

MEMORANDUM

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: October 17-18, 2024

From: STEVEN KECK, Chief Financial Officer

Reference Number: 2.4a.(2), Action Item

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

Subject: **RESOLUTION OF NECESSITY – APPEARANCE**

ISSUE:

Should the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-22468, 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 an appearance before the Commission. The primary concerns and objections expressed by the property owners through their attorney is that the proposed project is not planned or located in the manner that will be most compatible with the greatest public good with the least private injury, the property sought to be acquired is not necessary for the project, and that a legitimate offer pursuant to Government Code Section 7267.2 has not been made. The property owner's objections and the Department's responses are contained in Attachment B.

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

RECOMMENDATION:

The Department recommends that the Commission adopt Resolution C-22468 summarized on the following pages. This Resolution is for a transportation project on State Route (SR) 190 in District 6, in Tulare 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.

Discussions have been ongoing between the property owners and the Department to address and resolve the issues. Progress has been made, but in order to keep the project schedule, the Department is requesting that this appearance proceed to the October 17-18, 2024 Commission meeting. Legal possession will allow the construction activities on the parcel to commence, thereby avoiding and/or mitigating considerable right of way delay costs that will accrue if efforts to initiate the condemnation process are not taken immediately to secure legal possession of the subject property.

C-22468 - Young Oh Kwun, a single man

06-Tul-190-PM 11.37 - Parcel 88977-1, 2 - EA 1A3109.

Right of Way Certification Date: 10/31/24; Ready To List Date: 12/31/24

Conventional highway - construct a single-lane roundabout at the intersection of SR 190 at Rockford Road in Tulare County. Authorizes condemnation of land in fee for a State highway, and underlying fee. Located in the unincorporated area of the County of Tulare on SR 190 at the intersection of Rockford Road. Assessor Parcel Number 236-160-030.

Attachments:

Attachment A - Project Information

Exhibit A - Project Maps

Attachment B - Parcel Panel Report

Exhibit B - Parcel Maps

Exhibit C - Property Owner's Letter to the Commission dated October 2, 2023

Exhibit D - Resolution of Necessity C-22468

ATTACHMENT A

PROJECT INFORMATION

PROJECT DATA

06-Tul-190-PM 11.37
Project No. 0619000232 (EA 1A3109)

Location: Route 190 in Tulare County Near Porterville

Limits: From 0.20 miles west of Road 208 to 0.2 miles east of Road 208

Cost: R/W Cost: \$950,000; Construction Cost: \$4.4M

Funding Sources: SHOPP and funded in the 2024/2025 fiscal year from the
Safety Improvements Program

Number of Lanes: Existing: 2 lanes east/west, 2 lanes north/south
Proposed: 2 lanes east to west, 2 lanes north to south

Proposed Major Features: Upgrading existing 2 way stop controlled intersection to a roundabout, replacing driveways to affected properties.

Traffic Volumes: 2025 (year): 11,500 (Average Daily Traffic (ADT))
2045 (year): 15,700 (ADT)

NEED FOR THE PROJECT

SR 190, at this location, is a two-lane conventional highway and is oriented in an east/west direction. The existing SR 190 has standard 12-foot lanes and 8-foot outside paved shoulders with no left turn channelization. The eastbound and westbound approaches to the intersection have a shared left, through and right turn with no dedicated turn pockets. The eastbound and westbound approaches to the intersection have an existing flared outside shoulder for right turn movements. The posted speed limit in the eastbound and westbound direction is 55 mph. The 2017 Back and Ahead Annual ADT at this intersection is 6,100 and 10,600 respectively. The total heavy vehicle percentage is 12.3 percent.

Rockford Road within the project area is a local two-lane road and is oriented in a north/south direction. Rockford Road runs perpendicular to SR 190 and consists of 12-foot lanes and shoulder widths that vary from approximately zero to two feet wide. There are no left turn lanes on the approaches to the intersection; however, there are right-turn flares on the northbound and southbound approaches to the intersection. There are flashing beacons enhancing the stop signs controlling the northbound and southbound traffic approaching the intersection.

This intersection currently has high rates of collisions as indicated in the Project Report. Fatal collision rates are nearly 15 times the state average for similar facilities and total collisions are four times the state average. As determined in the Project Report, this safety improvement project is needed to address and reduce the number and/or severity of collisions at this intersection.

The following is the remaining Project schedule:

Right of Way Certification:	10/31/2024
Ready to List:	12/31/2024
Award:	07/07/2025
Approved Construction Contract:	08/08/2025

PROJECT PLANNING AND LOCATION

Project Report (PR): PR was approved on December 29, 2021

SR 190, formerly known as SR 127, is 2-lane rural conventional highway, which extends from SR 99 near Tipton to Quaking Aspen Camp in Tulare County and is on level terrain within the project area. Within District 6, SR 190 is predominantly a 2-lane conventional highway except for the 3.6 miles, 4-lane expressway segment (PM14.9/18.5) in the City of Porterville.

Within the project limits, the existing lane widths are 12 feet with eight feet outside shoulders and without left-turn channelization in both directions on SR 190. The existing Rockford Road is a two-lane undivided major collector road with 12 feet lanes and zero to two foot wide shoulders with only two-way stop signs at the intersection. The collision history at this intersection has resulted in this safety project to construct a single-lane roundabout to improve safety and reduce collisions. A traffic analysis of this intersection SR 190 concluded that there is a need to restripe the roundabout in the future to become a 2-lane hybrid roundabout. The roundabout must also be able to accommodate oversize overweight vehicles in addition to large amounts of truck traffic as indicated in the project report.

As a part of this project, a no-build alternative was evaluated but rejected since it does not meet the purpose and need of the project.

This project is programmed in the 2020 SHOPP and funded in the 2024/2025 fiscal year from the Safety Improvements Program.

EXHIBIT A

Project Location Map



Project Vicinity Map



ATTACHMENT B

PARCEL PANEL REPORT

Property Owner: Young Oh Kwun

Parcel Location: 20696 Avenue 144 on the northwest (NW) corner of Route 190 and Road 208 (Rockford Road).

Present Use: Agricultural

Zoning: Agricultural

Area of Property: 19.57 acres

Area Required: 0.95 acres

PARCEL DESCRIPTION

The subject property is operating as an organic blueberry farm. There is an existing access point to the blueberry farm located on the east side of the property approximately 230 feet north of the intersection on Rockford Road. Additionally, there is an access to a residence on the property approximately 675 feet west of the intersection along SR 190. The property is located at the NW corner of SR 190 and Road 208 in Porterville.

The Department's appraisal maps identified parcel 88977 as 19.57 acres and comprised of APN 236-160-03. However, when reviewing the unity of use, unity of ownership, and contiguity, the larger parcel consists of APN 236-160-03 at 19.57 acres and APN 236-160-29 at 19.94 acres totaling 39.51 acres. The acquisition consists of the purchase of 0.95 acres in Fee. The remainder parcel will consist of 38.56 acres.

The purpose of this safety improvement project is to improve safety at the intersection of SR 190 and Rockford Road and reduce the number and/or severity of collisions at this intersection.

Status of other parcels required for the project:

- Total parcels needed = 6
- Number of parcels acquired = 5
- Number of parcels filing suit to get an order for possession = 1

NEED FOR SUBJECT PROPERTY

Acquiring this parcel is necessary for the construction of a single-lane roundabout at the intersection of SR 190 at Road 208 (Rockford Road) and is unavoidable to meet the project need of increasing safety and reducing collision severity. The current Right of Way acquisition proposed cannot be reduced without significantly impacting utility relocations, other parcels, and the constructability of the project. Additionally, the amount of right of way required from this parcel is consistent with that required of the other parcels at the intersection so as not to impact one property owner more severely than another. If this parcel were to be avoided, it would result in larger acquisitions from other agricultural and residential properties.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) took place on June 18, 2024, as a hybrid meeting (virtual and in-person). The Panel members included Jean-Marie Hunter, Panel Chair, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; Paul Brown Assistant Chief Counsel Sacramento Legal; Tina Lucas and Amy Fong, Department HQ's Division of Design; Emma Pham, HQ's Division of Right of Way and Land Surveys, Secretary to the Panel; Diana Gomez, District 6 Director; Maria Toles, District 6 Deputy District Director for Right of Way; Nick Dumas, District 6 Right of Way Office Chief; Richard Helgeson, District 6 Deputy District Director of Design; Ernesto Penuna, District 6 Supervising Transportation Engineer; Sukhjinder Singh, District 6 Senior Transportation Engineer; Juan Carmona, District 6 Associate Right of Way Agent; Christopher Washington, California Eminent Domain Law Group; and Young Oh Kwun, property owner.

This report summarizes the findings of the Panel with regards to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The four criteria are as follows:

1. The public interest and necessity require the proposed project.

The Department developed a Project Report, dated December 29, 2021. The project proposes to improve safety by constructing a single-lane roundabout at the intersection of SR 190 at Rockford Road in Tulare County. This safety improvement project is needed to address and reduce the number and severity of collisions at this intersection.

2. 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 prepared an Initial Study with Negative Declaration, approved on November 18, 2021, for this project and, following public review, has determined from this study that the project will not have a significant effect on the environment. Two Alternatives were considered for this project to complete the roadway improvements: build or no-build, with the intention of causing the least private injury.

The no-build alternative will leave this intersection of SR 190 as it is, without a roundabout. This alternative does not meet the purpose and need for the project to reduce the number and severity of collisions at this intersection.

The build alternative proposes to improve the intersection of SR 190 at Rockford Road by constructing a roundabout at the site, thereby easing traffic congestion by introducing a traffic-calming circulation pattern. The project is carefully designed and located to minimize acquisitions and improve safety.

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

The owner's property consists of 39.51 acres and is located at NW corner of SR 190 and Road 208 (Rockford Road). The proposed acquisition area of 0.95 acre is necessary for the construction of a single-lane roundabout at the intersection of SR 190 at Rockford Road. The purpose of this safety improvement project is to improve safety at the intersection of SR 190 and Rockford Road and reduce the number and/or severity of collisions at this intersection. The current Right of Way acquisition proposed cannot be reduced without significantly impacting utility relocations, other parcels, and the constructability of the project. Additionally, the amount of right of way required from this parcel is consistent with that required of the other parcels at the intersection so as not to impact one property owner more severely than another. If this parcel were to be avoided, it would result in larger acquisitions from other agricultural and residential properties.

4. 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 a staff appraisal which was approved by District Right of Way management on January 24, 2023. The First Written Offer (FWO) was presented in person to the owner on March 9, 2023. During the presentation of the FWO, the owner expressed concerns about the cost to cure items and the value of the price per acre. The Agent has attempted to resolve these issues; however, once the owner retained counsel, the negotiation process was impeded. Therefore, negotiations are now at an impasse.

Condemnation must be initiated in order to keep the project on schedule and maintain the orderly sequence of construction schedules.

The following is a description of the specific concerns raised by the property owner and their representatives, followed by the Department's response:

Owner's Concern #1:

As currently proposed, the Department's project will close the intersection to through traffic and truck drivers needing to access Mr. Kwun's property will utilize a major, four-mile detour to access the subject property which may deter drivers from accessing the subject property on a regular basis.

Mr. Kwun has crops on his property that need to be removed in a timely fashion after the harvest period and if drivers elect not to come to his property, it would be financially problematic to get the crops to market.

District's Response: The District will write into the construction contract that construction will not start until the end of harvest. The construction shall start after June 30, 2025.

Owner's Concern #2:

Seasonal workers park along Mr. Kwun's property on Rockford Road as they cannot park on the subject parcel. During construction, they will have to park further away which may deter the seasonal workers from wanting to access the property to harvest the crops. That may cause another financial issue. In the after condition, when the project is done, they will still be parking further away from the property than they are currently.

District's Response:

Informal parking for the temporary short term harvest workers is currently utilizing areas of Rockford Road and SR 190. Any parking that harvest workers of the property owner currently do within the State right of way of SR 190, is not allowed; however, the project is eliminating only a small portion along Rockford Road within the limits of the roundabout. The area currently being used will be blocked by the new curb, gutter and sidewalk. The construction of curb, gutter, and sidewalk around the roundabout is necessary for the safe geometry of the roundabout as well as improve safety for pedestrians and bicyclists. Replacement of this small informal parking area outside the roundabout would have greater impacts to the property; however, parking along Rockford Road can continue outside the roundabout limits as is being done currently.

Owner's Concern #3:

Mr. Kwun appreciates enhanced safety with the construction of the roundabout, but he is concerned about the experience of the drivers navigating a roundabout. He is concerned that inexperienced drivers may cause issues with trucks tipping over. Hence, that might be a deterrent for them to want to access Mr. Kwun's property.

District's Response:

Headquarters has created brochures for the trucking industry on how to navigate roundabouts that they have been disseminating. If there are certain trucking companies that service Mr. Kwun's property, the District can make those brochures available to share with Mr. Kwun to provide to the drivers. The drivers will be informed that it is legal to mount the center island and give them tips on how to navigate through the roundabouts.

The truck movement brochures were sent to Mr. Kwun's attorney on June 20, 2024.

Owner's Concern #4:

The proposed project is blocking the access point to Mr. Kwun's property. Either the Department removes the median or develops an alternate to allow traffic going into the property.

District's Response: Due the geometry required for a safe approach the left-in and left-out movements are eliminated as the required splitter island blocks the movements. Either eliminating or providing gaps in the splitter island was evaluated as part of the design process to provide the left in and out movements; however, they were deemed to reduce the safety of the roundabout. In the southbound direction on Rockford Road, the elimination or modification to the splitter island creates nonstandard geometrics on the approach to the roundabout that is necessary to adequately slow vehicles prior to entering the roundabout. In the northbound direction, the elimination or modification of the splitter island has similar effects in affecting the safety of vehicles property exiting the roundabout.

As part of the coordination with the property owner in response to the need for vehicular access, a new driveway was evaluated and was added to the proposed project along SR 190 approximately 600 feet west of the intersection. The driveway will be restricted to an ingress only location with a left-in from the eastbound direction and a right-in from the westbound direction. Allowing egress movements from this new proposed driveway will be prohibited as they are outside of the limits of the roundabout where speeds of vehicles are traveling at the speed limit. Vehicles entering the driveway at this location will then be required to leave the property at the driveway on Rockford Road. With this

ingress/egress configuration, all movements to and from the property are accommodated.

Owner's Concern #5:

As a result of the project, there will only be right turn movements onto the property from SR 190; the property owner wants egress too.

District's Response:

As part of the coordination with the property owner in response to the need for vehicular access, a new driveway was evaluated and was added to the proposed project along SR 190, approximately 600 feet west of the intersection. The driveway will be restricted to an ingress location only with a left-in from the eastbound direction and a right-in from the westbound direction. Allowing egress movements from this new proposed driveway will be prohibited as they are outside of the limits of the roundabout where the speeds of vehicles are at the speed limit.

Owner's Concern #6:

As a small farmer, Mr. Kwun has fixed costs. He has to maximize the use of the entire property in order to meet all the costs and turn profits. The project may reduce their income, so Mr. Kwun does not believe the project is planned or located in the manner that will provide the least private injury. Thus, Mr. Kwun is opposed to the Resolution of Necessity.

District's Response:

The current acquisition area proposed by the project is the minimum area possible for the construction of the project, utility relocation, and future maintenance. No reductions in area can be accomplished without significantly affecting constructability or future maintenance of the roundabout. The area of impact to this property is proportional to the areas of impact on adjacent properties and any reduction of impact to the subject property will greatly impact the other properties.

Additionally, the improvements impacted within the fee area are included in the appraisal. The cost to cure items will restore the property after the project is completed and these costs were also included in the appraisal and offer.

DEPARTMENT CONTACTS:

The following is a summary of the contacts made with the property owner/attorney:

Type of Contact	Number of Contacts
Mailing of information	0
Emailing of Information	9
Telephone	3
Personal Call	2

STATUTORY OFFER TO PURCHASE

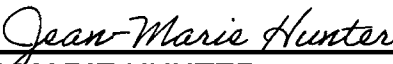
The Department has appraised the subject property and offered the full amount of the appraisal to the owner of record as required by the Government Code Section 7267.2. The owner has been notified those issues related to compensation are outside the purview of the Commission.

PANEL RECOMMENDATION

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

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 least private injury.
3. The property rights to be condemned are necessary for the proposed project.
4. An offer to purchase in accordance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting this Resolution of Necessity to the Commission.



JEANMARIE HUNTER
Chief, Office of Project Delivery
HQ Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:



DONNA BERRY
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW
MEETING ON June 18, 2024**

Jean-Marie Hunter, HQ's Division of Right of Way and Land Surveys, Panel Chair
Paul Brown, Legal Division Assistant Chief Counsel, Real Property, Panel Member
Tina Lucas, HQ's Division of Design, Panel Member
Emma Pham, HQ's Division of Right of Way and Land Surveys, Panel Secretary
Amy Fong, HQ's Division of Design, Assistant Chief

Diana Gomez, District Director, District 6
Richard Helgeson, Deputy District Director of Design – District 6
Maria Toles, Deputy District Director of Right of Way, District 6
Ernesto Penuna, District 6 Design
Sukhjinder Singh, District 6 Design

Nick Dumas, Office Chief, District 6 Right of Way
Juan Carmona, Associate Right of Way Agent, District 6

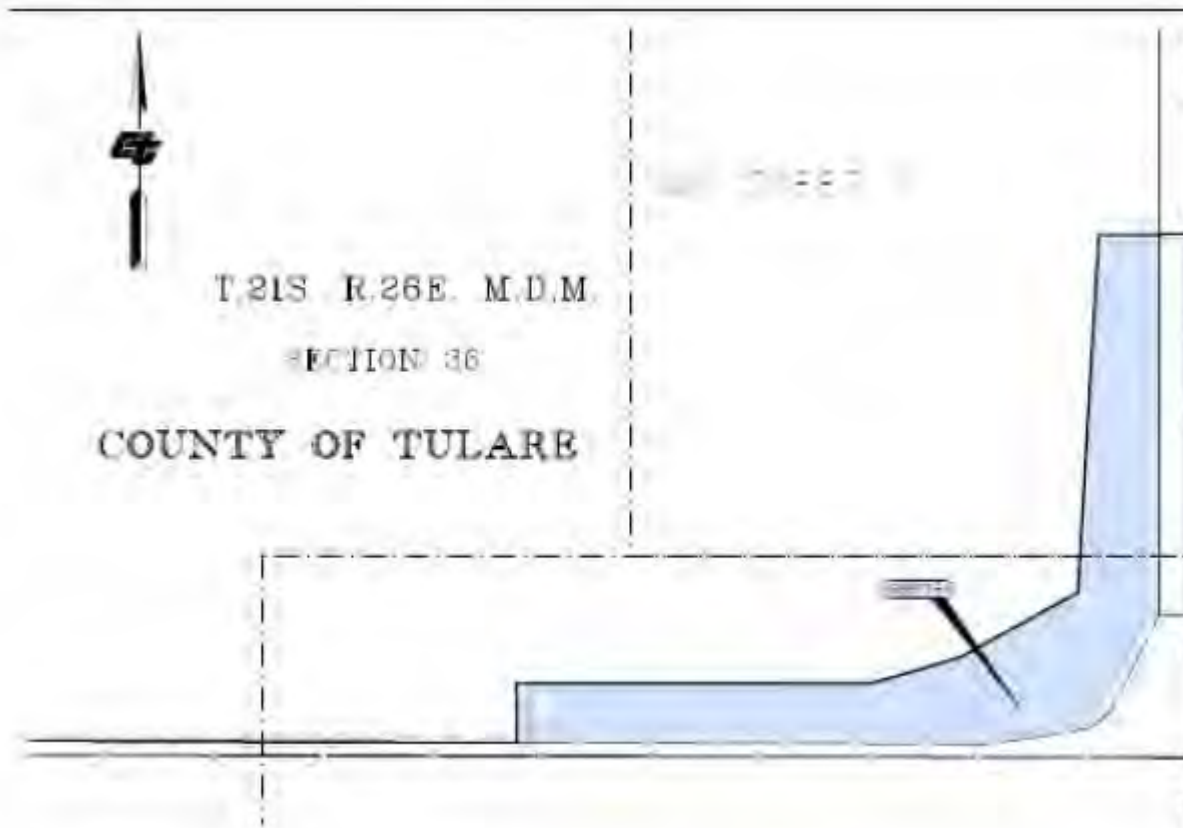
Christopher Washington, Attorney, California Eminent Domain Law
Young Oh Kwun, Property Owner

EXHIBIT B

SUBJECT PARCEL



Kwun Parcel Acquisition

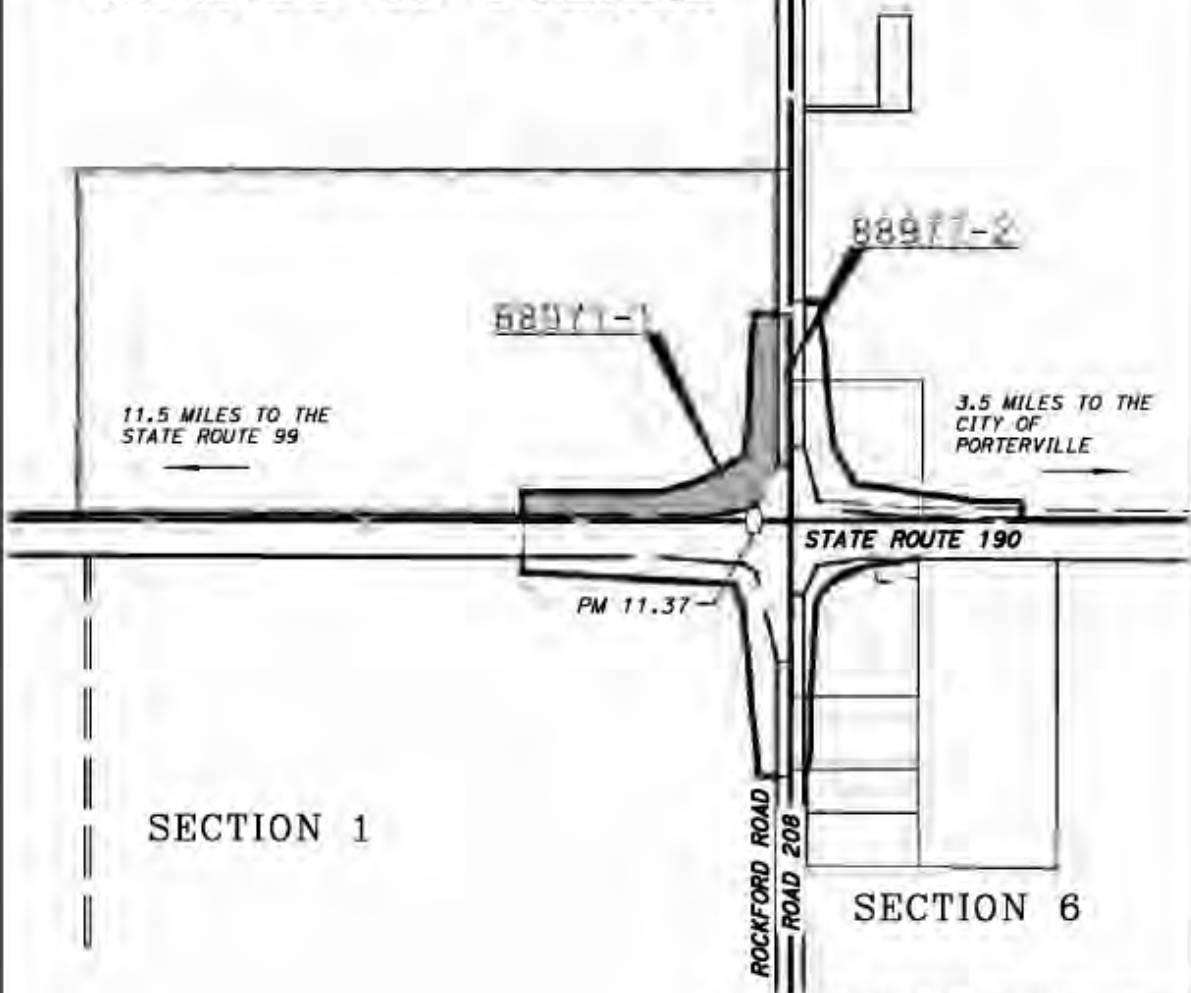


NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



T.21S. R.26E. M.D.M.
SECTION 36
COUNTY OF TULARE

T.21S. R.27E. M.D.
SECTION 31



SECTION 1

SECTION 6

STATE OF CALIFORNIA
CALIFORNIA STATE TRANSPORTATION AGENCY
DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
RESOLUTION OF NECESSITY MAP
AREA MAP
EXHIBIT A
NO SCALE**

DRAFTED BY	DATE	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
GUSTAVO MEDINA	7/28/2023	06	TUL	190	11.37	1	2

COUNTY OF TULARE

T.21S. R.26E. M.D.M.

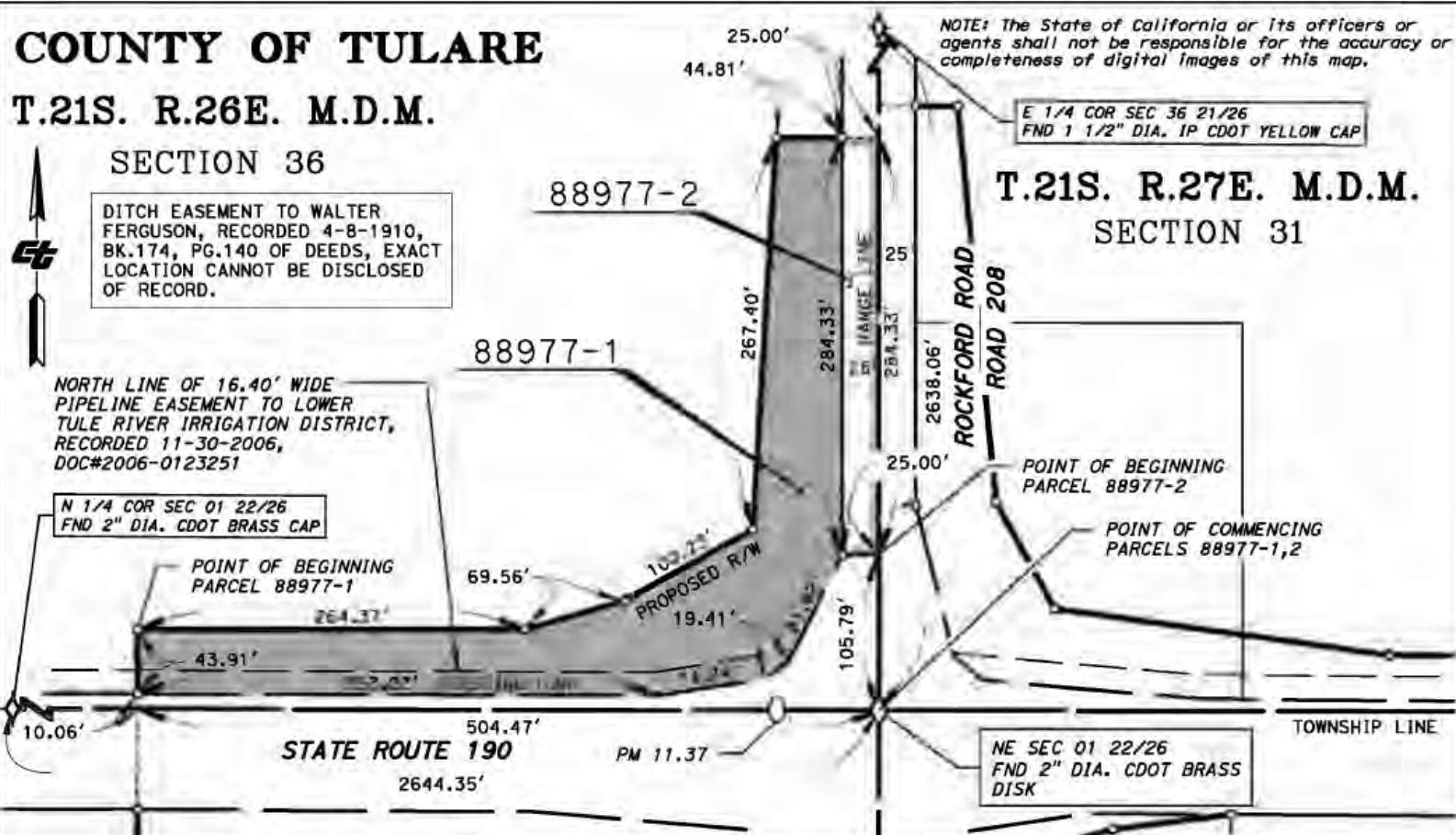
SECTION 36

DITCH EASEMENT TO WALTER FERGUSON, RECORDED 4-8-1910, BK.174, PG.140 OF DEEDS, EXACT LOCATION CANNOT BE DISCLOSED OF RECORD.

NORTH LINE OF 16.40' WIDE PIPELINE EASEMENT TO LOWER TULE RIVER IRRIGATION DISTRICT, RECORDED 11-30-2006, DOC#2006-0123251

N 1/4 COR SEC 01 22/26
FND 2" DIA. CDOT BRASS CAP

POINT OF BEGINNING
PARCEL 88977-1



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.

E 1/4 COR SEC 36 21/26
FND 1 1/2" DIA. 1P CDOT YELLOW CAP

T.21S. R.27E. M.D.M.

SECTION 31

POINT OF BEGINNING
PARCEL 88977-2

POINT OF COMMENCING
PARCELS 88977-1,2

NE SEC 01 22/26
FND 2" DIA. CDOT BRASS
DISK

TOWNSHIP LINE

IRRIGATION EASEMENT RESERVED BY WILLIAM & YOUNG COMPANY, RECORDED 8-21-1907, BK.146, PG.309 OF DEEDS, EXACT LOCATION CANNOT BE DISCLOSED OF RECORD.

SECTION 1

NOTES

Coordinates and bearings are on CCS 83(2017.50) Zone 04. Distances and stationing are grid distances. Divide by 0.99997683 to obtain ground distances. All distances are in feet unless otherwise noted.

LEGEND

- PARCEL 88977-1 FEE
- PARCEL 88977-2 UNDERLYING FEE
- PARCEL 88977 PROP. BOUNDARY

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

SCALE: 1" = 100'

FEET 0 50 100 200

DRAFTED BY	DATE	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
GUSTAVO MEDINA	8/15/2023	06	TUL	190	11.37	2	2

EXHIBIT C

CHRISTOPHER G. WASHINGTON
CGW@CALEDLAW.COM
DIRECT DIAL – 818-248-9050

October 2, 2023

Via Overnight Mail & Email (tanisha.taylor@catc.ca.gov)

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

**Re: California Department of Transportation
06-Tul-190-PM 11.37
EA 1A310
Project #0619000232 – Rockford Road Roundabout Project
Parcel No. 88977-1, 2
14565 Road 208, Porterville, CA (APN 236-160-030)
Owner: Young Oh Kwun**

**California Transportation Commission
Meeting: October 18 & October 19, 2023**

Dear Ms. Taylor and Commission:

Our firm has been retained by Young Oh Kwun (“Kwun”) as his eminent domain counsel with respect to the California Department of Transportation’s (“Caltrans”) proposed acquisition by eminent domain of portions of the above-referenced property and the organic blueberry farm thereon (“Subject Property”) for Caltrans’ Rockford Road Roundabout Project (“Project”).

This letter constitutes our formal request to appear before the CTC to raise objections to the adoption of a Resolution of Necessity on various grounds including, without limitation, that the Project is not planned or located in a manner consistent with the greatest public good and least private injury. Cal. Code Civ. Proc. §1240.030.

Mr. Kwun is a certified organic blueberry farmer and has owned and operated his organic blueberry farm on the Subject Property (~40 acres) for about 10 years. Mr. Kwun strongly objects to the California Transportation Commission’s (“CTC”) consideration of adoption of a Resolution of Necessity on the grounds that the Project is

designed by Caltrans to inflict substantial damage to his farm and farming operations. Moreover, Caltrans failed to consider reasonable alternative Project designs that would minimize these substantial damages. Thus, the Project is not planned or located in a manner consistent with the greatest public good and least private injury.

As presently designed, the Project will inflict severe permanent damages to the farm and farming operations by: (i) eliminating direct vehicular access to the farm and substantially constraining vehicular egress from the farm; (ii) wiping out rows of organic blueberry plants; and (iii) requiring the relocation and reconfiguration of essential farming infrastructure facilities (irrigation gates, valves and lines; electrical service; and, farming roads and parking areas). Moreover, during construction vehicular access to the farm is eliminated due to closing of the nearest intersection and the construction area encompassing and blocking the driveway. Caltrans failed entirely to consider reasonable alternative designs that would ensure access to the farm is maintained and preserving Mr. Kwun's farming operations.

We request that Caltrans schedule a District Condemnation Evaluation Meeting regarding this matter prior to the CTC's consideration of a Resolution of Necessity.

1. THE PROJECT IS NOT DESIGNED OR PLANNED CONSISTENT WITH THE GREATEST PUBLIC GOOD AND LEAST PRIVATE INJURY.

The Project is not planned or located in a manner consistent with the greatest public good and least private injury as required per Cal. Code. Civ. Proc. §1240.030 and §1245.230. Here, Caltrans did not consider any reasonable alternative designs that would ensure vehicular ingress/egress to the farm is maintained in order to preserve Mr. Kwun's farming operations and attempt to minimize the substantial private injury the Project will inflict. The law requires proper consideration of reasonable alternatives that could minimize private injuries resulting from public projects. Legislative Committee Comment to Cal. Code Civ. Proc. §1240.030.

As proposed, the Project eliminates vehicular access to the Subject Property's sole access point for the farming operation at Rockford Road/Road 208. Caltrans' Project improvements will eliminate northbound access to the Subject Property—the sole access point for the farming operation. Moreover, the Project's road improvements will severely constrain and impact tractor-trailer ingress/egress to farm. Moreover, Caltrans' Staging Plans establish that the farming operation driveway will be inaccessible during Project construction—*thus there will be no vehicular access for delivery trucks or works during Project construction*. Obviously, this will be extremely damaging and jeopardize

the viability of Mr. Kwun's farming operations.

The permanent taking of portions of the Subject Property and construction of the Project eliminates the underground irrigation canal and the underground irrigation system serving the farming operation, requiring relocation and reconfiguration of these facilities and other irrigation lines on the Subject Property. The taking and Project also eliminates the parking areas for Mr. Kwun's harvest workers. It is apparent that Caltrans failed entirely to consider any reasonable alternative designs to maintain vehicular ingress/egress, minimize detrimental impacts to the farming operations or make any effort to minimize the substantial private injury caused by the Project. Caltrans failed entirely to consider potential design alternatives within the existing right-of-way that would not require any taking of Mr. Kwun's property.

Accordingly, it appears that the Project is designed in a manner that *exacerbates*, rather than minimizes, the resulting private injuries.

Having failed to properly consider reasonable alternatives for the Project, Caltrans cannot establish by substantial evidence that it planned or located the Project consistent with the greatest public good and least private injury. Accordingly, adoption of a Resolution of Necessity to acquire portions of Mr. Kwun's property is not proper.

2. CALTRANS IS IMPROPERLY EXPEDITING THE EMINENT DOMAIN PROCESS.

Caltrans' is also improperly expediting the eminent domain process. The Notice of Intent to Adopt a Resolution of Necessity was issued on September 18, 2023, before Caltrans engaged in any meaningful negotiations with the property owner and before making a proper offer of fair compensation.

Caltrans' offer of compensation fails to consider the actual Project plans; thus, the offer fails to properly analyze and evaluate the damages to the remainder to which Mr. Kwun is entitled. Cal. Code Civ. Proc. 1263.410, *et seq.* Apparently, Caltrans' construction plans will not even be available until November of 2023, thus Caltrans' appraiser could not determine the actual impacts to the property and reach an opinion of the just compensation and damages to which Mr. Kwun is entitled. Obviously, unless and until the construction plans are finalized, Mr. Kwun's appraiser could not properly evaluate and analyze the actual impacts and determine the fair compensation and damages to which Mr. Kwun is entitled.

"The Agency shall not advance the time of condemnation ... or take any other coercive action in order to induce an agreement on the price to be paid for the property."

Tanisha Taylor, Executive Director
California Transportation Commission
October 2, 2023
Page 4 of 4

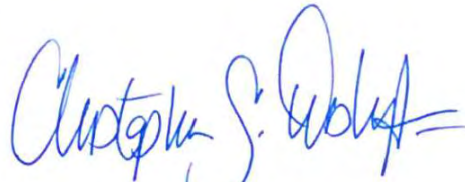
Title 24 Code of Federal Regulations §24.102(h); see also similar California provisions in Cal. Govt Code §7267.5 and Title 25 California Code of Regulations §6182(j)(1). Here, Caltrans is violating these explicit Federal and State prohibitions against any coercive action by a public agency.

3. CONCLUSION.

For the foregoing reasons, consideration of a Resolution of Necessity to initiate an eminent domain lawsuit and litigate this matter is premature and improper.

Again, we request that Caltrans schedule a District Condemnation Evaluation Meeting regarding this matter.

Please ensure that this letter is provided to each member of the Commission and is included in the administrative record pertaining to the hearing on this matter. If the scheduled hearing proceeds, please also ensure that we are provided with an opportunity to appear and be heard on these and any other matters that may be raised at the hearing.



Christopher G. Washington
California Eminent Domain Law Group,
a Professional Corporation

cc: Young Oh Kwun
Chanin McKeighen, Senior Right of Way Agent (via email)
Juan Carmona, Right of Way Agent (via email)

EXHIBIT D

**TRANSPORTATION COMMISSION
RESOLUTION NO.**

C-22468

**CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY
OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN
HIGHWAY 06-Tul-190-PM 11.37 PARCEL 88977-1, 2
OWNER: Young Oh Kwun, a single man**

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

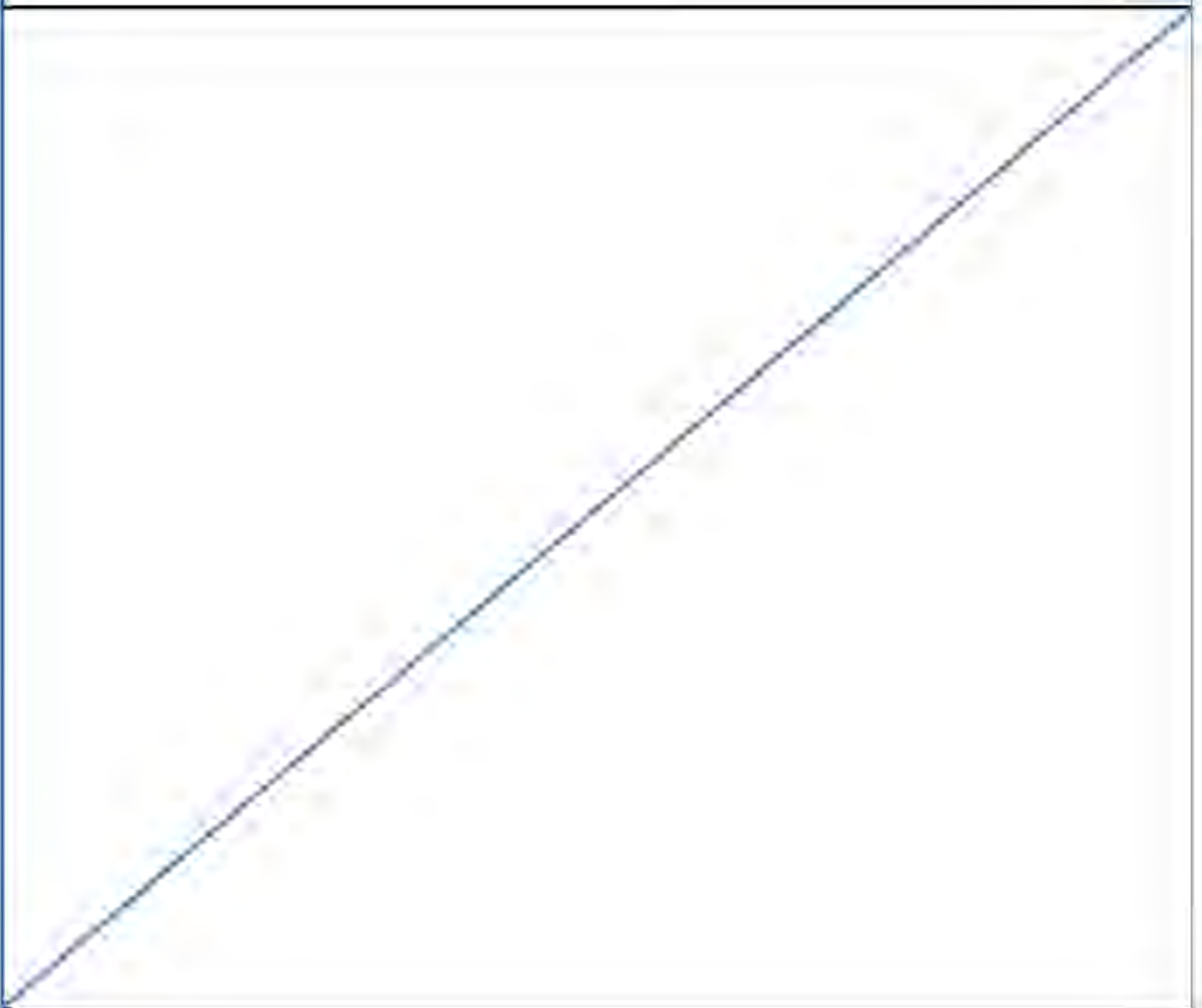
APPROVAL RECOMMENDED

Attorney, Department of Transportation

DIVISION OF RIGHT OF WAY

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

6 The real property or interests in real property, which the Department of
7 Transportation is by this resolution authorized to acquire, is situated in the County of Tulare,
8 State of California, Highway 06-Tul-190 and described as follows:



PARCEL 88977-1

For State highway purposes, that portion of the South half of the South half of the East half of the Southeast quarter of Section 36, Township 21 South, Range 26 East, Mount Diablo Meridian, in the County of Tulare, State of California, being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 36, said Southeast corner being a California Department of Transportation brass disk in monument well, from which the South quarter section corner of said Section 36 bears North 89°52'22" West, a distance of 2,644.35 feet, said South quarter section corner being a California Department of Transportation brass disk in monument well; THENCE (1) leaving said Southeast corner, along the south line of said Section 36, North 89°52'22" West, 504.47 feet; THENCE (2) leaving said south line, North 0°07'38" East, 10.06 feet to Point A; THENCE (3) North 0°06'04" West, 43.91 feet to the POINT OF BEGINNING; THENCE (4) South 89°59'51" East, 264.37 feet; THENCE (5) North 73°34'24" East, 69.56 feet; THENCE (6) North 61°07'04" East, 100.23 feet; THENCE (7) North 3°22'35" East, 267.40 feet; THENCE (8) North 89°59'01" East, 69.81 feet to the east line of said Section 36; THENCE (9) along said east line, South 0°00'59" East, 284.33 feet to the most Northeast corner of that parcel of land as described in the Grant Deed to the State of California, recorded November 30, 2006, as Document Number 2006-0123252 of Official Records Tulare County; THENCE along the, northerly, westerly and northwesterly lines of the right of way line of the State Route 190, as described in said Grant Deed to the State of California, the following described courses, (10) South 89°59'01" West, 25.00 feet to the westerly right of way line of Road 208; (11) South 26°44'53" West, 81.62 feet; (12) South 53°27'40" West, 19.41 feet; (13) South 81°12'47"

PARCEL 88977-1 (CONTINUED)

West, 74.74 feet; (14) North 89°47'48" West, 353.23 feet to hereinabove described Point A; THENCE (15) along hereinabove described course (2), North 0°06'04" West, 43.91 feet to the POINT OF BEGINNING.

EXCEPTING therefrom the underlying fee title of that portion of the South half of the South half of the East half of the Southeast quarter of Section 36, Township 21 South, Range 26 East, Mount Diablo Meridian, in the County of Tulare, State of California, being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 36, said Southeast corner being a California Department of Transportation brass disk in monument well, from which the South quarter section corner of said Section 36 bears North 89°52'22" West, a distance of 2,644.35 feet, said South quarter section corner being a California Department of Transportation brass disk in monument well; THENCE (1) leaving said Southeast corner, along the east line of said Section 36, North 0°00'59" West, 105.79 feet to the most Northeast corner of that parcel of land as described in the Grant Deed to the State of California, recorded November 30, 2006, as Document Number 2006-0123252 of Official Records Tulare County, said point being the POINT OF BEGINNING, THENCE (2) along the northerly line of the right of way line of the State Route 190, as described in said Grant Deed to the State of California, South 89°59'01" West, 25.00 feet to the westerly right of way line of Rockford Road (Road 208); THENCE (3) along said westerly right of way line, North 0°00'59" West, 284.33 feet; THENCE (4) leaving said westerly right of way line, North 89°59'01" East, 25.00 feet to said east line of said Section 36; THENCE (5) along said east line, South 0°00'59" East, 284.33 feet to the POINT OF BEGINNING.

PARCEL 88977-1 (CONTINUED)

The bearings and distances used in this description are on the California Coordinate System of 1983, Zone 4. Divide distances by 0.99997683 to convert to ground distances.

PARCEL 88977-2

For State highway purposes, the underlying fee title of that portion of the South half of the South half of the East half of the Southeast quarter of Section 36, Township 21 South, Range 26 East, Mount Diablo Meridian, in the County of Tulare, State of California, being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 36, said Southeast corner being a California Department of Transportation brass disk in monument well, from which the South quarter section corner of said Section 36 bears North 89°52'22" West, a distance of 2,644.35 feet, said South quarter section corner being a California Department of Transportation brass disk in monument well; THENCE (1) leaving said Southeast corner, along the east line of said Section 36, North 0°00'59" West, 105.79 feet to the most Northeast corner of that parcel of land as described in the Grant Deed to the State of California, recorded November 30, 2006, as Document Number 2006-0123252 of Official Records Tulare County, said point being the POINT OF BEGINNING, THENCE (2) along the northerly line of the right of way line of the State Route 190, as described in said Grant Deed to the State of California, South 89°59'01" West, 25.00 feet to the westerly right of way line of Rockford Road (Road 208); THENCE (3) along said westerly right of way line, North 0°00'59" West, 284.33 feet; THENCE (4) leaving said westerly right of way line, North 89°59'01" East, 25.00 feet to said east line of said Section 36; THENCE (5) along said east line, South 0°00'59" East, 284.33 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 0.99997683 to convert to ground distances.