

Resolution # TC-17-3-21

R4 PR US 34 Big Thompson Canyon Project, ER 0341-084 Unit 2, Project Code 20279

Authorizing the Chief Engineer to initiate and conduct condemnation proceedings pursuant to articles 1 to 7 of title 38, C.R.S. for the properties specified below.

Approved by the Transportation Commission on March 16, 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 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, on November 17, 2016, the Transportation Commission entered resolution(s) TC-16-11-14 ("Resolution(s)") upon its minutes for PR US 34 Big Thompson Canyon, ER 0341-084 Unit 2; and

WHEREAS, the Resolution(s) determined that the public interest or convenience will be served by the proposed alterations to US 34, approved the Chief Engineer's estimate of damages and benefits accruing to each landowner, and authorized the CDOT Chief Engineer to negotiate with landowners; 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, pursuant to the Resolution(s) CDOT attempted to located a landowner , however, after a good-faith and diligent search, CDOT was unable to locate any landowner(s) to negotiate with; and

WHEREAS, the Properties sought by CDOT 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, CDOT has an immediate need for the Property and the inability to work on the Property will likely cause delay to the PR US 34 Big Thompson Canyon, ER 0341-084 Unit 2 ("Project"), resulting in significant monetary harm to CDOT; and

WHEREAS, the Transportation Commission acknowledges that it or its predecessors previously reviewed the written report of the Chief Engineer seeking approval to negotiate with landowner(s) and has also reviewed the written report of the Chief Engineer seeking approval to initiate and conduct condemnation proceedings, and both reports included all information and documents required pursuant to Section 43-1-208(1), in relation to the Project and the Properties; and

NOW THEREFORE BE IT RESOLVED, the Transportation Commission authorizes CDOT to 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 Properties require 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 initiate and conduct condemnation proceedings for the following landowners:

1. Landowner Name: Frank J. Ehrmentraut or Blossom S. Ehrmentraut
Address of Property: Vacant Land, Larimer County Parcel #1502206013, Loveland, CO 80537
Parcels Required: RW-215: Fee acquisition for construction of highway
Estimated Property Value, Damages and Benefits (if any): \$6,150
2. Landowner Name: Estate of Osa Belle Armstrong
Address of Property: Vacant Land, Larimer County Parcel #1501305802, Loveland, CO 80537
Parcels Required: RW-230: Fee simple acquisition for construction of highway
Estimated Property Value, Damages and Benefits (if any): \$4,850

Herman F. Stockinger

Herman Stockinger, Secretary
Transportation Commission of Colorado

3-16-17

Date

