

Resolution # TC-19-03-14

R5 US 550 South Connection, FSA 5501-021, Project Code 19378

Approving the Settlement, Certificate of Ascertainment or Verdict amounts, which will be offered for the properties specified below.

Approved by the Transportation Commission on March 21, 2019.

WHEREAS, on September 26, 2016 the Colorado Supreme Court announced its decision in *Department of Transportation v. Amerco Real Estate Company, 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 decision whether, and if so precisely how and for how much, to take particular property, for a particular proposed highway alteration project, clearly involves the kind of judgment and discretion that is non-delegable in the absence express statutory authorization." *Amerco Real Estate Company*, 2016SA75, ¶15; and

WHEREAS, the Transportation Commission previously found that the public interest and convenience would be served by the alteration of U.S. Highways No. 550 and 160, and the acquisition of the properties listed below; and

WHEREAS, on November 16, 2017 the Transportation Commission did enter a resolution TC-17-11-9 upon its minutes for the US 550 South Connection Project, Project Number FSA 5501-021, Project Code 19378 ("Project"), approving the proposed highway changes and authorizing the CDOT Chief Engineer either negotiate with the landowners the amount of damages, as estimated by the Chief Engineer; and

WHEREAS, on August 16, 2018, the Transportation Commission did enter a resolution TC-18-08-17 upon its minutes for the Project, authorizing CDOT to condemn the properties listed below pursuant to Sections 38-1-101 *et seq.*, C.R.S.; and

WHEREAS, the Transportation Commission resolutions approving negotiation and condemnation required CDOT to seek Transportation Commission approval or ratification of any settlements, and specifically refers to amounts that require approval by the Regional Transportation Director and the Chief Engineer, as set forth in the CDOT Right-of-Way Manual; and

WHEREAS, the Chief Engineers Cost Estimate previously presented to the Transportation Commission in November, 2017 for the interest to be acquired was \$609,530 and CDOT's approved Fair Market Value Estimate and initial offer is \$746,000.

WHEREAS, on November 15, 2018, the Transportation Commission did enter a resolution TC-18-11-23 upon its minutes for the Project authorizing a settlement amount of \$1,250,000 for purchase of the interest to be acquired.

WHEREAS, on November 16, 2018 the Region 5 Right of Way Manager, Region 5 Transportation Director and Assistant Attorney General engaged in a global negotiation for the interest to be acquired together with additional stipulations in favor of CDOT including:

1. Agreement for the Webb Ranch to quitclaim its possessory interest in ROW Parcels AP-15-RM and AP-RW-15 that are titled to Jerry T. Piccoli (undivided 57.14% interest); Janet Maria Piccoli (undivided 7.14% interest); James Franklin Piccoli (undivided 7.14% interest); Steven Leo Piccoli (undivided 7.14% interest); Donald Alex Piccoli (undivided 7.14% interest); Rita Louise Piccoli (undivided 7.14% interest); and Gina Lee Piccoli (undivided 7.14% interest); as tenants in common. In the absence of this global settlement the Piccoli possessory interest issue could not be resolved via the condemnation petition and a separate legal action would likely be required.
2. Agreement for the Webb Ranch to memorialize consent to make limited modifications to the vertical profile of the highway facility as shown on the Supplemental Environmental Impact Statement. In the absence of this global settlement the issue of allowing for modifications of the vertical profile could not be resolved via the condemnation petition and a separate legal action would likely be required.
3. Agreement for the Webb Ranch to memorialize a Ditch Agreement to allow for the relocation of irrigation ditch and pond facilities. In the absence of this global settlement the ditch realignment issue could not be resolved via the condemnation petition and a separate legal action would likely be required.
4. Agreement by the Webb Ranch to grant deeded access control rights identified as AP-AC-17 Rev and AP-AC-17A. In the absence of this global settlement the deeded access control issue could not be resolved via the condemnation petition and CDOT would be at risk of the landowner asserting additional access rights along the highway.
5. Agreement for the Webb Ranch to memorialize Temporary Permission to Enter Agreements through March 31, 2020 for rights of entry across roads on the remainder property (outside of the interest to be acquired). In the absence of this global settlement this issue could not be resolved via the condemnation petition and alternative routes of entry along more difficult routes would be required.

6. Agreement by the Webb Ranch that the interest to be acquired include all sand, gravel and clay located above and below the area needed by CDOT for subsurface support of the highway facility. In the absence of this global settlement the issue sand and gravel would complicate the condemnation action and add additional risk to CDOT actions to take possession and argue valuation.

WHEREAS, on November 16, 2018 the Region 5 Right of Way Manager, Region 5 Transportation Director and Assistant Attorney General engaged in a global negotiation for the interest to be acquired together with additional stipulations at the request of the landowner including:

1. Clarification by CDOT to include utility sleeves for Water Utilities and Telecommunication Facilities crossing under the new highway facilities. CDOT has provided conceptual drawings that memorialize the approximate sleeve locations along US 550 and County Road 220 in the vicinity of the Webb Ranch.
2. Agreement by CDOT to locate the deer fencing with the US 550 ROW in such a manner that it does not trap livestock in the area between the berm and deer fence at Station 590+00 to 595+00.
3. Agreement by CDOT to provide construction details for the replacement private fencing and fencing tie-ins to be built within the new ROW and Temporary construction areas.

WHEREAS, the proposed settlement includes the exchange of an approximate 1.186 acre CDOT General Ledger property located at the intersection of US 550 and CR 220 that will be granted to the Webb Ranch owners. The Grant of property will include reserved rights of access control along the future US 550 corridor. The property has been appraised and the fair market value is \$72,488.


WHEREAS, the proposed settlement recommended by the Region 5 Right of Way Manager has been approved by the Regional Transportation Director and the Chief Engineer, as set forth in the CDOT Right-of-Way Manual; and

WHEREAS, the Transportation Commission, may approve the settlement offer amount previously approved by the Regional Transportation Director and the Chief Engineer prior to completion of the subject Project as contemplated by PD 1301.0; and

WHEREAS, CDOT shall acquire the following properties for the amounts listed below through either a settlement or the entry of a certificate of ascertainment or verdict;

Property Location	Resolution No. Authorizing Acquisition and/or Condemnation	Approved Chief Engineer's Estimate of Damages and Benefits	Approved and Actual Size of Acquisition	Settlement Amount
Property Located in Section 10, Township 34 N Range 9W (N.U.L.) (Parcels AP-RW-17, AP-17- RM, AP-RW-18, AP-18-RM, AP-PE-17-, AP-TE-17)	Acquisition: TC-17-11-9 Condemnation: TC-18-08-17	\$609,530	63.055 ac	\$1,995,000 plus a 1.186 acre General Ledger Property valued at \$72,488 Total Settlement of \$2,067,488

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby approves the actual size of the acquisition and the settlement offer, ascertainment, or verdict amount listed above.



 Herman Stockinger, Secretary
 Transportation Commission of Colorado

3-21-19

 Date