

**Resolution #TC2021-04-07**

R4 I-25 N: SH402 to SH14, Project Number IM 0253-255, Project Number 21506

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 April 15, 2021.**

**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 February 21, 2019, the Transportation Commission entered resolution TC-19-02-03 upon its minutes for I-25 North SH 402 to SH 14 Project, Project Number IM 0253-255, Project Code 21506; and

**WHEREAS**, the Resolution determined that the public interest or convenience will be served by the proposed alterations to Interstate 25, 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 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**, CDOT does not have possession of the Properties and CDOT's inability to work on the Property will likely cause delay to the I-25 North SH 402 to SH 14 Project, Project Number IM 0253-255, Project Code 21506; possibly 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. If acquisition of the Properties require[s] 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:** Harmony-McMurray, LLC (Parcels 228, 230 and 231), Harmony 25, LLC (Parcel 229)  
**Additional Interest Holder Names:** FirsTier Bank (deed of trust holder), Poudre Valley Rural Electric Association Inc (easement holder), Poudre Valley Electric Association (easement holder), North Poudre Irrigation Company (easement), Connell Resources, Inc. (sand and gravel lease holder), Loveland Water District (easement holder), Fort Collins-Loveland Water District (easement holder), South Fort Collins Sanitation District (easement holder), City of Fort Collins (easement holder and development agreement), Arthur Ditch (easement holder), Northern Colorado Water Conservancy District (project subject to District oversight), South Fort Sanitation District (property subject to District Oversight), Fort Collins-Loveland Water District (property subject to District service area), Harmony I-25 Metropolitan District 2 (property subject to District oversight and development requirements), Harmony Gardens, Inc. (lease holder), Serfer Land Ventures LLC (purchase agreement holder)

Address of Property: 4308 E CR 36, Fort Collins 80525; 4297 E CR 38, Fort Collins 80528; Parcel IDs 860320040 and 860320041 in the NW ¼ Sec 3, T6N, R68W, Larimer County

Parcels Required: RW-228 Rev, RW-228A, UE-228 Rev, RW-229, UW-229, RW-230, UE-230, UE-230A, RW-231, UE-231

Estimated Property Value, Damages and Benefits (if any): \$121,700.00

*Herman F. Stockinger III*

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Herman Stockinger, Secretary Transportation  
Commission of Colorado

4/15/2021

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Date