

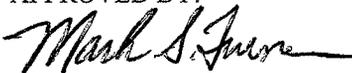
R/W MANUAL CHANGE

RWMC- 205

PROCEDURAL HANDBOOK
 (1984 Edition)

RWPH-____-____-____
 TRANSMITTAL#_____

TITLE:
 RIGHT OF WAY ENGINEERING

APPROVED BY:

 MARK S. TURNER

DATE ISSUED:
 JUL 22 2010

Page 1 of 1

SUBJECT AREA:
 CHAPTER 6 - RIGHT OF WAY ENGINEERING

ISSUING UNIT:
 OFFICE OF LAND SURVEYS

SUMMARY OF CHANGES: Updates Section 6.07.00.00 and Tables of Contents for sections and forms. Adds new Forms RW 6-3(A) and RW 6-3(B).

PURPOSE

In this manual change, Section 6.07.00.00, Resolution of Necessity, was rewritten to provide the latest process and procedures, as agreed to between R/W Engineering, Right of Way, and the Legal Division. Hyperlinks were provided for applicable California Codes and manuals. Formatting update was applied to this section.

The following two new Title Sheets were added:

Form RW No.	Title
1. RW 6-3(A)	Title Sheet (Resolution of Necessity Description)--Professional Land Surveyor
2. RW 6-3(B)	Title Sheet (Resolution of Necessity Description)--Registered Professional Engineer

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
6 - Sections	Table of Contents (REV 1/2009) 6.07.00.00	Table of Contents (REV 7/2010) 6.07.00.00 (REV 7/2010)
6 - Forms	Table of Contents (REV 9/2009) ---- ----	Table of Contents (REV 7/2010) RW 6-3(A) (New 07/2010) RW 6-3(B) (New 07/2010)

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6.07.00.00 - RESOLUTION OF NECESSITY

6.07.01.00 General

When the State exercises the power of eminent domain to acquire property necessary for public use, it must do so through the process of condemnation as required by various sections of the [Code of Civil Procedure](#) (CCP) and the [Streets and Highways \(S&H\) Code](#). A Resolution of Necessity must be authorized ([Section 1245.220](#) of the CCP and [Section 103.5](#) of the S&H Code) by the California Transportation Commission (CTC) in order to proceed with the condemnation process.

The requirements of a Resolution of Necessity can be found in [Section 1245.230](#) of the CCP.

For more information on the Condemnation Process, see [Chapter 9](#) of this manual.

6.07.02.00 Preparation

Right of Way (R/W) will request R/W Engineering to prepare descriptions and maps for inclusion in the Resolution of Necessity, and other related condemnation documents. R/W is responsible for relaying information to R/W Engineering to assist in identifying the parcel, owner, the type of title or interests, and other rights to be condemned.

R/W Engineering will prepare a written description of the parcel to be condemned and a map showing its location in relation to the project for which it is to be taken.

The Division of Right of Way and Land Surveys (HQ) is responsible for preparing the resolution to be reviewed and approved by the CTC. R/W is required to provide HQ all the necessary information needed to prepare the resolution. This information is also used by the Legal Division (Legal) to prepare court filings associated with the condemnation.

It is critical to work in a timely fashion, as any delay in the processing of a condemnation may significantly impact a project schedule.

For more information on the requirements of a resolution request to HQ, see Section 9.01.11.00 of this manual.

6.07.02.01 Legal Descriptions

Condemnation descriptions are written following the same rules of description writing applicable for grant deeds or other types of conveyance documents, except where underlying fee is to be separated into individual subparcels (see Section 6.07.02.03 of this manual). Generally, descriptions for total acquisitions are the same as the record description for the parcel contained in preliminary title reports, and descriptions for partial acquisitions are the same as descriptions contained in grant deeds.

In condemnation descriptions involving excess, the excess must be described and mapped separately from the portion lying inside the right of way, and must be treated as a separate interest.

In some cases, different interests, such as drainage or slope easements, are to be condemned together with fee title for the highway itself when condemned from the same ownership. Appraisal Parcel Numbers shall be used to identify the different interests (see Section 6.02.03.02, et seq., of this manual).

Separate subparcels of like interests, i.e., two separate pieces of fee, may be described together if doing so is more efficient. Include the additional subparcel numbers in parentheses, e.g., 123456-1(123456-2).

When describing the vesting interest, "OWNER" should be used in place of "GRANTOR" and "STATE" should be used in place of "GRANTEE."

A statement of area is not to be used in a condemnation description.

6.07.02.02 **Type of Title or Interest**

When submitting condemnation descriptions to HQ for CTC action, incorporate in the description of each parcel the *purpose* for which the type of title or interest is to be condemned. This procedure of describing interests to be acquired within the body of the parcel description allows for the acquisition of various rights in one resolution without the necessity of special recitals in the preamble of the resolution.

The following examples should be used for the acquisition of fee title:

For State highway purposes, that portion of _____, described as follows:

(Description of Parcel)

NOTE: The example above will be used even if the parcel is for a connecting road. No access rights are to be extinguished.

For freeway purposes, that portion of _____, described as follows:

(Description of Parcel)

NOTE: The example above will be used even though the parcel is partly for freeway, partly for connecting road, and partly for frontage road purposes.

For freeway purposes, that real property, described as follows:

(Description of parcel)

NOTE: The example above will be used for an entire ownership, lying entirely within the right of way, or a description of that part within and a description of that part outside the right of way as excess property.

The following examples should be used for the acquisition of other title:

An easement for State highway purposes in and to that portion of _____, described as follows:

(Description of Parcel)

An easement for drainage ditch purposes in and to that portion of _____, described as follows:

(Description of Parcel)

*For freeway purposes, the extinguishment of all easement of access in and to _____
(street or highway) appurtenant to the following described property, over and across
_____.*

(Description of Parcel)

*An easement for the purposes of a railroad detour over a temporary roadbed upon, over and
across a portion of _____, described as follows:*

(Description of Parcel)

The following examples require special resolutions:

*An easement for irrigation ditch purposes in and to that portion of _____, described as
follows:*

(Description of Parcel)

*A fee simple estate for irrigation facilities in and to that portion of _____, described as
follows:*

(Description of Parcel)

*A fee simple estate for a maintenance station site (or for a District Office site or for material
site purposes) in and to that portion of _____, described as follows:*

(Description of Parcel)

6.07.02.03 Underlying Fee

It is not necessary to condemn the underlying fee in cases where the State has good easement title to a public way or will acquire good easement title under Sections [83](#) and [233](#) of the S&H Code. However, it is the policy of the State to avoid creating isolated islands of underlying fee within State highway right of way. For that reason, appurtenant underlying fee will generally be acquired along with the State's requirements. In many cases, it will not be necessary to describe the underlying fee, as it will automatically pass with the abutting property. In those cases where it is necessary to describe the underlying fee, it will be described separately and will be assigned the next sequential subparcel suffix available.

NOTE: In cases involving property of substantial value and in cases requiring extensive survey costs to prepare a separate description, consult with Legal.

6.07.02.04 Clauses for Condemnation

It may be necessary to modify clauses in standard acquisition descriptions to meet specific requirements for condemnation. For example, a standard acquisition description may contain a clause for acquiring abutter's rights, but the State typically condemns only for the abutter's right of access. Also, items that would normally be handled in a R/W Contract may have to be added to the condemnation description, i.e., the right to sever and remove improvements.

For more information on Standard Clauses used for Freeway Condemnation, see Section 6.08.00.00 of this manual.

6.07.02.05 Title Sheet

The condemnation description(s) will be attached to either Form RW 6-3(A) or Form RW 6-3(B), "TITLE SHEET (Resolution of Necessity Description)." These documents serve as a transmittal to R/W of the final condemnation description(s). They include the parcel numbers of the parcels described and satisfy the legal responsibility of the land surveyor in charge of the description(s) per [Section 8761\(d\)](#) of the [Business and Professions Code](#).

6.07.02.06 Mapping

The necessity of quality mapping is important as it is used throughout the condemnation process. It provides a visual picture of the parcel to be condemned and its relationship to the overall project for which it is to be taken. It is also a requirement for various pleadings with the court ([Section 1250.310\(e\)](#) of the CCP).

The condemnation mapping shall consist of at least 2 maps:

1. Index Map (Exhibit A) – Shows parcel in relation to the overall project.
2. Detail Map (Exhibit B) – Shows parcel in detail.

Requirements for the Resolution of Necessity Maps are shown in [Section 4-8](#) of the [Plans Preparation Manual](#).

6.07.03.00 Final Package

The final Resolution of Necessity package to be transmitted to R/W shall include:

- A file in Portable Data Format (.pdf) containing the "TITLE SHEET (Resolution of Necessity Description)" and attached condemnation description(s). (See Section 6.07.02.05 of this manual.)
- The Condemnation description(s) in Word format (to be used by Legal in the preparation of court documents).

NOTE: Legal has requested descriptions to be:

- in Times New Roman 12 Point font.
- *not* on pleadings format.
- Resolution of Necessity Mapping in .pdf.

The original "TITLE SHEET (Resolution of Necessity Description)" and accompanying condemnation description(s) should be kept in the project folder.

6.07.04.00 Posting

Recording information for a Final Order of Condemnation, or any related and recorded court document, will be posted on the Right of Way Record Map. Prior to posting, Right of Way Engineering will compare the description contained within the Final Order of Condemnation with the original Resolution of Necessity description. Any discrepancies noted will be immediately brought to the attention of Legal so the appropriate corrective actions may be taken.

CHAPTER 6

Right of Way Engineering Table of Contents

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RW 6-1(A)	Grant Deed (Individual)
RW 6-1(B)	Grant Deed (Individual)
RW 6-1(C)	Grant Deed (Corporation)
RW 6-1(D)	Grant Deed (Corporation)
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RW 6-1(I)	Quitclaim Deed (Corporation)
RW 6-1(J)	Quitclaim Deed (Corporation)
RW 6-1(K)	Partial Release of Mortgage (Fee)
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RW 6-1(X)	Aerial Easement Deed
RW 6-1(Y)	Aerial Easement Deed (Corporation)
RW 6-1(Z)	Easement Deed
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RW 6-2(B)	Registered Professional Engineer Signature Page
RW 6-3(A)	Title Sheet (Resolution of Necessity Description)--Professional Land Surveyor
RW 6-3(B)	Title Sheet (Resolution of Necessity Description)--Registered Professional Engineer

TITLE SHEET
 (Resolution of Necessity Description)

District	County	Route	Postmile

Project ID _____

Legal descriptions for the parcels listed below are attached.

This document consists of a total of _____ pages.

Parcels in Legal Description: <Insert parcel numbers>					

The attached real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature _____
Professional Land Surveyor

Date _____



