

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: March 16-17, 2016

Reference No.: 2.4a.(2)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Jennifer S. Lowden, 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 a Resolution of Necessity (Resolution) C- 21424 summarized on the following page. This Resolution is for a transportation project on State Route 99 in District 6, in Fresno County.

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. The property is necessary for the proposed project.
4. An offer to acquire the property in accordance 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 an appearance before the Commission. The primary concerns and objections expressed by the property owner are the statutory authority for the Department to condemn property on this project, the legality of the proposed adoption of Resolution, and the unlawful use of public funds. The owner's objections and the Department's responses 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 he 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 this time. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-21424 - Nineda Limited Partnership, a California Limited Partnership

06-Fre-99-PM 26.00 - Parcel 86951-1, 2, 3, 4, 5 - EA 2HT109.

Right of Way Certification Date: 04/01/2016; Ready to List Date: Construction Manager/General Contractor. Freeway - State Route 99 alignment for High Speed Rail. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, temporary easements for construction purposes, and an easement for utility purposes to be conveyed to Fresno Irrigation District. Located in the city of Fresno at 3443 North Parkway Drive.

Assessor Parcel Numbers 433-050-035; -036.

Attachments:

- Attachment A - Project Information
- Exhibit A1 and A2 - Project Maps
- Attachment B - Parcel Panel Report for Nineda Ltd
- Exhibit B1 and B2- Parcel Maps
- Attachment C – Resolution of Necessity
- Attachment D – Owner's letter

PROJECT INFORMATION

PROJECT DATA	06-Fre-99-PM 23.7 - 26.5 Expenditure Authorization 2HT109
<u>Location:</u>	State Route (SR) 99, Fresno County
<u>Limits:</u>	From Clinton Avenue to Ashlan Avenue
<u>Cost:</u>	Programmed construction cost: \$ 130,000,000 Current right of way cost estimate: \$ 80,000,000
<u>Funding Source:</u>	STIP, Reimbursed, California High Speed Rail Authority
<u>Number of Lanes:</u>	Existing: Three lanes each way NB and SB 99 Proposed: Three lanes each way NB and SB 99
<u>Proposed Major Features:</u>	SR 99 Realignment for High Speed Rail (HSR) project with Clinton Avenue interchange modification and ramp closures of Princeton Avenue, Shields Avenue and Dakota Avenue
<u>Traffic:</u>	Existing: SR 99 (year 2012): 115,000 Annual Daily Traffic (ADT) Proposed: This project does not increase the capacity

NEED FOR PROJECT

This SR 99 Realignment project is necessary to create adequate space for the proposed HSR facilities to locate between the Union Pacific Railroad (UPRR) and Department's right of way.

The HSR project is necessary to address increasing congestion. The capacity of California's intercity transportation system, including the central part of the San Joaquin Valley region is insufficient to meet existing and future travel demands. Future congestion will continue to result in deteriorating air quality, reduced reliability, and increased travel times. The intrastate highway system, commercial airports and conventional passenger rail system serving the intercity travel market are operating at or near capacity and will require large public investments for maintenance and expansion to meet existing demand and future growth. The feasibility of expanding many major highways and key airports is uncertain and might be impractical or are constrained by physical, political and other factors.

Current Year traffic volumes are 115,000 and Design Year traffic volumes are not applicable since this is a replace in kind project.

PROJECT PLANNING AND LOCATION

The SR 99 Realignment project proposes to realign the section of SR 99 from Olive Avenue to Ashlan Avenue to the west. Associated with the SR 99 realignment, the existing Clinton Avenue Interchange including the Clinton Avenue Overcrossing will be reconstructed. To meet the HSR horizontal and vertical clearance requirements, the two existing bridge structures over UPRR tracks, at Clinton Avenue and Ashlan Avenue, will be replaced. Various local streets on the west side of SR 99 will be modified or re-routed to accommodate the proposed realignment of the State Highway System.

The project construction cost is currently estimated at \$130,000,000 with an additional \$80,000,000 estimated for right of way and utility relocation.

The project is implementing a Construction Manager/General Contractor (CM/GC) delivery method that has allowed the Department to engage a construction manager (Granite Construction) during the design phase to provide constructability input.

This methodology provides the Department with greater flexibility in identifying the potential for smaller work packages or phasing the project based on project constraints.

The construction for the first phase has already begun. Schedule for this phase is as follows;

Environmental Document	04/10/2012	
Project Report Approved	03/15/2013	
Right of Way Certification	08/07/2015	CM/GC Initial Certification
Ready to List	N/A	
Advertise	01/24/2012	
Begin Construction	08/01/2015	

The Department is currently negotiating a price for the construction of the second phase of the project and working to obtain the necessary right of way for the second phase. The Sethi's parcel is needed for the second phase of construction. The schedule for the second phase is as follows:

Right of Way Certification	04/01/2016	Second Phase Certification
Ready to List	N/A	
Advertise	02/01/2016-CM/GC	
Begin Construction	04/01/2016-CM/GC	

The full range of potential route alternatives considered during the alternatives development and analysis process for the HSR included five primary north-south routes between Merced and Fresno, four station alternatives for the Merced Station, two station alternatives in Chowchilla and Madera Station, and another six alternatives for the Fresno Station.

Those alternatives which were not carried forward had greater direct and indirect environmental impacts and the potential to cause undesirable growth patterns than those alternatives that closely follow existing transportation corridors. In the Preliminary Alternatives Analysis, Western Madera (A3) and UPRR/Burlington Northern Santa Fe (BNSF) Hybrid (A4) alternatives were removed from further consideration because they departed from existing transportation corridors, thereby causing new transportation corridors among highly productive agricultural lands. Doing so would have the potential to reduce the viability of surrounding farmlands, giving way to other uses such as other transportation and utility infrastructure that could result in unwanted and unplanned growth patterns.

The two alternatives identified to be carried forward for further study in the Preliminary Alternatives Analysis are the UPRR/SR 99 and the BNSF alternatives. Later, during the Supplemental Alternatives Analysis, the High Speed Rail Authority developed a "Hybrid Alternative" to take better advantage of existing transportation corridors, while reducing impacts on Chowchilla and Downtown Madera.

The UPRR/SR 99 Alternative (A2) was found to optimize travel time and minimize environmental impacts at the cost of a more elevated profile and potentially more community impacts than the other alternatives. The BNSF Alternative did not perform as well as the UPRR/SR 99 Alternative in terms of travel time performance and resulted in higher impacts on the natural and residential environment. However, the BNSF Alternative does provide an option to the UPRR/SR 99 Alternative that meets the project purpose and need while also adhering to all the project objectives. The Hybrid Alternative's more distant location from several community centers allows the alternative to remain at-grade for most of its distance and to have a lower level of impact on commercial centers compared to the UPRR/SR 99 Alternative. This Hybrid Alternative also follows transportation corridors but avoids most communities between Merced and Fresno.

Three alternatives were considered when developing the SR 99 Realignment project to support the HSR project. The three alternatives considered were:

- 1) Tight Diamond
- 2) No Build Modified
- 3) Modified Tight Diamond

Alternative 1, the Tight Diamond, was selected due to fewer right of way impacts, better operations and less cost.

Alternative 2, the No Build was included in the Final EIR/EIS for the Merced-Fresno Section, however it was rejected as it did not meet the project Purpose and Need.

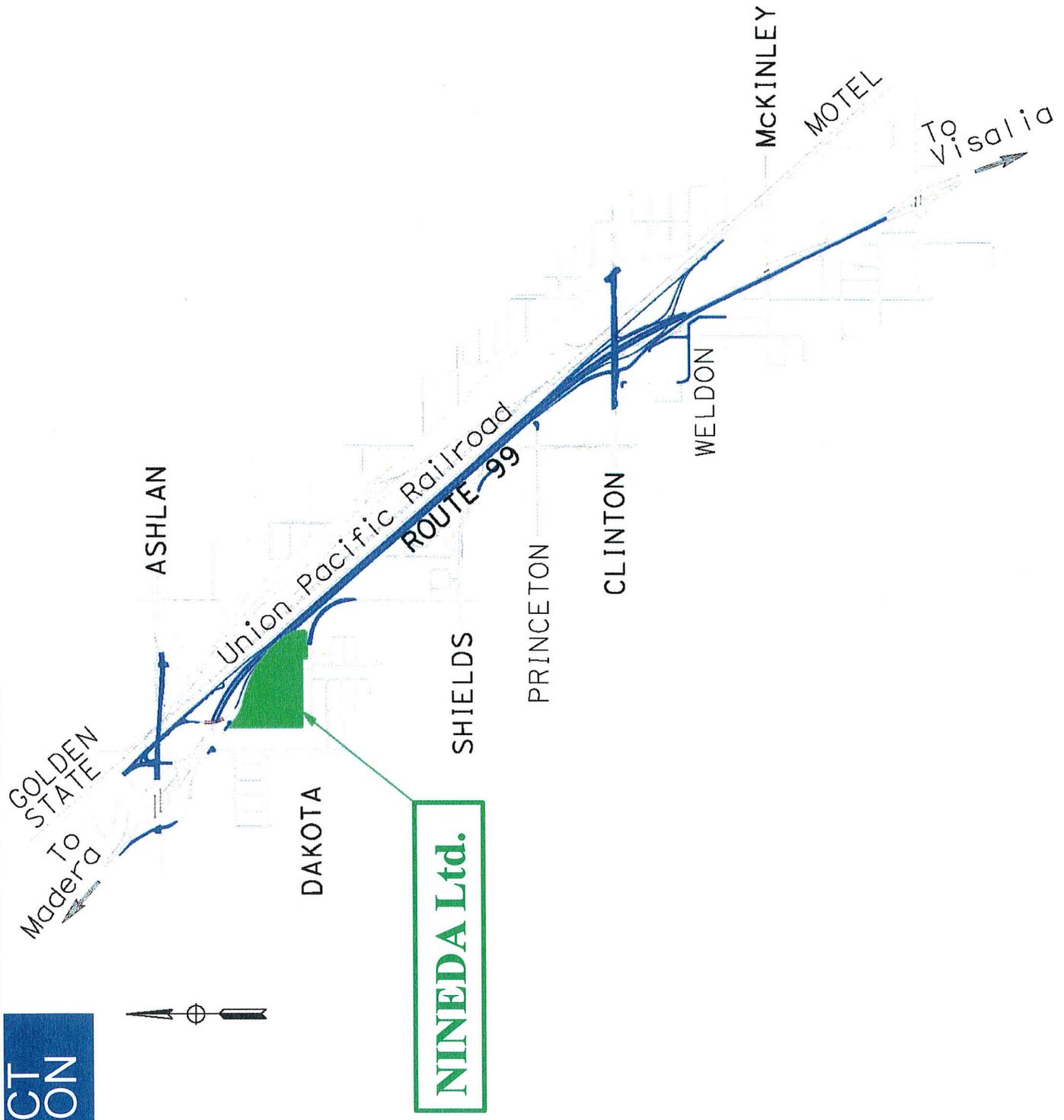
Alternative 3, the Modified Tight Diamond Alternative is similar to Alternative 1. The alternatives are identical in the design of the SR 99 mainline realignment, the reconstructed Clinton Avenue overcrossing at SR 99 and Clinton Avenue structure over UPRR tracks, and the

reconstructed Ashlan Avenue structure over UPRR tracks, but they differed in the proposed configuration of the Clinton Avenue interchange and the proposed disposition of the partial interchanges on SR 99 between Clinton Avenue and Ashlan Avenue.

Alternative 3 was rejected for the following reasons:

- The configuration required acquisition of two to three additional parcels, including as many as ten businesses and the Rescue the Children's Home and had geometric challenges.
- The impacts of improving the Shields Avenue interchange connections is considered undesirable and also would have resulted in greater right of way impacts changing the parcel from a partial take to a total take on a large hotel property located in the south east quadrant.
- Traffic operations of the alternative in the vicinity of the combined Clinton Avenue interchange and the proposed Shields Avenue interchange were less than desirable.

**PROJECT
LOCATION**



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.

CITY OF FRESNO

T.13S., R.20E., M.D.B.&M.

T.13S., R.19E.,
M.D.B.&M.

SECTION 13

SECTION 19

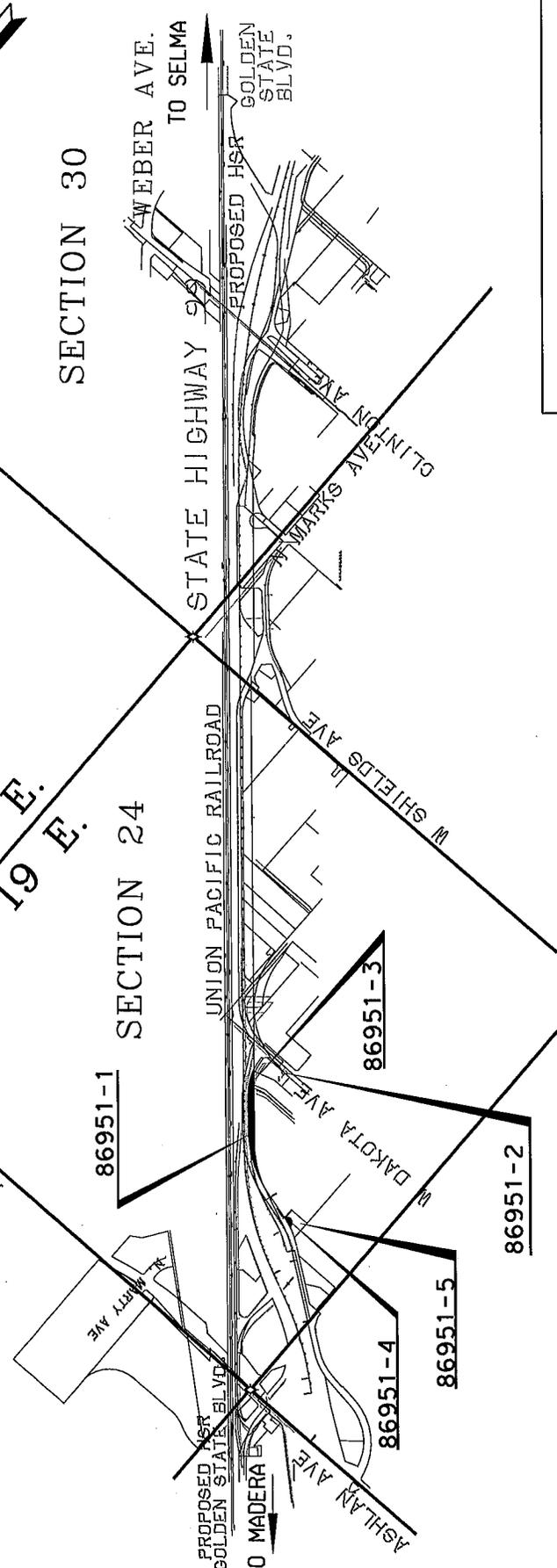
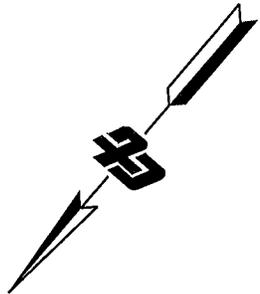
SECTION 30

SECTION 24

SECTION 23

SECTION 25

R. 20 E.
R. 19 E.



STATE OF CALIFORNIA
CALIFORNIA STATE TRANSPORTATION AGENCY
DEPARTMENT OF TRANSPORTATION

**RIGHT OF WAY
RESOLUTION OF NECESSITY**

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET	PM	SHEET NO.	TOTAL SHEETS
06	FRE	99	26.00		1	2

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: Nineda Ltd., a California limited partnership

Parcel Location: At the Dakota Avenue off-ramp at 3443 North Parkway Drive
Fresno, CA

Present Use: Industrial, public storage

Area of Property: 24.09 Acres

Area Required

- Parcel 86951-1 - 1.25 Acres - Fee
- Parcel 86951-2 - 0.018 Acre - Temporary Construction Easement
- Parcel 86951-3 - 0.07 Acre - FID Easement
- Parcel 86951-4 - 0.09 Acre - Fee
- Parcel 86951-5 - 0.58 Acre - Temporary Construction Easement

PARCEL DESCRIPTION

The subject property is located in Fresno, on the northwestern corner of Parkway Drive and Dakota Avenue and consists of two APNs: 433-050-35 and 36. The site is irregular in shape and the topography is level at street grade.

NEED FOR SUBJECT PROPERTY

A portion of the subject property is required for the Phase 2 construction of this project.

The right of way requirements for the project includes two fee parcels that are 1.25 acre and 0.09 acre needed to construct the realignment of the freeway, a permanent utility easement that is 0.07 acre to relocate facilities owned by Fresno Irrigation District, and two temporary construction easements that are 0.018 acre and 0.58 acre to construct a cul-de-sac at the north end of Parkway Drive and to establish a new entrance to the subject parcel.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Panel (Panel) met in Fresno on January 5, 2016. The Panel members included Rene Fletcher, Panel Chair, Department of Transportation (Department) Headquarters (HQ) Division of Right of Way and Land Surveys (RWLS), Harjinder Chima, Department HQ Legal Division, Mike Whiteside, Department, Assistant Chief Engineer, Linda Fong, Department HQ Division of Design, and Paul Pham, Department HQ (RWLS), Secretary of the Panel. The owner's representatives were Mr. Robin Frost, Manager, and Mr. C. William Brewer, attorney (Owner).

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The primary concerns and objections expressed by Owner relate to the statutory authority for the Department to condemn property on this project, the legality of the proposed adoption of Resolution of Necessity (Resolution), and the unlawful use of public funds. The following is a description of the specific concerns expressed by Owner, in a letter dated July 13, 2015, followed by the Department's response:

Owner Contends:

Owner objects to the Resolution arguing that the findings required by law cannot be made, by reason of the multiple violations of the foundational statute which conditionally authorized the high speed train project, to wit: THE SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT FOR THE 21 ST CENTURY, set forth in Chapter 20 of Division 3 of the Streets & Highways ("S&H") Code which was conditionally approved by California voters at the November 4, 2008 election, generally referred to as "Proposition 1A."

Owner further objects on the basis that the proposed adoption of the Resolution would authorize an illegal act, based substantially if not entirely, on multiple violations of law, each of which are also alleged to have been, and continue to be violations.

The exercise of the power of eminent domain may only be utilized where it is authorized by statute and where it satisfies the constitutional mandates of public use and just compensation. The enabling statute in California, the Eminent Domain Law, is Title 7, Chapters 1 through 12 (sections 1230.010-1273.050) of the Code of Civil Procedure (CCP).

Owner further objects on the basis that the authorization to proceed with the condemnation of their property would necessarily constitute and result in the unlawful use of public funds in violation of another statute, CCP, section 526a, and of misappropriation of public funds.

Specifically, but without limitation, owners object to the adoption of the noticed Resolution based on the following statutory provisions which demonstrate that the public use findings cannot be made: CCP sections 526a, 1240.020, 1240.110, 1240.120 and 1240.130; Streets & Highways Code sections 2704.08(c)(2)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K); 2704.08(d), 2704.08(g), 2704.04, 2704.04(c), 2704.09 (a), (b), (f); and AB 3034, subsection (f) of section 8.

Department Response:

While the High Speed Rail (HSR) Project necessitates the planned relocation of State Route (SR) 99, this acquisition involves the acquisition of property by the Department for a Department project. The Resolution of Necessity shall be heard by the California Transportation Commission, not the California Public Works Board as would be required for resolutions associated with the HSR Project.

In cooperation with the sister agency, HSR Authority, Department is realigning SR 99 to make room for the HSR Project.

CCP Section 1245.230 (c) sets forth the preconditions that must be satisfied by a public entity to obtain a Resolution.

1. The public interest and necessity require the Project

The public interest and necessity require the project: The relocation of SR 99 is necessitated by the High Speed Rail project. The Legislature declared the need for a statewide HSR project in 1996 with passage of the California HSR Act. The Act states, among other things: "Development of a HSR system is a necessary and viable alternative to automobile and air travel in the state." In addition, the Legislature reaffirmed the public interest in and necessity for the HSR project in 2012 and 2014 with appropriations for HSR construction.

2. That the proposed Project is planned and located in a manner that will provide the greatest public good with the least private injury

Several SR 99 realignment alternatives were considered by the Department in the project development process. This proposed alternative meets the project need, is the most cost effective, and has the least impact on the private owners and the environment.

3. The property described in the Resolution is necessary for the proposed project

After the proposed alternative has been chosen, only property that is necessary to SR 99 realignment construction is acquired.

4. Offer required by Government Code Section 7267.2 has been made to the owner of record

An offer of just compensation was made to the Owner on May 08, 2015. The Department has satisfied all of the preconditions.

Owner also has numerous objections regarding the HSR Project. Streets and Highways Code section 2704.04 (a) recites that it is "the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a highspeed train network consistent with the authority's Final Business Plan of June 2000." In addition, the Attorney General's office has opined that the California HSR Authority is authorized to exercise the powers set forth in Public Utilities Code section 185036. It received partial authority to exercise those powers through legislation, and full authority on November 4, 2008, through the passage of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. HSR project is moving forward.

Owner Contends:

Owner requested the Department's final design plans and confirmation that there will be no additional changes at this location. Owner is concerned that the reconstruction schedule and the final cost estimate will not be accurate if Department makes any additional design changes.

Department Response:

Department has confirmed that the plan which Owner has previously received was the final design plans. Department assured that the Owner can finalize their reconstruction plan based on information provided. Additionally, Department's Design staff has been working with the Owner's in-house construction personnel in an effort to determine a better estimate of impacts and the value of such. On February 7, 2016, an updated estimate was received from the Owner; however, it did not provide sufficient information for the Department to validate the owner's claim for curable work.

Owner Contends:

Owner has concern about the drainage in after condition. Currently, this parcel drains into a basin, which will be replaced with a 24-inch pipe. Owner also has concern regarding the reconnection of two fire hydrants since the water main will be relocated from its existing location by the project.

Department Response:

Department has provided the detailed plans including cross-sections at the cul-de-sac location to the Owner for further evaluation of the drainage solution. Department has provided the utility plans to the Owner showing the new location of the water main on Dakota Avenue for the reconnection of the fire hydrants.

DEPARTMENT CONTACTS

The following is a summary of contacts made with the property owners:

Type of Contact:	Number of Contact
Mailing of information	2
Email of information	20+
Telephone contacts	18+
Personal / meeting contacts	7

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owner of record as required by the Government Code Section 7267.2. The property owner has been notified that issues related to compensation are outside the purview of the Commission.

PANEL RECOMMENDATION

The Panel concludes that the Department's project complies with Section 1245.230 of CCP in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in accordance with Government Code Section 7267.2 has been made to the owner of record.

The Panel recommends submitting a Resolution to the Commission.

RENE FLETCHER
Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

KARLA SUTLIFF
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW
MEETING ON JANUARY 5, 2016**

Rene Fletcher, HQ's Division of Right of Way and Land Surveys, Panel Chair

Linda Fong, HQ's Division of Design, Panel Member

Harjinder Chima, HQ's Legal Division, Panel Member

Paul Pham, HQ's Right of Way, Panel Secretary

Mike Whtieside, Assistant Chief Engineer

Robin Frost, Manager, Nineda Ltd.

C. William Brewer, Attorney for the Property Owner, Motschiedler, Michaelides, Wishon,
Brewer & Ryan, LLP.

Sharri Bender Ehlert, Department of Transportation, District 6, District Director

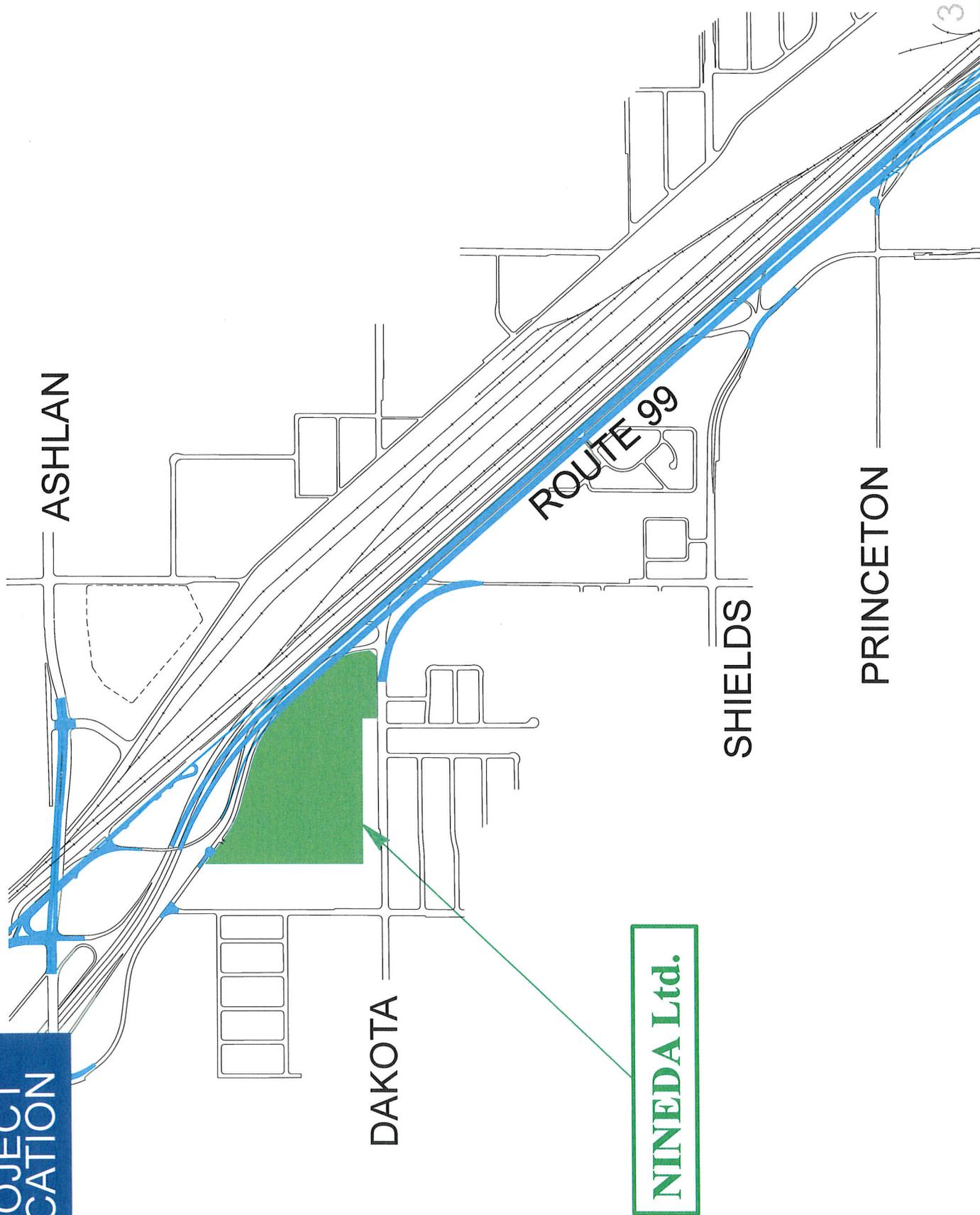
Jamie Lupo, District 6, Central Region Chief, Right of Way

Sharon Parsons, District 10, Senior Right of Way Agent

Garth Fernandez, District 6, Project Management

Jun Xu, District 6, Project Delivery

**PROJECT
LOCATION**



NINEDA Ltd.

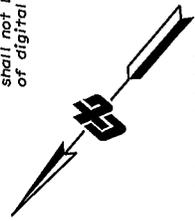
T.13S., R.19E., M.D.B.&M.
CITY OF FRESNO

SECTION 24

Point of Commencement
Parcel 86951-1,2,3,4,5

C 1/4 COR. SEC. 24, 13/19
FD. 4-1/2" IP FILLED WITH
CONCRETE, PER CR NO.3013
FRESNO COUNTY
SURVEYOR'S OFFICE

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.

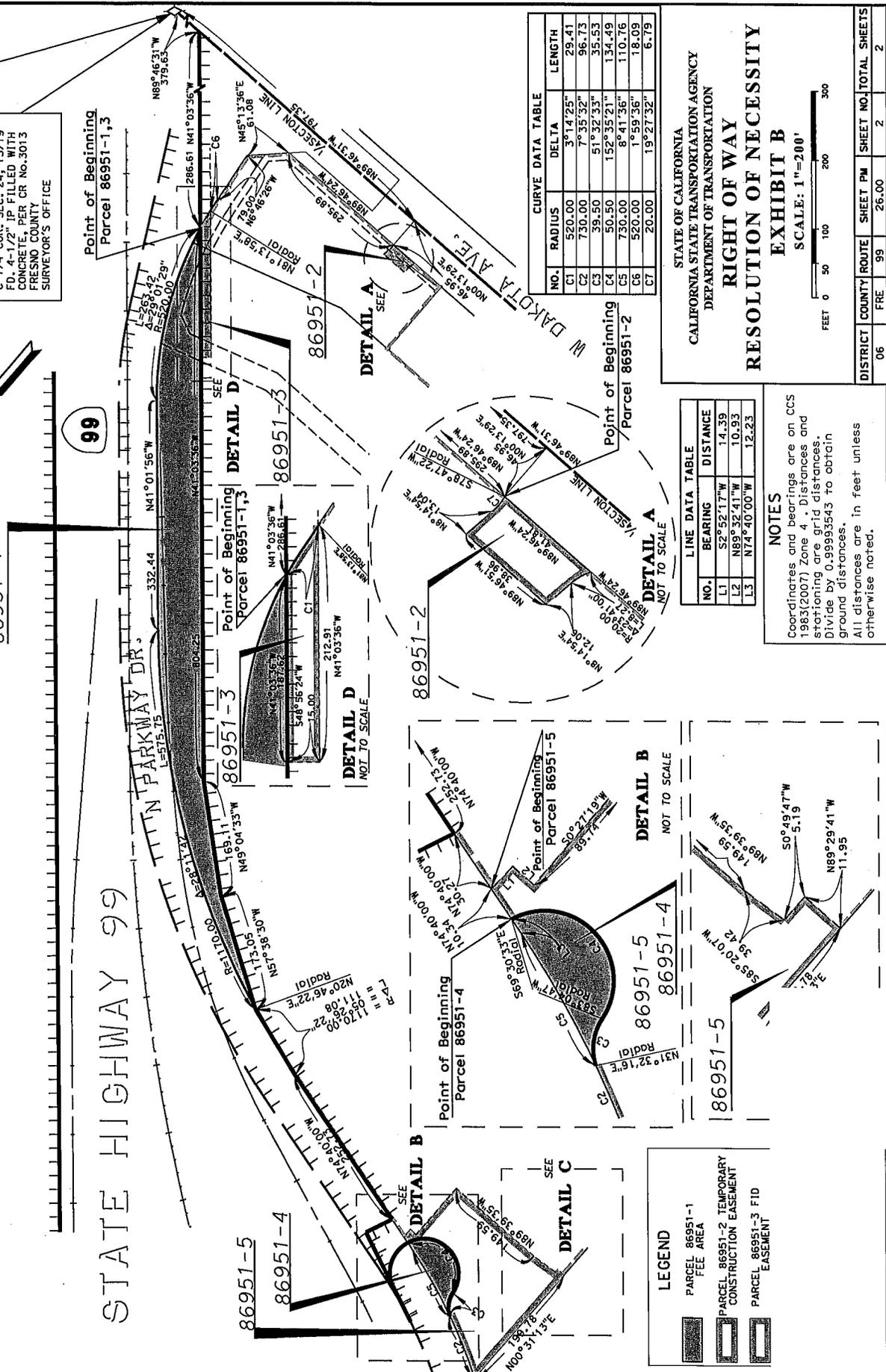


99

STATE HIGHWAY 99

TWIN PARKWAY DR.

W DAKOTA AVE.



NO.	RADIUS	DELTA	LENGTH
C1	520.00	3°14'25"	29.41
C2	730.00	7°35'32"	96.73
C3	39.50	51°32'33"	35.63
C4	50.50	152°35'21"	134.49
C5	730.00	8°41'36"	110.76
C6	520.00	1°59'36"	18.09
C7	20.00	19°27'32"	6.79

STATE OF CALIFORNIA
CALIFORNIA STATE TRANSPORTATION AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY RESOLUTION OF NECESSITY EXHIBIT B

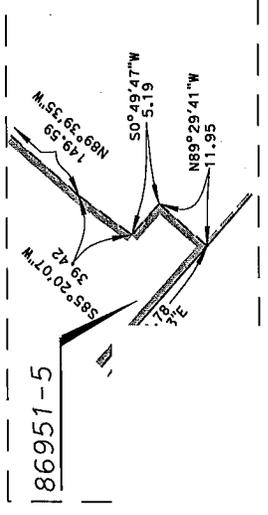
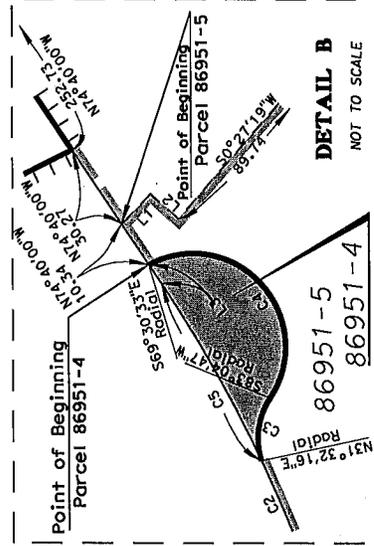
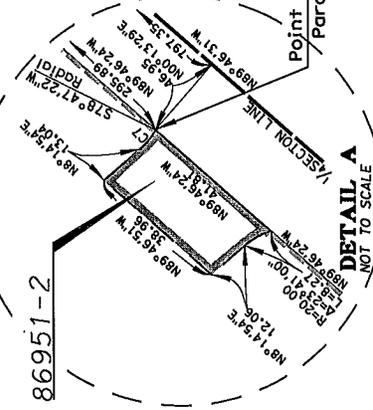
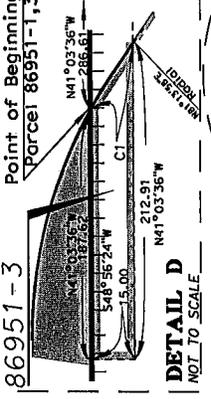
SCALE: 1"=200'

FEET 0 50 100 200 300

DISTRICT	COUNTY	ROUTE	SHEET	PM	SHEET NO.	TOTAL SHEETS
06	FRE	99	26.00		2	2

NO.	BEARING	DISTANCE
L1	S2°52'17"W	14.39
L2	N89°32'41"W	10.93
L3	N74°40'00"W	12.23

NOTES
Coordinates and bearings are on CCS 1983(2007) Zone 4. Distances and stationing are grid distances. Divide by 0.99983543 to obtain ground distances. All distances are in feet unless otherwise noted.



LEGEND

- PARCEL 86951-1 FEE AREA
- PARCEL 86951-2 TEMPORARY CONSTRUCTION EASEMENT
- PARCEL 86951-3 FID EASEMENT

ATTACHMENT C

TRANSPORTATION COMMISSION
RESOLUTION NO.

C-21424

CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY
OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN
HIGHWAY 06-Fre-99-PM 26.00 PARCEL 86951-1, 2, 3, 4, 5
OWNER: Nineda Limited Partnership, a California Limited Partnership

Resolved by the California Transportation Commission after
notice (and hearing) pursuant to Code of Civil Procedure Section
1245.235 that it finds and determines and hereby declares that:

The hereinafter described real property is necessary for State
Highway purposes and is to be acquired by eminent domain pursuant
to Streets and Highways Code Section 102; and Code of Civil
Procedure Section 1240.320 in that a portion of the property is
being acquired for conveyance to Fresno Irrigation District for
utility purposes;

The public interest and necessity require the proposed public
project, namely a State highway;

The proposed project is planned and located in the manner that
will be most compatible with the greatest public good and the least
private injury;

APPROVED AS TO FORM AND PROCEDURE

APPROVAL RECOMMENDED

Attorney, Department of Transportation

DIVISION OF RIGHT OF WAY

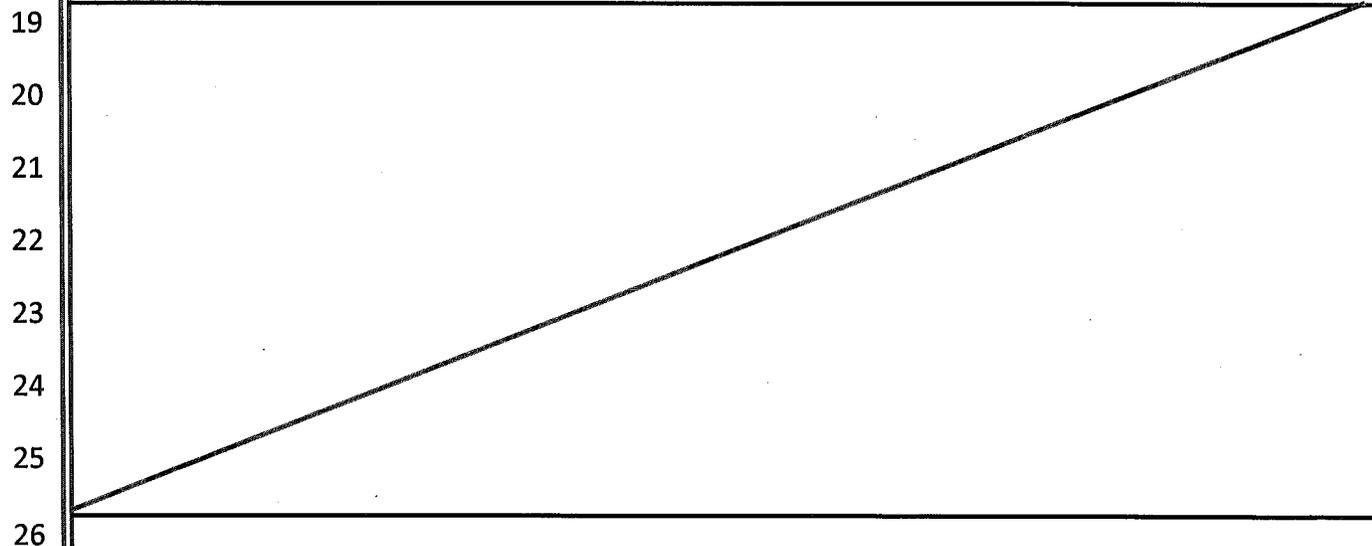
1 The property sought to be acquired and described by this
2 resolution is necessary for the public project;

3 The offer required by Section 7267.2 of the Government Code
4 has been made to the owner or owners of record; and be it further

5 RESOLVED by this Commission that the Department of
6 Transportation be and said Department is hereby authorized and
7 empowered;

8 To acquire, in the name of the People of the State of
9 California, in fee simple absolute, unless a lesser estate is
10 hereinafter expressly described, the said hereinafter described
11 real property, or interests in real property, by condemnation
12 proceeding or proceedings in accordance with the provisions of the
13 Streets and Highways Code, Code of Civil Procedure and of the
14 Constitution of California relating to eminent domain;

15 The real property or interests in real property, which the
16 Department of Transportation is by this resolution authorized to
17 acquire, is situated in the County of Fresno, State of California,
18 Highway 06-Fre-99 and described as follows:



ATTACHMENT D

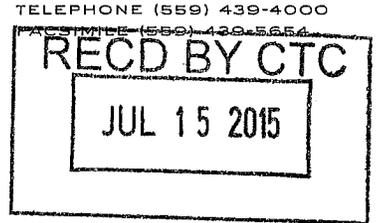
→ Stephen Mallei

MOTSCHIEDLER, MICHAELIDES, WISHON,
BREWER & RYAN, LLP

ATTORNEYS AT LAW
1690 WEST SHAW AVENUE
SUITE 200

FRESNO, CALIFORNIA 93711

POST OFFICE BOX 9099
FRESNO, CALIFORNIA 93790-9099



J. CARL MOTSCHIEDLER
PHILLIP G. MICHAELIDES
A. EMORY WISHON III
C. WILLIAM BREWER*
RUSSELL K. RYAN†
JORDAN K. RYAN

*A PROFESSIONAL CORPORATION
†ALSO ADMITTED IN UTAH

July 13, 2015

Forwarded
7/15/15
Right of way

Copied to:
Stephen Mallei

Received 7/20
PPHamm

Executive Director
California Transportation Commission
Post Office Box 942873
Mail Station 52
Sacramento, California 94273-0001

Re: **HSR Parcel Numbers: 86951-1, 2, 3, 4, 5**
Owner: Nineda Ltd., a California limited partnership

Dear Sir or Madame:

With respect to the proposed construction of the High Speed Rail as it impacts the property described above, this letter will serve as my request to appear and be heard at the California Transportation Commission ("Commission") hearing on the adoption of the Resolution of Necessity now scheduled for August 26 and 27, 2015. This request is made on behalf of the record owner of the impacted property who also plans to appear.

This request is made in accordance with the requirements set forth in the Commission's Notice to Property Owners of Intention to Adopt Resolution of Necessity dated July 10, 2015, received by owner on July 13, 2015.

Very truly yours,

C. William Brewer

CWB:ndl

cc: Nineda, Ltd.

MOTSCHIEDLER, MICHAELIDES, WISHON,
BREWER & RYAN, LLP

ATTORNEYS AT LAW
1690 WEST SHAW AVENUE
SUITE 200

FRESNO, CALIFORNIA 93711

POST OFFICE BOX 9099
FRESNO, CALIFORNIA 93790-9099

TELEPHONE (559) 439-4000
FACSIMILE (559) 439-5654

J. CARL MOTSCHIEDLER
PHILLIP G. MICHAELIDES
A. EMORY WISHON III
C. WILLIAM BREWER*
RUSSELL K. RYAN†
JORDAN K. RYAN

*A PROFESSIONAL CORPORATION
†ALSO ADMITTED IN UTAH

July 13, 2015

Executive Director
California Transportation Commission
Post Office Box 942873
Mail Station 52
Sacramento, California 94273-0001

Re: **HSR Parcel Numbers: 86951-1, 2, 3, 4, 5**
Owner: Nineda Ltd., a California limited partnership

Dear Sir or Madame:

Owner respectfully submits its objections to the intended adoption of the Resolution of Necessity (“RON”) following the noticed public hearing for August 26 and 27, 2015.

Owner objects generally on the ground that the findings required by law cannot be made, by reason of the multiple violations of the foundational statute which conditionally authorized the high speed train project, to wit: THE SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT FOR THE 21ST CENTURY, set forth in Chapter 20 of Division 3 of the Streets & Highways (“S&H”) Code which was conditionally approved by California voters at the November 4, 2008 election, generally referred to herein as “Proposition 1A.”

Owner further objects on the basis that the proposed adoption of the RON would authorize an illegal act, based substantially if not entirely, on multiple violations of law, each of which are also alleged to have been, and continue to be, violations of law.

The exercise of the power of eminent domain may only be utilized where it is authorized by statute and where it satisfies the constitutional mandates of public use and just compensation. The enabling statute in California, the Eminent Domain Law, is Title 7, Chapters 1 through 12 (sections 1230.010-1273.050) of the Code of Civil Procedure.

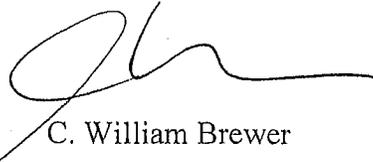
MOTSCHIEDLER, MICHAELIDES, WISHON,
BREWER & RYAN, LLP
ATTORNEYS AT LAW

Executive Director
July 13, 2015
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Owner further objects on the grounds that the authorization to proceed with the condemnation of their property would necessarily constitute and result in the unlawful use of public funds in violation of another statute, Code of Civil Procedure, section 526a, and of misappropriation of public funds.

Specifically, but without limitation, owners object to the adoption of the noticed RON based on the following statutory provisions which demonstrate that the public use findings cannot be made: Code of Civil Procedure sections 526a, 1240.020, 1240.110, 1240.120 and 1240.130; Streets & Highways Code sections 2704.08(c)(2)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K); 2704.08(d), 2704.08(g), 2704.04, 2704.04(c), 2704.09 (a), (b), (f); an AB 3034, subsection (f) of section 8.

Very truly yours,



C. William Brewer

CWB:ndl

cc: Nineda Ltd.