

## **Transportation Commission Resolution #20251107**

Approve Referral of CDOT Region 5 Access Appeal to the Office of Administrative Courts, C.R.S. § 43-2-147(6)(c) & 2 CCR 601-1(2.9)

**Approved by the Transportation Commission on November 20, 2025.**

**WHEREAS**, Applicant Whispering Pines Trust No. 14382, Duane O'Malley Trustee, submitted a State Highway Access Permit Application dated May 7, 2025 (the "Application"); and

**WHEREAS**, the Application requests a Highway Access Permit for a new access to State Highway 159 ("SH 159") to service the property identified as Parcel # 40002292, in Costilla County, Colorado (the "Property"); and

**WHEREAS**, the Property to be served by the permit is owned by Whispering Pines Trust No. 14382 dated December 17, 2020 ("Whispering Pines Trust"); and

**WHEREAS**, the location of the proposed access is approximately 1,425 feet south of mile marker 33; and

**WHEREAS**, the Application stated that the proposed access would serve one single family home and a 2,000 square foot banquet hall; and

**WHEREAS**, prior to the division of land process, the undivided parcel had access to SH 159 via a single driveway access located at approximately mile marker 32.905 Right, and all historical access to the Property has been from this access; and

**WHEREAS**, the undivided parcel was subdivided into four separate tracts in January of 2023 by its owner Bobby G. Mount, identified as Parcels 40002293 (Tract A), 40002290 (Tracts B & C), and 40002292 (Tract D); and

**WHEREAS**, Whispering Pines Trust No. 14382 acquired the Property via Warranty Deed dated February 22, 2023, from Grantor Bobby G. Mount; and

**WHEREAS**, SH 159 A is an R-A Category Highway under the State Highway Access Code; and

**WHEREAS**, CDOT denied the Application on July 18, 2025, explaining that the Application was denied because Section 3.8(6) of the State Highway Access Code states: "No additional access rights shall accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest. All access to newly created properties shall be provided internally from any existing access or a new access determined by Code design standards or by permit application and consistent with this subsection", and because reasonable access can be obtained via the historical driveway access per Section 3.8(2) of the State Highway Access Code; and

**WHEREAS**, Duane O'Malley, Trustee of Whispering Pines Trust No. 14382, has filed a written appeal dated August 13, 2025, objecting to the denial of the Application;

**NOW THEREFORE BE IT RESOLVED**, the Commission directs the hearing for Whispering Pines Trust No. 14382's appeal be heard before an Administrative Law Judge with the Office of Administrative Courts. The Office of the Attorney General is requested to facilitate the appeal pursuant to 2 CCR 601-1(2.9) and take all necessary actions to accommodate Whispering Pines Trust No. 14382's request for a hearing.

**BE IT FURTHER RESOLVED**, the Commission delegates its authority to conduct the hearing to the Office of Administrative Courts and for the preparation of a complete record of the hearing should additional appeals be necessary.

*Herman F. Stockinger A.A.A.*

Herman Stockinger, Secretary

Transportation Commission of Colorado