

Resolution #TC-2021-01-08

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 January 21, 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 March 21, 2019, May 16, 2019 and July 18, 2019 the Transportation Commission entered resolutions TC 19-03-12, TC 19-05-13 and TC 19-07-03 upon its minutes for I-25 Express Lanes SH 7 to SH 1 Project, Project Number NHPP 0253-270, Project Code 22831; and

WHEREAS, the Resolutions 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 Property and may also include tenant-owned improvements, personal property, and other real estate; and

WHEREAS, CDOT does not have possession of the Properties described below as parcels AP-RW-612A, AP-RW-612 Rev, AP-PE-612, AP-TE-612A, AP-TE-612 Rev, and CDOT's inability to work on the Properties will likely cause delay to the Project, 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 Property; 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 Property 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: Hank Properties, LLC
Additional Interest Holder Names: Ameritas Life Insurance Company f/k/a Union Central Life Insurance Company (mineral owner); American Telephone and Telegraph Company (easement holder); Linda Lou Botterill personal representative for Henry Betz (deceased) , Clifford Henry Betz, David Charles Betz, and Katherina Adelaide Baird (mineral owners)
Address of Property: Lot 5, Betz Baird Manor Subdivision, 2nd Filing, Weld County
Parcels Required: AP-565
Estimated Property Value, Damages and Benefits (if any): \$2,983,950.00

2. Landowner Name: Hank Properties, LLC
Additional Interest Holder Names: Wyco Pipe Line Company (easement holder); American Telephone and Telegraph Company (easement holder); Snyder Oil Corporation (easement holder)
Address of Property: North 1/2 of Southwest 1/4 of Section 14, Township 4 North, Range 68 West of the 6th P.M., Weld County Parcel #106114300047
Parcels Required: RM-566, AP-566
Estimated Property Value, Damages and Benefits (if any): \$92,250.00
3. Landowner Name: Smith Acres LLC,
Additional Interest Holder Names: Poudre Valley Rural Electric Association (PVREA) (easement holder); the Harry Lateral Ditch Company (easement holder); GP Schoenfelder (water, ditch and ditch rights and mineral owner); Judy & Lawrence Koltz, Louis Booth, Vickey Booth, Tamara Booth (mineral owners including right of ingress and egress); Johnstown Farms (mineral owner); I-25 Gateway Center (easement holder and HOA)
Address of Property: Lot 2, Block 1, I-25 Gateway Center, Filing Four, Town of Johnstown, Weld County
Parcels Required: AP-RW-612A, AP-RW-612 Rev, AP-PE-612, AP-TE-612A, AP-TE-612 Rev
Estimated Property Value, Damages and Benefits (if any): \$508,500.00

Herman F. Stockinger III

Herman Stockinger, Secretary
Transportation Commission of Colorado

1/21/2021

Date