, to be held by the District Director, is termed the district Condemnation Evaluation Meeting (formerly termed "First Level") and if necessary, a second evaluation, termed the Condemnation Panel Review Meeting (formerly termed "Second Level") is to be held by the Condemnation Panel appointed by the Chief Engineer.

The district Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting shall be conducted separately to afford the district every opportunity to discuss the project and to negotiate a settlement with the property owner. Combining the district Condemnation Evaluation Meeting and Condemnation Panel Review Meeting shall be considered only under unusual circumstances.

The district Condemnation Evaluation Meeting must be held far enough in advance of the Condemnation Panel Review Meeting to allow adequate time for the district to consider and evaluate recommendations discussed at the district meeting. Results of

all evaluations are to be included in the appearance information sheet (AIS) and the district's presentation during the Condemnation Panel Review Meeting.

The procedures to carry out this process are discussed in detail in Article 4. The outcome of this process is either an amicable resolution between Caltrans and the property owner, or a well-based recommendation to the Chief Engineer by the Condemnation Panel to proceed to the CTC to request an action on the resolution of necessity.

## **ARTICLE 4      Procedures**

In order to ensure timely authorization for these resolutions, the following procedures should be followed.

### **District Director Review**

When a property owner challenges a proposed resolution of necessity and requests an appearance before the CTC, the District Director shall personally review the facts, issues, and recommended Caltrans position. The review must include, but is not limited to, the following:

- The allegations raised and alternatives suggested by the property owner.
- Reasonable alternatives that might reduce or eliminate the parcel take.
- The recommended Caltrans position in the event that the CTC denies the resolution of necessity and the parcel cannot be condemned.

### **District Condemnation Evaluation Meeting with Property Owner**

The purpose of the district Condemnation Evaluation Meeting is to identify and resolve all the property owners' issues, if possible, at the district level. To do so requires thorough preparation and open consideration of the property owners' concerns. Mandatory attendance and participation of design and right-of-way managers, as well as the District Director are necessary components for success. Clear, concise and complete responses to all of the property owners' concerns must be communicated at the time of the Condemnation Evaluation Meeting or promptly thereafter, in writing to the property owner if additional review is necessary.

The District Director shall ensure that appropriate personnel work with the owner throughout the acquisition process in an effort to resolve the owner's concerns. The

district's right-of-way and design units must work as a team, in a cooperative manner during this process. When a property owner challenges adoption of a resolution, the District Director is responsible for conducting a Condemnation Evaluation Meeting with the property owner to identify all issues and alternatives, and to determine if it is feasible to modify the design or schedule to effect resolution with the owner.

This meeting is to be conducted by the District Director with the assistance of the Deputy District Directors from design and right-of-way. The meeting should be limited to the functional managers, the Headquarters Project Delivery Coordinator, and the property owner. The Deputy District Directors should be familiar enough with the project details to provide a presentation to the meeting attendees. Other district staff should be available by phone or on standby to provide supplemental project details during the meeting, if necessary. Supplemental information on suggested meeting formats as well as other resources can be found on the Headquarters Division of Design intranet.

### **Appearance Information Sheet and Fact Sheet**

If the property owner(s) does not withdraw their request for appearance upon conclusion of the Condemnation Evaluation Meeting and/or upon receipt of subsequent study results, and the district's recommendation is to proceed with the resolution of necessity, the district should notify the Headquarters Division of Design Chief, Attention: Office of CTC Highway Appearances, Highway Encroachments and Resource Conservation, Mail Station 28.

This notification will consist of a fact sheet and an appearance information sheet recommended for approval by the Deputy District Directors from design and right-of-way and approved by the District Director. A copy of the notification should also be sent to Headquarters Division of Right of Way and Land Surveys. The date selected for presentation to the CTC will be governed by the completeness of the district's initial notification and information submittal, whether or not the matter is to be evaluated by a Condemnation Panel, and the time required for the Condemnation Panel to perform its function in relation to the monthly cutoff dates for submitting agenda items (with supporting documentation) to the CTC.

[Appendix JJ](#) – Resolutions of Necessity contains templates of the fact sheet and appearance information sheet that is prepared for each appearance as well an outline of supplemental data and mapping. The fact sheet and the information included in the appearance information sheet are used to prepare the Panel Report, which is included

in the CTC briefing book should the resolution of necessity advance to the CTC for action. The actual presentation to the CTC will include a visual and verbal explanation based on this material. It is essential that the appearance information sheet be complete enough to allow the division chiefs of both Headquarters Division of Right of Way and Land Surveys and Headquarters Division of Design to decide if the request for appearance should be forwarded to a Condemnation Panel.

### **Action Options by Chief, Division of Design**

The Chief of Headquarters Division of Design, after consulting with the Chief of Headquarters Division of Right of Way and Land Surveys, may take the following actions:

- Refer request to the Condemnation Panel to develop a recommended course of action for the Chief Engineer, or
- Refer project back to the district for additional design studies or design modifications.

### **Condemnation Panel Review**

If the request for appearance is referred to a Condemnation Panel, the panel members will be selected from the list approved by the Chief Engineer. The Condemnation Panel shall consist of one or more Caltrans managers having career experiences in law, engineering, and right-of-way. The right-of-way panel member will act as panel chairperson and will designate a right-of-way staff person to serve as secretary to the Condemnation Panel.

The purpose of the Condemnation Panel Review Meeting is for the Condemnation Panel to conduct an independent review of the project, its impacts to the subject parcel, and to evaluate all issues brought forward.

### **Condemnation Panel Review Meeting Arrangements**

The secretary for the Condemnation Panel will:

- Notify the panel members of their assignment and provide them with (1) the owner's written request to appear before the CTC, and (2) the district's appearance information sheet.
- Arrange through district right-of-way for a Condemnation Panel Review Meeting place and time that is convenient for the owner and all attendees. The facility should be suitable for a formal meeting. District right-of-way staff will be expected to make necessary arrangements by phone and to

- confirm these, in writing, to the property owner and the panel members. An expenditure authorization should be provided by the district to capture charges to the project.
- Prior to the Condemnation Panel’s review meeting with the owner, coordinate with district staff to arrange for a Condemnation Panel field review of the proposed acquisition. Representatives from district design and/or right-of-way may be requested to attend the field review to provide project details.

### **Stenographic Reporter**

The Condemnation Panel Review Meeting is a relatively formal process that sometimes involves the preparation of a transcript by a stenographic reporter. If it is felt by the Condemnation Panel that a written transcript will be needed for a particular meeting, the Headquarters Division of Legal member of the Condemnation Panel will arrange for a stenographic reporter to attend and to prepare the transcript.

### **Meeting Participants**

The owner and/or designated representative, the panel members, the panel secretary, the District Director, and the Deputy District Directors from design and right-of-way, will attend the Condemnation Panel Review Meeting. For locally funded projects or consultant-designed projects, the district may invite additional representatives to the Condemnation Panel Review Meeting to provide detailed information.

Caltrans representation at the meeting should be limited to only the managers listed, with potential expert presenters and other staff available on standby.

### **Inform Owner Prior to Meeting**

Prior to the Condemnation Panel Review Meeting, the district should inform the owner of the specific details of the meeting procedures so the owner can arrange for engineering or legal assistance if desired.

### **Meeting Procedures**

The panel secretary will begin the Condemnation Panel Review Meeting by explaining the purpose of the meeting and the procedures to be followed. District managers will describe the project using suitable maps and plan exhibits. Owners will be asked to present their concerns about the project or the proposed acquisition as presented, along with any suggestions they may have to reduce or mitigate project impacts.

## **Condemnation Panel Discussion**

After all information has been presented and the meeting concluded, the owner and the stenographic reporter, if present, will be excused. The Condemnation Panel will then discuss the available information in an effort to develop a recommendation for the Chief Engineer. In some instances, the Condemnation Panel may need additional information from the district or other sources. They may also refer suggestions by the owner to the district for further evaluation. The Condemnation Panel may meet again upon completion of this evaluation to reach a decision.

## **Panel Report with Recommendation**

The panel secretary will prepare a Panel Report and recommendation in coordination with the panel members. The report will include: a summary description of the project and the State's acquisition from the owner's property; a listing of the issues and recommendations raised by the owner; the Condemnation Panel's consideration of the issues and recommendations of the owner; the panel's findings; and the panel's recommendation. The report should be furnished to the panel members for review and comment prior to presenting it to the Chief Engineer for consideration.

The Chief Engineer will review the Panel Report to determine if Caltrans is ready to request the resolution of necessity from the CTC Dry Run.

## **Combined Meetings**

The Chief Engineer has delegated the District Director the authority to combine the district Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting for those projects where the property owner's issues are not related to the project's design. When this authority is exercised, the District Director shall provide in writing to the Chief Engineer, Attn: Chief Headquarters Division of Design, a notice of the decision to combine the meetings and verification that the property owners' issues are not design related.

The district will be responsible for notifying the panel secretary to coordinate the panel's participation at the combined meeting. The district will have the additional responsibility of preparing the Panel Report when a combined meeting is conducted. Coordination with the panel secretary will be necessary to complete this task.

## **Meeting California Transportation Commission Scheduling**

If the Chief Engineer determines that Caltrans is ready to request CTC action on the resolution of necessity, the fact sheet, maps, and the Condemnation Panel's report will be furnished to the Headquarters Division of Transportation Programming, Office of CTC Liaison for inclusion in the CTC briefing book by Headquarters Division of Right of Way and Land Surveys prior to the due date for CTC book items.

## **Owner Notification for California Transportation Commission Meeting Appearance**

The panel secretary will send a letter to the owner, notifying them of the date, time, and location to appear before the CTC. Copies of the Panel Report, Fact Sheet, maps and the Condemnation Panel Review Meeting transcript, if prepared, will be furnished to the owner with the notification. Copies of this transmittal will also be furnished to the Deputy District Directors of right-of-way and design.

## **District Participation**

District staff is responsible for providing the necessary information to fully engage their managers and to prepare them for effective meetings with the property owners. The district will develop the presentation materials for the CTC, with assistance from the Condemnation Panel.

## **District and Deputy District Directors' Involvement**

The Deputy District Directors for design and right-of-way are to be personally involved in the preparation and review of the appearance information sheet and any additional studies or required backup material before being sent to the Condemnation Panel. The information must be up-to-date, complete and factual.

The District Director will present Caltrans' draft presentation to the Chief Engineer at the Headquarters resolution of necessity Dry Run.

The Chief Engineer will determine at the conclusion of the district's resolution of necessity Dry Run presentation if the resolution of necessity is ready to move forward to the CTC for consideration. The district must keep in mind that Caltrans typically has only one opportunity to present Caltrans' position to the CTC.

Should the District Director be given approval to proceed, the District Director will conduct Caltrans' presentation before the CTC. If the District Director is unable to attend the CTC meeting, a Deputy District Director will conduct the presentation before the CTC.

### **Importance of This Process**

Although this process usually occurs well after most required project approvals have been obtained, its importance cannot be minimized. Projects have been delayed or modified as a result of property owner challenges. Careful and complete documentation of the project need and design, throughout the entire project development process, is essential.