

Resolution # TC-16-6-5

Authorizing the Chief Engineer to negotiate with and tender damages to Jack Kent Cadillac, Inc.

Approved by the Transportation Commission on June 16, 2016.

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 CDOT to acquire property necessary for state highway purposes; and

WHEREAS, pursuant to the final sentence of Section 43-1-208(3), C.R.S., since 1994 the Transportation Commission has authorized CDOT to condemn private property without following the more prescriptive practice for condemnation set forth in Section 43-1-208(1), (2) and the first two sentence of (3); and

WHEREAS, there is pending before the Colorado Supreme Court a challenge to the Transportation Commission's and CDOT's authority to condemn private property pursuant to the final sentence of Section 43-1-208(3) which case is titled *Department of Transportation v. Amerco Real Estate Company; U-Haul Company of Colorado; et al.*, 2016 SA 75; and

WHEREAS, the pendency of the Colorado Supreme Court case is having a negative impact on CDOT's ability to timely acquire possession of property sought for state highway purposes under the authority granted pursuant to the final sentence of Section 43-1-208(3); and

WHEREAS, in order to allow CDOT construction projects to proceed in a more timely fashion, the Transportation Commission, without admitting the validity of the challenge to its condemnation authority presented in the pending Colorado Supreme Court case, is electing to follow the prescriptive practice set forth in Section 43-1-208(1), (2) and the first two sentences of (3); and

WHEREAS, the Transportation Commission is authorized pursuant to Section 43-1-208(2), C.R.S. to determine whether a proposed change to a state highway will serve the interest and convenience of the public; and

WHEREAS, the Transportation Commission may enter a resolution upon its minutes approving the proposed highway changes and authorizing the CDOT

Chief Engineer to tender landowners the amount of damages, as estimated by the Chief Engineer; and

WHEREAS, the Transportation Commission has determined that the proposed changes on I25, 120th Ave. to State Highway 7, Project IM 0253-234 and improvements on U.S. Highway 160 including replacing culverts along McCabe Creek (the “Projects”) will serve the public interest and convenience of the traveling public.

WHEREAS, CDOT wants to file a Petition in Condemnation in Archuleta County District Court against Melvin and Dawn Ross and certain property located at the 524 San Juan Street in Pagosa Springs, CO, Archuleta County owned by Jack Kent Cadillac, Inc.; and

WHEREAS, CDOT wants to file a Petition in Condemnation in Adams County District Court against Jack Kent Cadillac, Inc. and certain property located at the at I25, 120th Avenue to State Highway 7 in Adams County, Colorado owned by Jack Kent Cadillac, Inc.; and

WHEREAS, CDOT and both owners have not been able to agree on the fair market value; and

WHEREAS, CDOT has an immediate need for the properties and the inability to work on the properties will likely cause delay to the Projects which could result in significant monetary harm to CDOT; and

WHEREAS, without admitting that CDOT is required to comply with the provisions of Section 43-1-208(1), (2) and the first two sentences of (3), C.R.S., the Transportation Commission acknowledges that it has reviewed the written report of the Chief Engineer in relation to the Projects and the owners; and

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby declares that the public interest and convenience will be served by the proposed changes to the Project, and authorizes the Chief Engineer to negotiate with the Owners regarding the amount of damages, and tender such damages as estimated by him, and authorizes CDOT to proceed with condemnation of the properties described above in the event negotiations are unsuccessful.

Herman Stockinger, Secretary
Transportation Commission of Colorado

Date