

Resolution # TC-17-10-10

R3 US 40 Craig East BPM Project, NHPP 0402-090, Project Code 20753

Approved by the Transportation Commission on October 19, 2017.

Authorizing the Chief Engineer to negotiate with the landowner(s) of the properties specified below.

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, CDOT seeks to acquire properties, for the US 40 Craig East BPM Project, Project Number NHPP 0402-090, Project Code 20753 ("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; and


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 Properties; 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 40 will serve the public interest and/or convenience of the traveling public and that acquisition of the Properties described in the report will serve the purpose(s) of the Project; 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/or convenience will be served by the proposed changes to U.S. Highway 40 by virtue of the US 40 Craig East BPM Project, Project Number NHPP 0402-090, Project Code 20753, parcels PE-1, TE-1, PE-2, TE-2, TE-4, PE-3, and PE-3A, and authorizes the CDOT staff to negotiate with the landowner(s) of the Properties the amount of estimated damages, as estimated by the Chief Engineer. If CDOT and a landowner reach a settlement amount that requires approval by the Regional Transportation Director and the Chief Engineer, as set forth in the CDOT Right-of-Way Manual, then the settlement amount is subject to Transportation Commission approval. 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

10-19-17
Date