

Resolution # TC-17-3-18

R5 US 160 Dry Creek Passing Lanes, NH 1602-140, Project Code 19362

Authorizing the Chief Engineer to negotiate and tender damages to properties specified below.

Approved by the Transportation Commission on March 16, 2017.

WHEREAS, the Transportation Commission is authorized pursuant to Section 43-1-106(8), C.R.S. to formulate the general policy with respect to management, construction and maintenance of public highways and other transportation systems in the state and to promulgate and adopt all budgets of CDOT; and

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 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; 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 Transportation Commission is authorized pursuant to Section 43-1-208(2), C.R.S. to determine whether a proposed change to a state highway will serve the interest or convenience of the public; and

WHEREAS, the Transportation Commission may enter a resolution upon its minutes approving the proposed highway changes and authorizing the CDOT Chief Engineer to either tender landowners the amount of damages, as estimated by the Chief Engineer; and

WHEREAS, CDOT seeks to acquire necessary Properties, for the US 160 Dry Creek Passing Lanes Project, Project Number NH 1602-140, Project Code 19362 ("Project").

WHEREAS, CDOT may negotiate with the property owners as specified in the attached Chief Engineer's Cost Estimate.

WHEREAS, CDOT seeks to acquire multiple properties, as specified in the attached Chief Engineer's Estimate for the Project ("Properties"). The Chief Engineer's Estimate specifies the landowners, property locations, proposed size of the acquisitions, and the estimated damages and benefits, if any, to the properties.

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

WHEREAS, the Transportation Commission acknowledges that it has reviewed the written report of the Chief Engineer, which included all information and documents required pursuant to Section 43-1-208(1), in relation to the Project and the Property; and


WHEREAS, after reviewing the Chief Engineer's written report regarding Project and the Properties, the Transportation Commission has determined that the proposed changes to U.S. Highway No. 160 will serve the public interest and convenience of the traveling public and that acquisition of the Properties described in the report is necessary and in the public interest; and

WHEREAS, the Transportation Commission also approves the Chief Engineer's Cost Estimate of damages and benefits, if any, set forth in his written report.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby declares that the public interest and convenience will be served by the proposed changes to U.S. Highway No. 160 by virtue of the US 160 Dry Creek Passing Lanes Project, Project Number NH 1602-140, Project Code 19362, parcels TE-3 and TE-4, and authorizes the CDOT staff either to negotiate and tender the Owner of the Properties the amount of estimated damages. Further, if a settlement amount, is reached with respect to the amount of just compensation due to the landowner, the final settlement is subject to approval by the Transportation Commission. If acquisition of the Properties 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 negotiate for the acquisition of those items if necessary. At this time, the Transportation Commission does not authorize CDOT to initiate and conduct condemnation proceedings pursuant to Sections 38-1-101 *et seq.* CDOT shall seek separate approval from the Transportation Commission in order to initiate and conduct condemnation proceedings.



Herman Stockinger, Secretary
Transportation Commission of Colorado



Date