

Resolution #TC-2021-08-10

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 August 19, 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 landowners, but negotiations with the landowners 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 Properties 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 landowners 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 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:** Jensen Investments LLC
Additional Interest Holder Names: Advantage Bank (deed of trust holder); Mountain States Telephone and Telegraph (Century Link easement holder); Jensen Boat and Recreation Center (Interest in Lot 1 of Jensen Subdivision), City of Fort Collins (Riverwalk annexation); Island Promotions LLC (lessee); Connell Resources, Inc (memorandum of sand and gravel lease); Larimer County (conservation easement and covenant, development covenant); Northern Colorado Water Conservancy District (property and related water is subject to District oversight and requirements)
Address of Property: 5887 SW Frontage Road, Fort Collins, CO 80528
Parcels Required: PE-215 REV2, PE-215A REV
Estimated Property Value, Damages and Benefits (if any): \$284,000.00

2. **Landowner Name:** CWH Properties, LLC

Additional Interest Holder Names: Fort Collins & Loveland Water District (easement holder); Dorthy E. and John E. Weitzel (ingress & egress easement holder); Connell Resources (memorandum of sand and gravel lease); Poudre Valley Rural Electric Association Inc. (easement holder); Town of Timnath (right of way agreement and easement holder); Fort Collins & Loveland Water District (easement holder); Cache La Poudre Investors South LLC (easement holder and easement agreement); South Fort Collins Sanitation District (order of inclusion)
Address of Property: 5000 SE Frontage Road, Fort Collins, CO 80528
Parcels Required: RW-227 REV, RW-227A REV, PE-227
Estimated Property Value, Damages and Benefits (if any): \$98,700.00

Herman F. Stockinger A A A

Herman Stockinger, Secretary
Transportation Commission of Colorado

8/19/2021

Date