

Resolution #TC-2023-06-11

R3 SH 92 Rogers Mesa Reconstruct Phase 1, Project Number STR 092A-0209, Project Code 22992

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 June 15, 2023.

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 December 14, 2022 the right of way plans for SH 92 Rogers Mesa Reconstruct Phase 1, Project Number STR 092A-0209, Project Code 22992 ("Project") were authorized by the Chief Engineer; and

WHEREAS, pursuant to Colorado law at Section 43-1-208, C.R.S., the authorization of right of way plans by the Chief Engineer allowed CDOT to acquire land necessary for the Project by purchase, exchange or negotiations with landowners; and

WHEREAS, CDOT attempted to negotiate with the landowners, but the attempts to negotiate 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 SH 92 Rogers Mesa Reconstruct Phase 1, Project Number STR 092A-0209, Project Code 22992; possibly resulting in significant monetary harm to CDOT; and

WHEREAS, the Transportation Commission acknowledges that it has reviewed the written report of the Chief Engineer seeking approval to initiate and conduct condemnation proceedings, and the report 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: Dion M. Luke and Dixie L. Luke
Address of Property: 30242 Hwy 92, Hotchkiss, CO 81419
Parcels Required: PE-22, TE-22, TE-22A, TE-22B, TE-22C
Estimated Property Value, Damages and Benefits (if any): \$800.00

**Herman
Stockinger**

Digitally signed by
Herman Stockinger
Date: 2023.06.15
12:00:09 -06'00'

Herman Stockinger, Secretary
Transportation Commission of Colorado

Date