

Resolution # TC-17-4-15

R5 US 160 McCabe Creek Culvert Replacement, BR 1602-139, Project Code 19263

Authorizing the Chief Engineer to initiate and conduct condemnation proceedings pursuant to articles 1 to 7 of title 38, C.R.S. for the property owned by Heidi N. Sinha, Ajay Sinha, Mark E. Wilsey and Seth A. Wilsey.

Approved by the Transportation Commission on April 20, 2017.

WHEREAS, pursuant to Colorado law at Section 43-1-208, C.R.S., the Colorado General Assembly has conferred the power of eminent domain upon the Transportation Commission to acquire private property necessary for state highways purposes; and

WHEREAS, on April 24, 1994 the Transportation Commission adopted Resolution TC-271 ("TC-271"), which directed the "Executive Director of the Department of Transportation, or his delgatee, to handle on its behalf consistent with State and Federal Laws, both the approval for land acquisition actions and the tendering of payment to landowners for damages in connection with previously approved highway projects;" and

WHEREAS, on September 26, 2016 the Colorado Supreme Court announced its decision in *Department of Transportation v. Amerco Real Estate Company; U-Haul Company of Colorado; et al.*, 2016SA75; and

WHEREAS, the *Amerco Real Estate Company* opinion held that the Transportation Commission must decide that the public interest or convenience will be served by a proposed alteration of a state highway and that the Commission's decision must be made in consideration of the portions of land of each landowner to be taken and an estimate of the damages and benefits accruing to each landowner prior to authorizing condemnation of property; and

WHEREAS, the *Amerco Real Estate Company* opinion also held that the Transportation Commission is authorized to either direct the Chief Engineer to make tender to a landowner or the Transportation Commission can proceed in the acquisition of private lands for state highway purposes, according to articles 1 to 7 of title 38, C.R.S., without tender to the landowner; and

WHEREAS, the *Amerco Real Estate* opinion further held that the Transportation Commission could delegate to the "legal staff or representatives of the commission or department" the "initiation and conduct of condemnation proceedings." *Amerco Real Estate Company*, 2016SA75, ¶15; and

WHEREAS, the Property sought by CDOT may include buildings, structures, or other improvements on the real Property and may also include tenant-owned improvements, personal property, and other real estate; and

WHEREAS, on May 26, 2016, prior to the *Amerco* opinion, relying on TC-271 and without Transportation Commission approval, the Chief Engineer and or CDOT staff began negotiations for acquisition of parcel 10-RM owned by Heidi N. Sinha, Ajay Sinha, Mark E. Wilsey and Seth A. Wilsey by tendering an initial offer to acquire the property; and

WHEREAS, the Transportation Commission, as part of its non-delegable duties, must now approve and ratify all negotiation actions taken by CDOT prior to the *Amerco Real Estate Company* opinion in relation to the below acquisition and has also reviewed the written report of the Chief Engineer seeking approval to initiate and conduct condemnation proceedings, and the report includes all information and documents required pursuant to Section 43-1-208(1), in relation to the Project and the Property; and

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby declares that the public interest or convenience will be served by the proposed changes to U.S. Highway No. 160 by virtue of the US 160 McCabe Creek Culvert Replacement Project, Project Number BR 1602-139, Project Code 19263. All approvals or other negotiation actions taken by CDOT with respect to the above listed acquisitions prior to September 26, 2016, are hereby affirmed, ratified, and made effective as officially sanctioned actions of the Transportation Commission. The Transportation Commission authorizes CDOT to negotiate with and initiate and conduct condemnation proceedings for the following landowners. Further, if a settlement amount, certificate of ascertainment and assessment, or verdict is reached with respect to the amount of just compensation due to the landowner, the final settlement, certificate of ascertainment and assessment, or verdict amount is subject to approval by the Transportation Commission. If acquisition of the property requires acquisition of buildings, structures, or improvements on real property as well as acquisition of tenant-owned improvements both real and personal property, or other real estate, the Transportation Commission authorizes CDOT to acquire those items through eminent domain proceedings if necessary.

CDOT may negotiate with and initiate and conduct condemnation proceedings for the following landowners:

1. Landowner Name: Heidi N. Sinha, Ajay Sinha, Mark E. Wilsey and Seth A. Wilsey
Address of Property: 149 N. 7th Street, Pagosa Springs, CO 81147
Parcels Required: 10-RM
Estimated Property Value, Damages and Benefits (if any): \$62,250



Herman Stockinger, Secretary
Transportation Commission of Colorado

4-20-17
Date