

LPO GUIDELINES

RESOLUTION OF NECESSITY

A Resolution of Necessity must be adopted by the governing board of a public entity prior to initiating eminent domain proceedings to condemn fee interest, easements and other rights in real property (Code of Civil Procedure [§1245.220](#)). Two key components of the Resolution of Necessity that are subject to LPO review are a legal description of the parcel to be condemned and mapping to show 1) the relation of the parcel to the project for which it is to be taken and 2) a detailed plot of the configuration of the described parcel.

Legal Description

The descriptions written for condemnation proceedings are generally written in the same manner as a descriptions written for grant deeds or other types of conveyance documents used to acquire parcels for right of way. The following notes illustrate some of the similarities and differences to be used and/or applied in condemnation descriptions. Also see Section 06.07.02.01 of [Chapter 6](#) of the *Caltrans® Right of Way Manual* for more details.

Total Acquisition

The description written for a total acquisition of a parcel will generally be the same as the record description for the parcel contained in the preliminary title reports.

Partial Acquisition

The description written for partial acquisition of a parcel is written in the same manner as if the parcel was being acquired by a grant deed.

Acquisition with Excess Land

In acquisitions involving excess lands, that portion of the land deemed excess must be described and mapped separately from the portion lying within the designed right of way. Each parcel is treated as a separate interest with its own sub-parcel number.

Easements

The description written for an easement (e.g. drainage, slope, footing) is written in the same manner as if the easement was being acquired as part of a grant deed or easement deed. An easement is condemned along with fee title if obtained from the same ownership. An easement is treated as a separate interest with its own sub-parcel number.

Area

A statement of area is not to be added to a condemnation description.

Vesting Interest

When describing the vesting interest, "OWNER" Should be used in place of "GRANTOR" and "STATE" should be used in place of "GRANTEE."

Purpose

When writing condemnation descriptions, include the *purpose* for which the interest is to be condemned. This procedure of describing interests to be acquired within the body of the parcel description allows for the acquisition of various rights in one resolution without the necessity of special recitals in the preamble of the resolution. E.g. For a Total Acquisition use the following:

"For freeway purposes, that real property, described as follows:"

See Section 6.07.02.02 in [Chapter 6](#) of the *Caltrans*® *Right of Way Manual* for more examples.

Underlying Fee

To avoid leaving isolated parcels of fee ownership underlying the highway right of way, it is Caltrans policy to acquire underlying fee interests along with parcels which abut public ways within the proposed right of way. The underlying fee will generally pass with an abutting ownership and thus it is not necessary to describe the adjoining underlying fee. However, if the circumstances require the underlying fee to be described, it shall be described as a separate interest with its own sub-parcel number.

Clauses

It may be necessary to modify the clauses used in standard acquisition documents to meet specific requirements for condemnation. See Section 6.08.00.00 in [Chapter 6](#) of the *Caltrans*® *Right of Way Manual* for more information.

Mapping

All mapping products created for the Resolution of Necessity are prepared with the same quality of care and attention to detail as the legal descriptions the plats are to accompany. Once the Resolution of Necessity has been adopted by the appropriate governing board, the plats will also be used to satisfy the requirements for the various pleadings before the court (Code of Civil Procedure [§1250.310\(e\)](#)).

The mapping created for the condemnation process shall consist of at least two (2) maps:

- 1) An Index Map (Exhibit A) which will show the parcel in relation to the overall project.
- 2) A Detail Map (Exhibit B) which will show the described parcel in detail.

See [Section 4-8](#) RESOLUTION OF NECESSITY MAP of the *Caltrans*® *Plans Preparation Manual* for the specific requirements for each map.