

Resolution # TC-17-10-11

R4 PR SH 144 Flooding Repair, Project ER 144A-002, Project Code 20254

Approved by the Transportation Commission on October 19, 2017.

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 Orchard Ranch LLC, and referred to as RW-3 and TE-3.

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 March 16, 2017, the Transportation Commission adopted resolution TC-17-3-13 ("TC-17-3-13"), which directed the "Executive Director of the Department of Transportation, or his delegate, to handle on its behalf consistent with the State and Federal laws, what the approval for land acquisition actions and the tendering of payment to landowners for damages in connection with previously approved highway projects;" and

WHEREAS, the Resolution determined that the public interest or convenience will be served by the proposed alterations to SH 144, 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, 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, pursuant to the Resolution CDOT attempted to negotiate with the landowner, but negotiations with the landowner was unsuccessful; 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, CDOT has an immediate need for the Property and the inability to work on the Property will likely cause delay to the PR SH 144 Flooding Repair, 20254 ER 144A-002 ("Project"), resulting in significant monetary harm to CDOT; and

WHEREAS, the Transportation Commission, as part of its non-delegable duties, must now approve and ratify all negotiation actions taken by CDOT 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, 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 the public interest or convenience will be served by the proposed changes to State highway 144, by virtue of SH144 Flooding Repair, 20254 ER 144A-002 project. All approvals, or other negotiation actions taken by CDOT with respect to the above listed acquisitions are hereby affirmed, ratified, and made effective as officially sanctioned actions of transportation commission. The transportation commission authorizes CDOT to negotiate with and conduct condemnation proceedings for the following owners. 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 landowners, the final settlement, certificate of ascertainment or 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 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 landowner:

1. Landowner Name: Orchard Ranch LLC
Address of Property: Vacant land, Morgan County Parcel #1045-080-00-008; E 1/2 of SE 1/4, Section 8, Township 4 North, Range 60 West, Orchard, CO 80649
Parcels Required: RW-3, TE-3
Estimated Property Value, Damages and Benefits (if any): \$5,850.00

Herman F. Stockinger III
Herman Stockinger, Secretary
Transportation Commission of Colorado

10-19-17
Date