

MEMORANDUM

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: October 17-18, 2024

From: STEVEN KECK, Chief Financial Officer

Reference Number: 2.4a.(1), Action Item

Prepared By: René Fletcher, Chief (Acting)
Division of Right of Way and Land Surveys

Subject: **RESOLUTION OF NECESSITY – WRITTEN APPEARANCE**

ISSUE:

Should the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-22467, for the parcel whose owners are contesting the declared findings of the California Department of Transportation (Department) under Section 1245.230 of the Code of Civil Procedure?

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 owners are contesting the Resolution and have requested a written appearance before the Commission. At the request of the property owners, 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 property owners' objections are included as Attachment A. The Department's responses to the property owners' objections are contained in Attachment B.

“Provide a safe and reliable transportation network that serves all people and respects the environment.”

RECOMMENDATION:

The Department recommends the Commission adopt Resolution C-22467 summarized on the following pages. This Resolution is for a transportation project on State Route (SR) 41 in District 6, in Kings County.

BACKGROUND:

Discussions have taken place with the owners, who have been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which they may subsequently be entitled. Adoption of this Resolution will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owners have been advised that the Department is requesting the Resolution at the Commission's October 17-18, 2024 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-22467 - Chevron U.S.A. Inc., a California Corporation

06-Kin-41-PM 16.52 – Parcel 88887-1 – EA 0X9509.

Right of Way Certification Date: 10/18/24; Ready to List Date 10/18/24. Conventional highway - proposes to construct a double-lane roundabout to improve safety, reduce the number of collisions for the life of the project, and improve traffic operations. Authorizes condemnation of land in fee for a State highway. Located in the unincorporated area of Kettleman City at 27513 Ward Drive. APN 042-370-008, -010.

The public interest and necessity require the proposed project.

The Department developed a Project Report, dated January 12, 2022, for the project located on SR 41 south of Kettleman City, in Kings County, from 0.1 mile south of Bernard Drive to 0.2 mile north of Bernard Drive.

The Bernard Drive and SR 41 intersection has been experiencing traffic congestion due to recent commercial development. As a result, southbound vehicles on SR 41 have been using the shoulder as a through lane, compromising the safety of other vehicles and pedestrians using the intersection.

The Department proposes to construct a double-lane roundabout to improve safety, reduce the number of collisions for the life of the project, and improve traffic operations.

The Complete Streets elements are included as a part of the roundabout design approach to allow for safer access and travel by those walking, cycling, driving automobiles, riding public transportation, or delivering goods.

“Provide a safe and reliable transportation network that serves all people and respects the environment.”

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 Department has approved an Initial Study with Negative Declaration (ND) for this project and, following public review, has determined that the proposed action with the incorporation of the identified mitigation measures will not have a significant effect on the environment.

A ND was prepared and signed on December 15, 2021, for this project. Two alternatives were considered for this project to complete the improvements: build or no-build, with the intention of causing the least private injury.

The no-build alternative will not meet the purpose and need statement and may result in further deterioration of the Level of Service, additional collisions, and congestion at the Bernard Drive and SR 41 intersection.

The Build Alternative proposes to build a dual-lane roundabout with a single right turn onto eastbound Bernard Drive. The pavement within the intersection will be a dark contrast Jointed Plain Concrete Pavement. Additionally, a separate Jointed Plain Concrete Pavement truck apron at the center of the roundabout will accommodate standard trucks and oversized trucks using SR 41. The roundabout will maintain existing traffic patterns with modified driveways in addition to installing lighting facilities, sidewalks, splitter islands, pedestrian crossings, and bike ramps. There will also be the construction of drainage inlets, drainage pipes, and relocation of utilities. Commercial signs will be removed or relocated when in conflict with drainage, utilities, or earthwork within the construction limits.

The impacted area of this parcel has been minimized. The latter was accomplished by a reduction of desired sidewalk and drainage ditch widths, resulting in additional drainage pipes, along with the relocation of a bike ramp to the north side of Ward Drive. The width of the right turn lane to Ward Drive has also been reduced to eliminate additional parcel impact. All the above steps have been taken to provide the least impact on the existing driveway and the existing commercial sign while providing proper drainage behind the sidewalk. Additionally, the existing parcel driveway on Ward Drive will remain while an Americans with Disabilities Act curb ramp will be added, for pedestrians' safety, to comply with the Complete Street objectives at this location.

The property rights to be condemned are necessary for the proposed project.

The owner's property located at 27513 Ward Drive in Kettleman City cannot be eliminated as it is needed to construct a dual-lane roundabout to improve traffic, pedestrian safety and to enhance the level of service. The area required for this parcel is .014 acres in fee.

The parcel improvements include curb ramp, sidewalk, drainage inlets, and drainage ditch. The project improvements and Complete Streets elements, in this segment, cannot be constructed without acquiring this property.

"Provide a safe and reliable transportation network that serves all people and respects the environment."

An offer to purchase in accordance with Government Code Section 7267.2 has been made to the owners of record.

District 6 Right of Way staff completed an appraisal report, which was approved by District Right of Way management on May 16, 2022. Due to the project being split and funding not in place, First Written Offer could not be made within 30 days. A District 6 Right of Way agent delivered the first written offer via email on October 15, 2022.

Due to a Design change, there was a revised appraisal approved on October 31, 2023. A new offer was presented via email on November 30, 2023, to the Owner. A Confirmation of Market Value was completed on June 20, 2024.

The Agent has made multiple attempts to settle with the owner's attorney with no success. The Agent initiated the condemnation process in March as no resolution has been met. Owner requested an appearance with the district, and as a result, the parcel was pulled from the March Commission meeting agenda. As of the date of last contact, August 24, 2024, the Agent and the owner's attorney discussed the owner's issue with the design and no longer objects to the design. Owner's attorney withdrew their objection to the design in the letter dated August 2, 2024. The owner's attorney is requesting the letter to be part of the formal record through a written appearance.

Condemnation has been initiated to maintain the orderly sequence of events required to meet the construction schedule.

Attachments:

Attachment A – Property Owners' letter to the Commission dated August 2, 2024

Attachment B – Department Response Dated August 29, 2024

Attachment C – Fact Sheet

Exhibit A – Parcel Maps

Exhibit B – Resolution of Necessity C-22467

ATTACHMENT A

August 2, 2024

File Number: ONAS-365913

VIA E-MAIL & CERTIFIED U.S. MAIL - RETURN RECEIPT REQUESTED

Tanisha.Taylor@catc.ca.gov
Tanisha Taylor, Executive Director
California Transportation Commission
P.O. Box 942873, Mail Station 52
Sacramento, CA 94273-0001



Re: Objection to Proposed Adoption of Resolution of Necessity for Acquisition to Acquire Certain Real Property or Interest in Real Property Identified As Parcel 88887-1 (the "Subject Property") For Project #0619000078/State Route 46 Project (the "Project")

Dear Executive Director:

This firm represents Chevron U.S.A. Inc. ("Chevron"), owner of the Subject Property. We have received notice of the California Transportation Commission's ("CTC") intent to adopt a resolution of necessity authorizing the taking of certain portions of the Subject Property by condemnation for the above-referenced Project. Based upon this notice, the CTC's hearing is scheduled for August 15 and 16, 2024 in the San Diego region, California. No time was specified in the notice.

The purpose of this letter is to provide written objection on behalf of Chevron to the adoption of the resolution of necessity in lieu of personally appearing at the hearing. Accordingly, while we do not plan to appear at the hearing, we request that this letter be included as part of the formal record on that agenda item.

Chevron objects to the adoption of the resolution of necessity on each of the following specific grounds:

1. Chevron's Property Is Not Needed For The Project.

While Caltrans' acquisition agents have been friendly and professional, the acquisition process regarding the Subject Property has been confusing and Caltrans has failed to identify exactly what property is required for the project and whether such property is actually necessary for the project. In the July 16, 2024 letter advising Chevron of the upcoming hearing regarding the resolution of necessity, Caltrans simply stated that "a description of the required property is attached to this Notice, and is marked Exhibit A." A copy of that Exhibit A is attached hereto. As can be seen from that document, the exhibit poses more questions than it answers, and Chevron is left to wonder exactly what property interests Caltrans plans to acquire and why.

Based on previous correspondence with Caltrans, Chevron believes, but is not certain, that Caltrans intends to acquire 625 square feet of the Subject Property at the northeast corner of the Subject Property. This acquisition will cause the removal of a Chevron business sign and may interfere with the use and operation of a Chevron driveway. The Subject Property to be acquired is relatively small, and Caltrans has never explained why the Subject Property is actually necessary for the project. Stated differently, Caltrans has never explained why the Subject Property cannot be redesigned slightly to accommodate Chevron in a manner that would obviate the need to acquire any of the Subject Property.

2. Caltrans' Proposed Project Is Not Planned Or Located In The Manner That Will Be Most Compatible With The Greatest Public Good and The Least Private Injury.

One of the necessity components that must be analyzed when considering the adoption of a resolution to authorize the taking of private property is whether the proposed project for which the property is sought to be taken is planned or located in a manner that is most compatible with the greatest public good and causes the least private injury. (Code Civ. Proc., § 1240.030, subd. (b).) In the absence of substantial evidence supporting the CTC's determination as to the planning and location of the proposed project, the resolution of necessity is invalid.

In this case, the project as proposed cannot satisfy the "least private injury" requirement. As stated above, Caltrans has never explained why the project cannot be redesigned slightly to accommodate Chevron in a manner that would obviate the need to acquire any of the Subject Property, or at a minimum, redesign the project so that the sign would not need to be relocated. The "least private injury" requirement could easily be satisfied by a slight modification in the project that would either eliminate the need to acquire the small (625 square feet) but burdensome acquisition or take less property so that the sign could remain in place. But because Caltrans has failed to do so, and apparently plans to proceed with the acquisition of the Subject Property, Caltrans cannot meet the "least private injury" requirement such that the resolution of necessity must be denied.

3. The Hearing On The Proposed Resolution Of Necessity is Inappropriate Because The Agency Is Already Irrevocably Committed To Adopting The Resolution Of Necessity.

Chevron is concerned that no meaningful consideration of its objections and concerns will take place at the hearing of the resolution of necessity concerning the proposed project given that Caltrans appears to have already committed itself to acquiring the Subject Property.

Redevelopment Agency v. Norm's Slauson (1991) 173 Cal.App.3d 1121, addressed such a situation. In that case, the Redevelopment Agency of the City of Huntington Park brought an action in eminent domain to take a major portion of a restaurant's parking lot. The redevelopment agency's attempt to take the property in question was preceded by an agreement between the agency and a developer by which the agency agreed to acquire the property for transfer to the developer and the developer would build a condominium project thereon. The Court of Appeal started its analysis with an explanation of the purpose of a hearing on a resolution of necessity: "Implicit in this requirement of a hearing and the adoption

SheppardMullin

Executive Director
August 2, 2024
Page 3

of a resolution of necessity is the concept that, in arriving at its decision to take, the Agency engage in a good faith and judicious consideration of the pros and cons of the issue and that the decision be buttressed by substantial evidence of the existence of the three basic requirements set forth in Code of Civil Procedure, section 1240.030." Id. at pp. 1124-25. In affirming the trial court's determination that the agency had not right to take the property, the court concluded that: "[i]t seems clear that the hearing which led to the adoption of the resolution of necessity was a sham and the Agency's policy-making board simply 'rubber stamped' a predetermined result." Id. at p. 1127. The Court also stated that: "By the time the agency actually conducted a hearing to determine the 'necessity' for taking the property in question, it had, by virtue of its contract with the developer and issuance of revenue bonds, irrevocably committed itself to take the property in question, regardless of any evidence that might be presented at the hearing." Id.

The concerns raised by the court in Norm's Slauson apply with equal vigor here as the CTC has irrevocably committed to acquire the Subject Property in order to complete the Project, which began about two years ago. Chevron is concerned that despite what objections or evidence may be presented at the hearing on the resolution of necessity for the proposed Project, the hearing will be nothing more than a procedural technicality due to the fact that the CTC has irrevocably committed itself to take the Subject Property.

Based upon the foregoing objections, Chevron respectfully requests that the CTC not adopt the resolution or, at a minimum, continue the hearing on this agenda item until such time as the objections are addressed. Please contact me if you have any questions or comments concerning the foregoing.

Very truly yours,

Sean P. O'Connor

Sean P. O'Connor
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4885-3685-4996.1

Attachment

cc: Chanin McKeighen (via email)
chanin_mckeighen@dot.ca.gov
Randeep Dhillon (via email)
Randeep.dhillon@dot.ca.gov

ATTACHMENT B

California Department of Transportation

DISTRICT 6 OFFICE
2015 E. Shields Ave. Suite 100 | FRESNO, CA 93726
(559) 383-5232
chanin.mckeighen@dot.ca.gov



August 29, 2024

Sean P O'Connor
Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Driver 10th Floor
Costa Mesa CA 92626-1993

RE: Objection to Proposed Adoption Resolution Necessity for Acquire Certain Real Property or Interest in Real Property Identified as Parcel 88887-1 (the Subject Property") For Project #0619000078/State Route 46 Project (The Project)

Dear Mr. O'Connor:

This letter is in response to your letter to the Executive Director of the California Transportation Commission (CTC) dated August 2, 2024. The purpose of this letter is to provide a written response to the objection of the adoption of the resolution of necessity (RON) based on the property needed for the project, the planning of the project and the CTC is already irrevocably committed to adoption the RON.

The property owned by Chevron at Ward Drive and State Route 41 is needed for the project. This intersection as the well as the intersection at Bernard Drive has been experiencing traffic congestion due to recent commercial development. As a result, southbound vehicles on State Route 41 have been using the shoulder as a through lane, compromising the safety of other vehicles and pedestrians using the intersection. A double lane hybrid roundabout design has been chosen due to its superior safety record and traffic calming features. A double lane hybrid roundabout must comply with Complete Street directive and provide safety for bikes and pedestrians as well as passenger vehicles and large trucks. Chevron property is located within the pedestrian's affected traffic area of the roundabout and, currently, does not have a sidewalk or curb ramp, required by Complete Street directive, to provide a safe pedestrian crossing on Ward Drive. Additionally, a shallow drainage ditch is required to accommodate the new drainage inlet and new drainage pipes to direct the stormwater away from the Chevron property.

Mr. Sean O'Connor

August 29, 2024

Page 2

The project has been planned with the greatest public good and the least private injury. The property is absolutely needed for the project to comply with the Complete Street directive and must include adequate space for multi modal sidewalk, curb ramp, and a drainage ditch to be used for drainage behind the sidewalk to avoid any storm water onto the property, as well as the Ward Drive itself. It should be noted that the pavement at Ward Drive has already deteriorated substantially due to stormwater in this specific area.

Lastly the Hearing on the proposed RON is meaningful as our design team has made extra efforts to reduce the footprint of the construction, on Chevron property. The sidewalk and curb ramp stop short of the driveway and the parcel acquisition has been minimized such that there is virtually no impact to the existing Chevron driveway while providing a safer pedestrian/bike crossing.

Based on the information provided above and through our continued negotiations with your office, we will request the CTC to adopt the RON at the October 17th and 18th, 2024, meeting to be held in Bakersfield, California. If you have any questions or concerns regarding this action please do not hesitate to contact me.

Sincerely,



Chanin McKeighen

Acquisition/Condemnation Branch Chief

cc: Randeep Dhillon

Harry Cheng

Nick Dumas

ATTACHMENT C

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA

06-KIN-41-PM 16.51
Project ID: 0619000078 (EA 0X9509)

Location: In Kings County in the unincorporated area of Kettleman City at 27513 Ward Drive

Limits: On State Route 41 from 0.1 mile South of Bernard Drive to 0.2 mile North of Bernard Drive

Cost: Programmed Construction Cost: \$6,464,000 (Capital)
Current of way cost estimate: \$8,391,803 (Capital)

Funding Source: State Highway Operation and Preservation Program, Safety Improvements Category of Safety Improvements

Number of Lanes: Existing: 2 Lane Conventional Highway
Proposed: Double Lane Roundabout at the intersection of Bernard Drive and SR 41.

Proposed Major Features: Construction of a double lane hybrid roundabout with truck aprons which includes new lighting system with luminaire poles, pedestrian crossing with passageways, new curb ramps and bike ramps, multi modal sidewalks to latest Americans with Disabilities Act standards, pedestrian Rectangular Rapid Flashing Beacons, high visibility crosswalks and restriping, new storm drainage pipes, new drainage inlets.

Traffic: Existing (year 2025): 24,800 Annual Daily Traffic (ADT)
Proposed (year 2065): 56,000 ADT

PARCEL DATA

Property Owner: Chevron USA, Inc

Parcel Location: 27513 Ward Drive, Kettleman City
Present Use: Commercial Gas Station (Chevron), mini mart and fast food (McDonald's)

Area of Property: 1.74 acres

Area Required: Parcel 88887-1: 625 square feet in fee

Exhibit A

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.

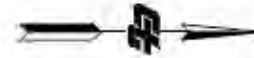
COUNTY OF KINGS

T.22S. R.19E. M.D.M.

SECTION 30

CYRIL PLACE

HUBERT W-Y



PM 16.51

STATE ROUTE 41

BERNARD DRIVE

EXISTING R/W

0.27 MI. TO I-5

EXISTING R/W

TO KETTLEMAN CITY

88887-1

W-RO DRIVE

DANA CIRCLE

BERNARD DRIVE

CALIFORNIA AQUEDUCT

STATE OF CALIFORNIA
 CALIFORNIA STATE TRANSPORTATION AGENCY
 DEPARTMENT OF TRANSPORTATION
 RIGHT OF WAY
 RESOLUTION OF NECESSITY
 AREA MAP
 EXHIBIT A
 NO SC-LE

DR-FTED BY	D-TE	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
M. M-RIN	01/11/2024	6	KIN	41	16.52	1	2

T.22S. R.19E. M.D.M.

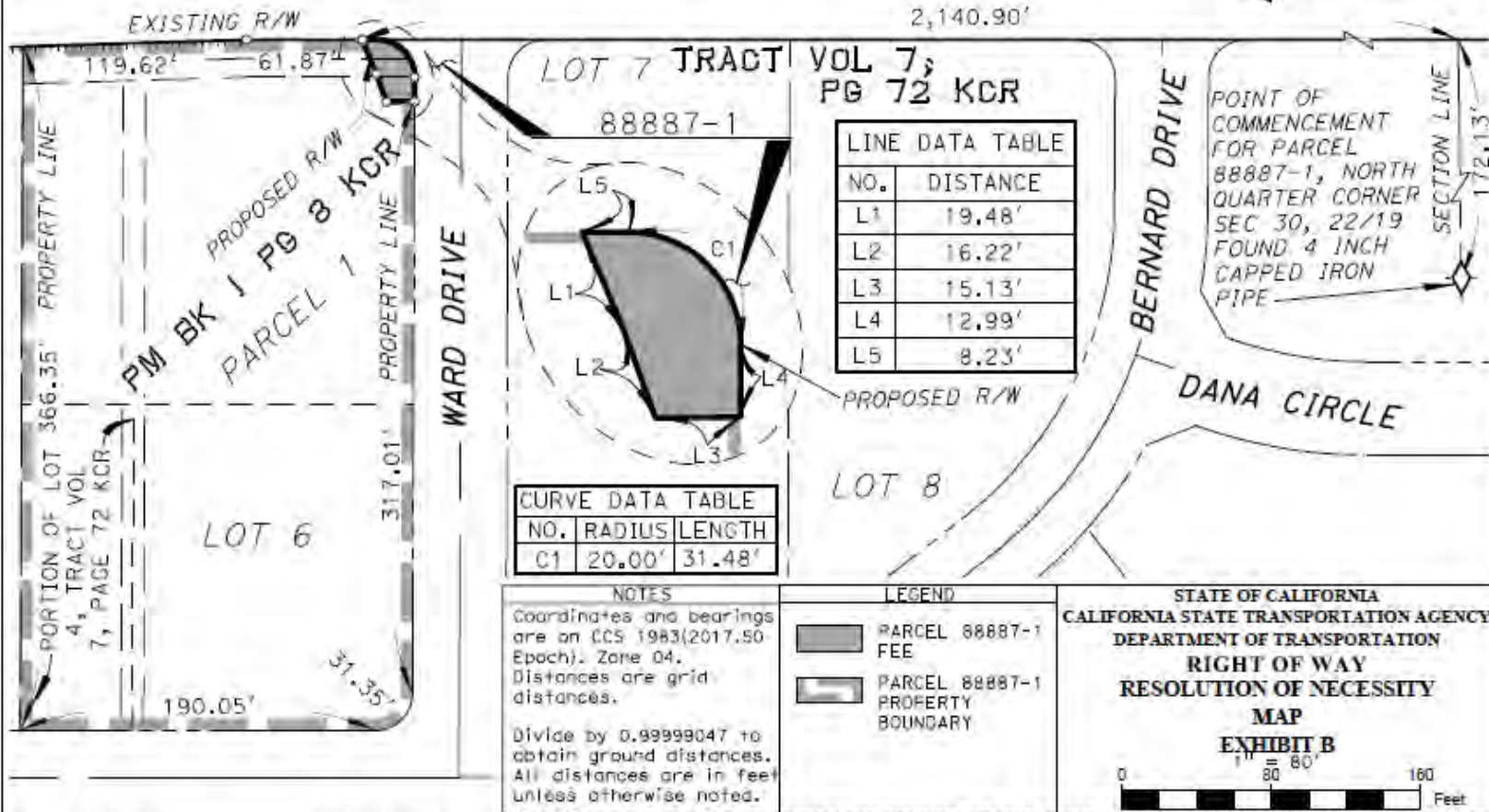
NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.

SECTION 30

COUNTY OF KINGS

CL SURVEY 1955

STATE ROUTE 41



LINE DATA TABLE

NO.	DISTANCE
L1	19.48'
L2	16.22'
L3	15.13'
L4	12.99'
L5	8.23'

CURVE DATA TABLE

NO.	RADIUS	LENGTH
C1	20.00'	31.48'

NOTES
 Coordinates and bearings are on CCS 1983(2017.50 Epoch), Zone 04. Distances are grid distances.
 Divide by 0.99999047 to obtain ground distances. All distances are in feet unless otherwise noted.

LEGEND

	PARCEL 88887-1 FEE
	PARCEL 88887-1 PROPERTY BOUNDARY

STATE OF CALIFORNIA
 CALIFORNIA STATE TRANSPORTATION AGENCY
 DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
 RESOLUTION OF NECESSITY
 MAP
 EXHIBIT B**

1" = 80'
 0 80 160 Feet

DRAFTED BY	DATE	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
M. MARIN	01/11/2024	6	KIN	41	16.52	2	2

EXHIBIT B

**TRANSPORTATION COMMISSION
RESOLUTION NO.**

C-22467

CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY
OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN
HIGHWAY 06-Kin-41-PM 16.52 PARCEL 88887-1
OWNER: Chevron U.S.A. Inc, a California Corporation

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 1240.510 in that the property being acquired is for a compatible use;

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;

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

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

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

APPROVED AS TO FORM AND PROCEDURE

APPROVAL RECOMMENDED

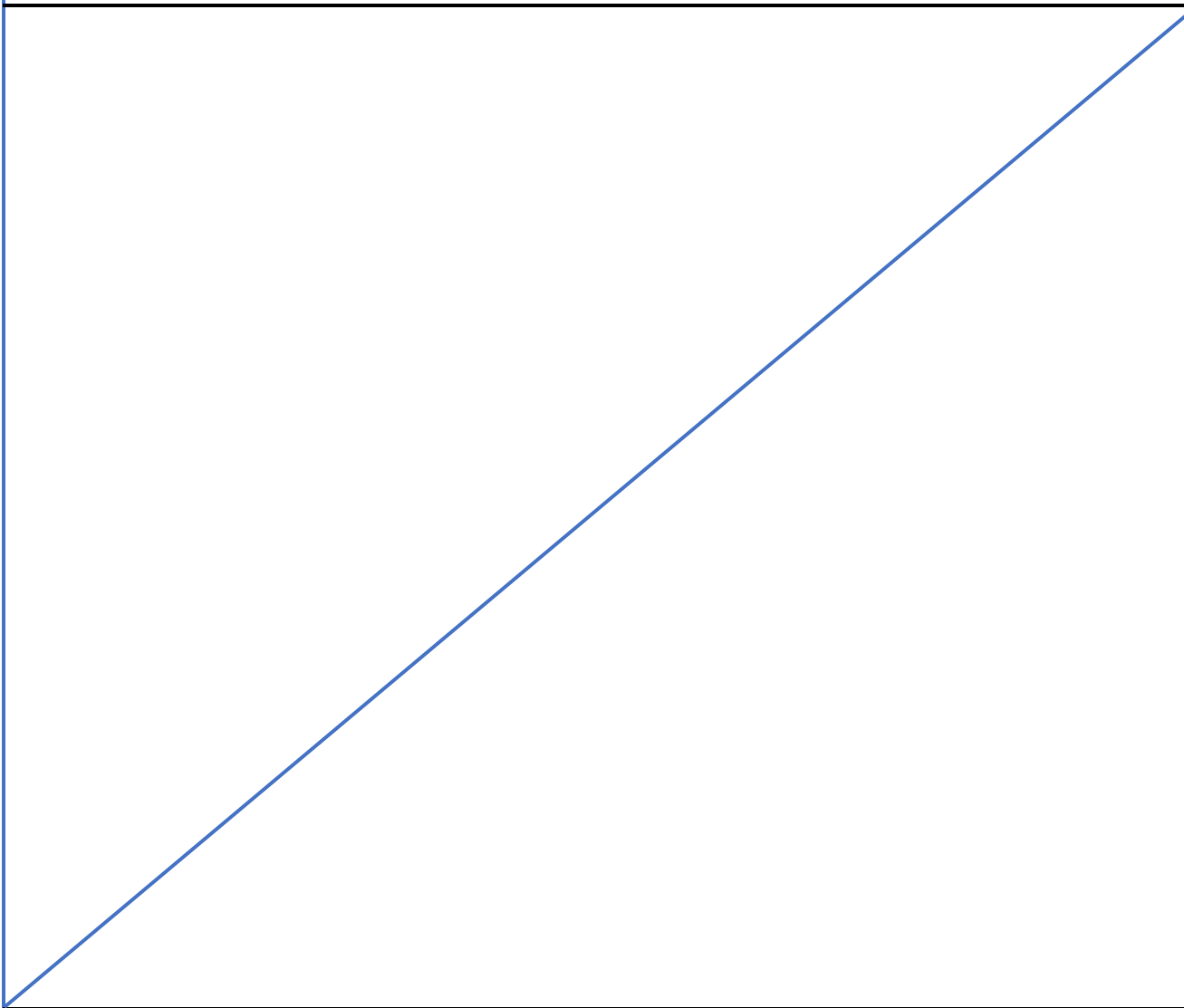
Attorney, Department of Transportation

DIVISION OF RIGHT OF WAY

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

The real property or interests in real property, which the Department of Transportation is by this resolution authorized to acquire, is situated in the County of Kings, State of California, Highway 06-Kin-41 and described as follows:



Parcel 88887-1

For State highway purposes, a portion of Lot 5 of Tract No. 242, in the County of Kings, State of California, as per map recorded in Volume 7 of Licensed Surveyors' Plats, at Page 72 in the office of the County Recorder of Kings County, described as follows:

COMMENCING at the North quarter corner of Section 30, Township 22 South, Range 19 East, Mount Diablo Meridian, marked by a found 4-inch capped iron pipe stamped LS 3771, per Kings County Corner Record No. 1959, down 12 inches, from which the Northwest corner of said Section 30, marked by a found 3-inch iron pipe, with a 4-inch brass cap stamped L.G.B. McD., per Kings County Corner Record No. 1960, down 20 inches, bears North 89°29'27" West, 2639.37 feet along the North line of the Northwest quarter of said Section 30; THENCE (1) leaving said North quarter corner, along said North line, North 89°29'27" West, 172.13 feet to the easterly right of way line of State Highway 41, as said easterly right of way line is shown on said tract map; THENCE (2) along said easterly right of way line, South 01°15'54" West, 2140.90 feet to the POINT OF BEGINNING; THENCE (3) leaving said easterly right of way line, North 68°29'24" East, 19.48 feet; THENCE (4) North 71°20'23" East, 16.22 feet; THENCE (5) North 00°40'28" East, 15.13 feet to the northerly line of said Lot 5; THENCE (6) along said northerly line, North 88°33'06" West, 12.99 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 20.00 feet; THENCE (7) southwesterly, along said tangent curve, through a central angle of 90°11'00", an arc distance of 31.48 feet to the easterly right of way line of said State Highway 41; THENCE (8) along said easterly right of way line, South 01°15'54" West, 8.23 feet to the POINT OF BEGINNING.

The bearings and distances used in this description are on the California Coordinate System of 1983, Zone 4. Divide distances by 0.99999047 to convert to ground distances.