

A public entity may not commence an eminent domain proceeding until its governing body has adopted a Resolution of Necessity.

(Code of Civil Procedure, section 1245.220.)

- Resolutions of Necessity are adopted by an agency's "governing body."
- Many governing bodies are integral parts of the agency seeking to acquire property:
- E.g., a county's board of supervisors or a city's city council

- In the case of several state departments, the “governing body” consists of a separate state entity.
- The “governing body” for Caltrans is the Transportation Commission
- (See Code of Civil Procedure, section 1245.210(e), (f), and (g).)

- Before adopting a resolution of necessity, the governing body must first give to the property owner notice of the meeting and a reasonable opportunity to appear and be heard.

- Among other things, the notice must state that the property owner has the right to appear and to be heard on the matters referred to in Code of Civil Procedure section 1240.030.

- Code of Civil Procedure, section 1240.030, refers to the following matters:
- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (c) The property sought to be acquired is necessary for the project.

- Code of Civil Procedure, section 1240.030, does not make any reference to the amount of compensation to be received by the property owner.
- Thus, the issue of compensation is *not* a proper subject of a hearing on a resolution of necessity.

- If there is a dispute between Caltrans and the property owner as to the proper amount of compensation, the dispute is properly resolved by the Court, not by the Commission.

- **(a) The public interest and necessity require the project.**
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
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- The requirement, that the proposed project be planned or located in the manner that will be most compatible with the greatest public good and the least private injury, involves essentially a comparison between two or more sites.

*SFPP v. The Burlington Northern & Santa Fe Railway Co.* (2004)  
121 Cal. App. 4<sup>th</sup> 452, 470.

- In order to make such a comparison, the Commission would need to have information concerning both the public good as well as the private injury associated with a proposed alternative.
- Unless it has such information, the Commission cannot begin to make such comparisons, and thus it would not have any basis to reject the resolution of necessity.

- A property owner who objects to the resolution of necessity has the burden to provide such information because:
- "Public use and necessity are to be construed liberally in favor of the condemnor."
- (See *City of Saratoga v. Hinz* (2004) 115 Cal.App. 4th 1202, 1224)

- Assuming it has before it adequate information which would allow it to make the comparison, the Commission must consider both comparative *public good* and comparative *private injury*.

- “Private Injury” refers to the aggregate or total private injury, not just to the injury sustained by the objecting property owner.

- “Public Good” includes, but is not limited to, “social, economic, environmental, and esthetic considerations.”
- (See *City of Saratoga v. Hinz* (2004) 115 Cal.App. 4th 1202, 1224)

- Caltrans' proposed plan/location is considered correct and proper unless the alternative would “involve an equal or greater public good and a lesser private injury.”
- “A lesser public good can never be counter-balanced by a lesser private injury to equal a more proper location.”
- “Nor can equal public good and equal private injury combine to make the condemnor's choice an improper location.”

*SFPP v. The Burlington Northern & Santa Fe Railway Co.* (2004)

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- For each of the two factors associated with an alternative plan or location – public good and private injury – there are three possible conclusions one could reach in comparing the alternative to what Caltrans is proposing:
- The public good associated with the alternative (1) would be greater than, (2) equal to, or (3) less than with Caltrans' proposal.
- The aggregate private injury associated with the alternative (1) would be greater than, (2) equal to, or (3) less than with the Caltrans' proposal

- These two sets of three possible conclusions result in nine possible combinations. These combinations can be represented graphically as shown on the next slide.

**Less Private Injury   Equal Private Injury   Greater Private Injury**

**Greater Public Good**

**Equal Public Good**

**Less Public Good**


Greater Public Good

Less Private Injury

**Reject Resolution**



Equal Public Good

**Reject Resolution**



**The resolution should be adopted unless there is an alternative to Caltrans' proposed plan/location which would "involve an equal or greater public good and a lesser private injury."**

Equal Private Injury    Greater Private Injury


Less Public Good

Less Private Injury   Equal Private Injury   Greater Private Injury

<b>Reject Resolution</b> 		
<b>Reject Resolution</b> 		

Greater Public Good

Equal Public Good

Less Private Injury

**Adopt Resolution** 

Less Public Good

"A lesser public good can never be counter-balanced by a lesser private injury to equal a more proper location."

"Nor can equal public good and equal private injury combine to make the condemnor's choice an improper location."

Equal Private Injury    Greater Private Injury

Equal Public Good

<p><b>Adopt Resolution</b></p> 	<p><b>Adopt Resolution</b></p> 
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Less Private Injury    Equal Private Injury / Greater Private Injury

Greater Public Good

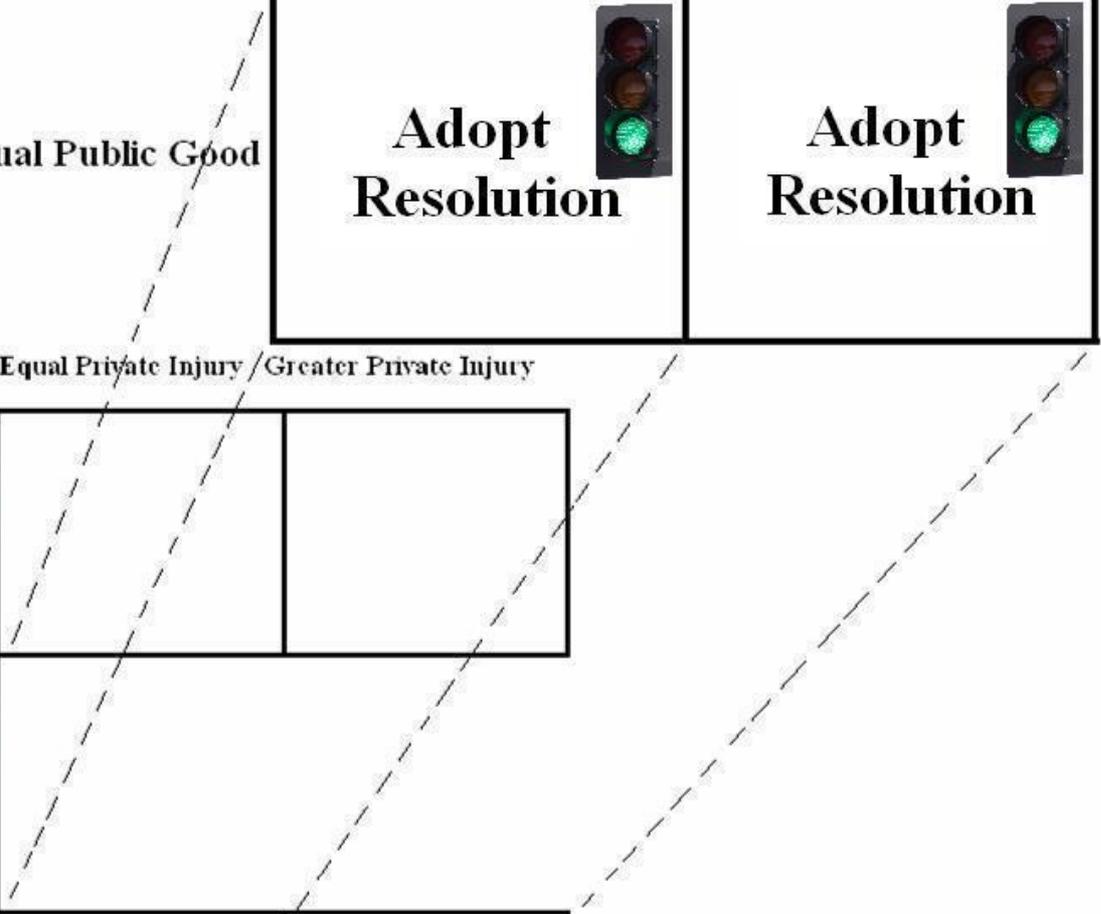
<p><b>Reject Resolution</b></p> 		
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Equal Public Good

<p><b>Reject Resolution</b></p> 		
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Less Public Good

<p><b>Adopt Resolution</b></p> 		
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Equal Private Injury    Greater Private Injury

Greater Public Good

Adopt Resolution 	Adopt Resolution 
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Less Private Injury    Equal Private Injury    Greater Private Injury

Greater Public Good

Reject Resolution 

Equal Public Good

Reject Resolution 

Adopt Resolution 

Adopt Resolution 

**The resolution should be adopted unless there is an alternative to Caltrans' proposed plan/location would "involve an equal or greater public good and a *lesser* private injury."**

Less Public Good

Adopt Resolution 

Less Private Injury   Equal Private Injury   Greater Private Injury

Greater Public Good	Reject Resolution 	Adopt Resolution 	Adopt Resolution 
Equal Public Good	Reject Resolution 	Adopt Resolution 	Adopt Resolution 
Less Public Good	Adopt Resolution 		

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	Equal Private Injury	Greater Private Injury
Less Public Good	Adopt Resolution 	Adopt Resolution 

Less Private Injury    Equal Private Injury    Greater Private Injury

Greater Public Good

**Reject  
Resolution**



**Adopt  
Resolution**



**Adopt  
Resolution**



Equal Public Good

**Reject  
Resolution**



**Adopt  
Resolution**



**Adopt  
Resolution**



Less Public Good

**Adopt  
Resolution**



**Adopt  
Resolution**



**Adopt  
Resolution**



- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- **(c) The property sought to be acquired is necessary for the project.**

- “[N]ecessity does not signify impossibility of constructing the improvement ... without taking the land in question, but merely requires that the land be reasonably suitable and useful for the improvement.”

*SFPP v. The Burlington Northern & Santa Fe Railway Co.* (2004)  
121 Cal. App. 4<sup>th</sup> 452, 472, fn 10.

- If all other things are equal, the fact that there might be another parcel which is equally useful or suitable should not be a ground for rejecting the one chosen by Caltrans. Otherwise, “the improvement could never be secured, because whatever location was proposed, it could be defeated by showing another just as good.”

*Pasadena v. Stimson* (1891) 91 Cal. 238, 256.



# Resolution of Necessity Appearance Process

Presented by:

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Division of Right of Way and Land Surveys

# Project Development Process



## Caltrans Goal

- Avoid or minimize impacts to adjacent properties
- Resolve property owner issues at the earliest opportunity

## When Properties are Impacted

- The "Uniform Act" is followed
  - Timely offers based on approved appraisals
  - Reasonable time to consider offer
  - Relocation Assistance to eligible Residents and Businesses

# Eminent Domain Requirements



1. The public interest and necessity require the project.
2. The project is planned/located in a 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 has been made to the owner of record (in compliance with Government Code Section 7267.2).

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The Department has fulfilled these requirements thru:

- The public review & public hearing process
- Completion of the Environmental Document and Project Report
- Commission approval of future project funding



The Department has demonstrated these requirements thru a multi-tiered project/property review process

- Condemnation Evaluation Meeting (District Level)
- Condemnation Panel Review Meeting (HQ Panel)
- HQ Executive and CTC Staff Review



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The Department has demonstrated this requirement thru:

- Fair Market Value Appraisal of the proposed acquisition area
- Making an offer of the full amount of the appraisal to the owner of record
- Allowing the property owner time to consider the offer

# RON Appearance Statistics



Fiscal Year	Total Parcels Acquired	Consent List RON's Adopted by the CTC	RON's w/ Appearances Adopted by the CTC	Percent RON Appearances Brought to CTC
05/06	1151	273	15	1.3 %
06/07	1028	189	9	0.9 %
07/08	763	219	14	1.8 %



QUESTIONS??