

Resolution # TC-19-03-17

R4 US 34 & US 36 FLAP Estes Park Couplets, STA R400-330, Project Code 20298

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 21, 2019.

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 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, on May 18, 2017, the Transportation Commission entered resolution TC-17-5-11 ("Resolution") upon its minutes for R4 US 34 & US 36 FLAP Estes Park Couplets Project, STA R400-330, Project Code 20298 ("Project"); and

WHEREAS, the Resolution determined that the public interest or convenience will be served by the proposed alterations to U.S. Highways No. 34 and 36, approved acquisition of properties needed for the proposed alterations, approved the Chief Engineer's estimate of

value, damages and benefits, if any, accruing to each landowner, and authorized the CDOT Chief Engineer and CDOT staff to negotiate with landowners; and

WHEREAS, pursuant to the Resolution(s) CDOT attempted to negotiate with the landowner(s), but negotiations with the landowner(s) were unsuccessful; and

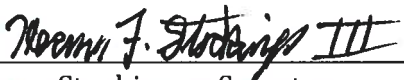
WHEREAS, the Properties sought by CDOT may include buildings, structures, or other improvements on the real Properties and may also include tenant-owned improvements, personal property, and other real estate; and

WHEREAS, 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. 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 the condemnation matter is resolved through a certificate of ascertainment and assessment, or verdict then the certificate of ascertainment and assessment, or verdict amount 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 acquire those items through eminent domain proceedings if necessary.

CDOT may initiate and conduct condemnation proceedings for the following landowners:

1. Landowner Name: EPD, LLC
Address of Property: 342 Moraine Avenue, Estes Park, CO 80517
Parcels Required: AP-1
Estimated Property Value, Damages and Benefits (if any): \$200,000.00



Herman Stockinger, Secretary
Transportation Commission of Colorado

Date