

# Memorandum

# Tab 2

**To:** CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

**CTC Meeting:** October 8, 2014

**Reference No.:** 2.4a.(1)  
Action Item

**From:** NORMA ORTEGA  
Chief Financial Officer

**Prepared by:** Brent L. Green, Chief  
Division of Right of Way and  
Land Surveys

**Subject:** RESOLUTION OF NECESSITY – APPEARANCE

## RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-21274 summarized on the following page. This Resolution is for establishing electrical service on the State Route 99 in District 6 in the city of Fresno, county of Fresno.

## ISSUE:

Prior to initiating Eminent Domain proceedings to acquire needed Right of Way for a programmed project, the Commission must first adopt a Resolution, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owner is contesting the Resolution and has requested a written appearance before the Commission. At the request of the property owner, objections to the Resolution have been submitted in writing to be made part of the official record of the Commission meeting, in lieu of a personal appearance before the Commission. The owner's objections are included as Attachment A. The Department's responses to the owner's objections are contained in Attachment B.

**BACKGROUND:**

Discussions have taken place with the owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owner may subsequently be entitled. Adoption of the Resolution will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owner has been advised that the Department is requesting the Resolution at the Commission's October 8, 2014 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-21274 – Wer-Stan Associates, a General Partnership

06-Fre99-PM 16.76 - Parcel 87048-1 - EA 0G2109.

Right of Way Certification Date: 09/05/14; Ready To List Date: 01/02/15. Conventional highway – Install service pedestal. Authorizes condemnation of a permanent easement for utility purposes. Located in the city of Fresno at State Route 99 near the intersection of Cedar Avenue. Assessor Parcel Number 330-060-51.

Attachments:

Attachment A - Owners Written Objections dated July 24, 2014

Attachment B – Department Response dated August 11, 2014

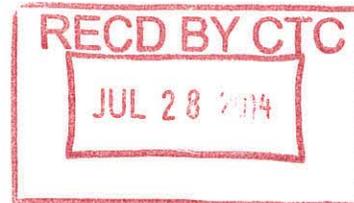
Attachment C – Fact Sheet

Exhibits A and B - Maps

**WSA**  
**WER-STAN ASSOCIATES L.P.**

P.O. BOX 10126 • FRESNO, CA 93745-0126 • OFFICE: (559) 281-0424 • FAX: (559) 841-2959

**JULY 24, 2014**



**Executive Director  
California Transportation Commission  
P.O. Box 942873  
Mail Station 52  
Sacramento, Ca 94273-0001**

*Forwarded To:  
Right of way  
Copied To:  
Stephen Maier*

**Re: 06-Fre-99-PM 16.76  
Project #0600020474  
Parcel 87048-1**

**Gentlemen:**

***This transmittal shall constitute Werstan Associates LP written response to the pending condemnation proceedings for the above captioned parcel.***

***If your contemplated action is to acquire a permanent easement, Werstan Associates would have no objection to such taking subject to the following conditions:***

- 1-Corners of created parcel shall be monumented.***
- 2-Created parcel shall remain and maintained free of deleterious materials.***
- 3- Consideration shall be of equivalent market value.***

***If the Commission's contemplated action is within the statutory powers under eminent domain for taking in fee***

ATTACHMENT A

**title Werstan Associates would require the following conditions be associated with such "involuntary sale".**

- 1-Department of Transportation be responsible for all costs of surveys and recordation of parcel maps associated with the created parcel.**
- 2-Corners of the created parcel shall be monumented.**
- 3-Created parcel shall remain and maintained free of deleterious materials.**
- 4- Consideration shall be of equivalent market value.**
- 5- Werstan Associates shall be reimbursed all costs and expenses associated with accounting fees for determining the capital gain tax consequences. (Note opinions of two CPA accounting firms confirm that an "involuntary sale" would be subject to capital gain tax. Since this parcel was included in a composite purchase of several parcels and in a property exchange, and many improvements during the years, ferreting out the cost basis for the determination of capital gain tax would be substantial due to the complexities for this calculation. Estimates have totaled several hundred dollars for these calculations. Note enclosure.)**

**Should the Commission have further inquiry or question please direct same to the undersigned at the letterhead address or call 559 281-0424.**

***Yours truly,***

John S. Stanfield

**John S. Stanfield**  
**Managing General Partner**  
**Werstan Associates, LP**



Mr. Stanfield  
August 11, 2014  
Page 2

Created parcel shall remain and maintained free of deleterious materials.

Department cannot be solely held responsible for maintaining the parcel free of deleterious materials since this area is also used by other easement holders. The purpose of parcel is to get overhead PG&E electrical service from its existing pole. No construction activity by Department will take place on this parcel as this is an Aerial Easement only.

Consideration shall be of equivalent market value.

The fair market value for an Aerial Easement on this 10 feet by 10 feet area has been established by a fair market appraisal on January 7, 2014. A copy of Department's appraisal had been provided at the time of first written offer. The value of this area has been completed taking into consideration encumbrances by PG&E and a roadway easement. As we have previously discussed, you may obtain an independent appraisal and receive reimbursement from the Department for the cost of the appraisal up to \$5,000.

2. If the Commission's contemplated action is within the statutory powers under eminent domain for taking in fee title Werstan Associates would required the following conditions to be associated with such "involuntary sale".

The Department has no intention to acquire this parcel in fee title; therefore, the following conditions would not be relevant.

Department of Transportation be responsible for all costs of surveys and recordation of parcel maps associated with the created parcel.

Corners of the created parcel shall be monumented.

Created parcel shall remain and maintained free of deleterious materials.

Consideration shall be of equivalent market value.

Werstan Associates shall be reimbursed all costs and expenses associated with accounting fees for determining the capital gain tax consequences. (Note opinion of two CPA accounting firms confirm that an "involuntary sale" would be subject to capital gain tax. Since this parcel was included in a composite purchase and many improvements during the years, ferreting out the cost basis for the determination of capital gain tax would be substantial due to the complexities for this calculation. Estimates have totaled several hundred dollars for these calculations. Note enclosure.)

I hope you find our responses satisfactory. It is our goal to reach an amicable agreement. Proceeding with condemnation does not stop our negotiation. The offer still stands should you wish to consider.

If you have any questions, please feel free to contact Ruben A Perez at (559)-445-6216.

Sincerely,



SUZETTE SHELLOOE  
Chief, Central Region  
Right of Way

## Resolution of Necessity Appearance Fact Sheet

**PROJECT DATA** 06-Fre-99-PM 16.76  
Expenditure Authorization 0G2109

Location: State Route 99 in Fresno County in the city of Fresno

Limits: From PM 16.7 to PM 16.7

Cost: Programmed construction cost: \$ 85,000  
Current right of way cost estimate: \$ 15, 000

Funding Source: Minor B from SHOPP

Number of Lanes: Existing: Three lanes each way NB and SB 99-Highway lighting and Sign illumination.  
Proposed: Unchanged - Electrical Work Only

Major Features: Install new electrical service point and upgrade highway lighting.

Traffic: Existing SR-99 (year 2012): 88,000 Annual Daily Traffic (ADT)  
Proposed: N/A

**PARCEL DATA**

Property Owner: Wer-Stan Associates, a General Partnership

Parcel Location: at State Route 99 near the intersection of Cedar Avenue, City of Fresno  
Assessor's Parcel Number 330-060-51

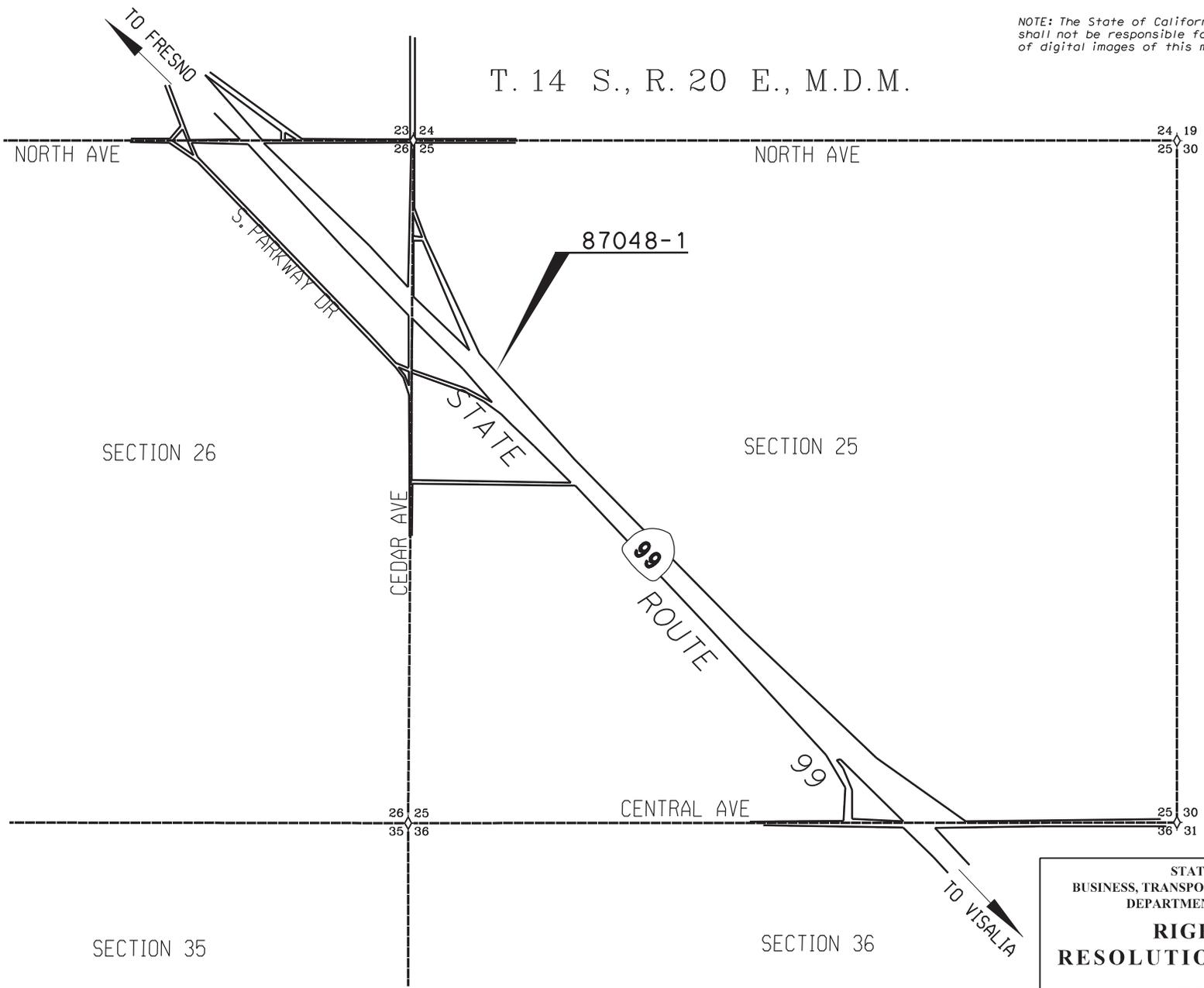
Present Use: Heavy industrial. Zoned M-3

Area of Property: 132,858 Square Feet (SF)

Area Required: Parcel 87048-1 - 100 SF - Utility Easement

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.

T. 14 S., R. 20 E., M.D.M.



STATE OF CALIFORNIA  
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
 DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY  
 RESOLUTION OF NECESSITY**

**EXHIBIT A**



DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
06	FRE	99	16.76	1	2

EXHIBIT A

Exhibit A

