

Resolution #TC-2021-02-08

R4 I-25 Express Lanes SH 7 to SH 1 Project, Project Number NHPP 0253-270, Project Code 22831

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 February 18, 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 September 20, 2018, the Transportation Commission entered resolution TC-18-09-09 upon its minutes for the I-25: SH 66 North to North of SH 56 Project Number IM 0253-220, Project Code 18319.

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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, the Properties approved for acquisition by the Resolution were later re-designated under the related I-25 Express Lanes SH 7 to SH 1 Project, Project Number NHPP 0253-270, Project Code 22831; and

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

WHEREAS, on October 17, 2019, the Transportation Commission entered resolution TC-19-10-04 upon its minutes for I-25 Express Lanes SH 7 to SH 1 Project, Project Number NHPP 0253-270, Project Code 22831, authorizing CDOT to initiate and conduct condemnation proceedings against the fee simple landowner specified below; and

WHEREAS, CDOT later reached an agreement with the landowner, which included the conversion of several permanent easements to fee simple parcels, but attempts to negotiate with the owner of a surface use agreement have not been successful; and

WHEREAS, CDOT has renewed the request for authority to initiate and conduct condemnation proceedings to include both the fee simple landowner and surface use agreement owner; 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 I-25 Express Lanes SH 7 to SH 1 Project, Project Number NHPP 0253-270, Project Code 22831, 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 reports 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 landowner and conservation easement holder. 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 landowner and surface rights owner:

1. Landowner Names: M&C Real Estate, LLC (Fee Simple), Occidental Petroleum (Surface Use Agreement)
Address of Property: Property Located in NE 1/4 , Sec. 22, T4N, R68W, Weld County PIDs 106122103006 & 106112103007
Parcels Required: AP-563 REV2, PE-563A REV2, PE-563B REV2, AP-571 REV2 and TE-571 REV2
Estimated Property Value, Damages and Benefits (if any): \$373,450

Herman F. Stockinger AAA

Herman Stockinger, Secretary
Transportation Commission of Colorado

2/18/2021

Date