



COLORADO

Department of Transportation

Office of the Chief Engineer

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MEMORANDUM

TO: COLORADO TRANSPORTATION COMMISSION

FROM: JOSHUA LAIPPLY, CHIEF ENGINEER

DATE: JULY 2, 2015

SUBJECT: US 85 & UNION PACIFIC RAIL ROAD IN REGION 4

Purpose

The purpose of this memo is to update the Commission on the discussions that are in progress between Union Pacific Rail Road (UPRR) and the Colorado Department of Transportation (CDOT), concerning CDOT's expired lease agreement in UPRR's right-of-way (ROW) along State Highway 85. Discussions are underway to find a solution that would mitigate the impacts to UPRR's future capacity while leaving State Highway 85 in its current location within their ROW. Region 4 Director, Johnny Olson, Joshua Laipply and the Attorney General's office are involved in the process.

Project Background

CDOT maintains and keeps open all Interstate and State Highways open to the public, including the 24,000 motorist using State Highway 85 through Greeley, Colorado each day. CDOT's State Highway 85 lies within UPRR ROW under an expired lease. The portions of US 85 covered by expired leases include 37 Parcels. Ten of thirty-seven parcels the Union Pacific wants to use a revocable license to convey CDOT legal use of land because the highway is within 50ft. of the ROW. With this revocable license, UPRR will have the right to close State Highway 85 giving CDOT a 3 year notice to relocate the Highway.

Details

A proposal presented by UPRR involves CDOT purchasing the parcels of land on which the ROW is located. UPRR's offer of \$7.6 million is more than CDOT's Fair Market Value offer of \$3.7 Million. UPRR requires payment commensurate with full ownership rights, but is only willing to provide a revocable license for any parcels that are within 50 feet (10 Parcels) of the centerline of the UPRR track.

CDOT's Options:

- One option for CDOT is to settle with UPRR, based upon their offer. However, by law we cannot pay more than fair market value for temporary rights.
- A second option for CDOT is to pursue litigation. CDOT can sue UPRR in State and Federal Court, and can also file for a decision from the Surface Transportation Board. Litigation expenses have been estimated at \$511,250 for CDOT, with a trial valuation of \$16,000,000. In addition the precedent established is not in CDOT's favor, making it unlikely that a trial will end favorably for CDOT.
- The third option includes exploring alternative arrangements with UPRR. CDOT is currently looking into intersection improvements along State Highway 85 that would include closures and grade separations along the highway that would not only improve highway safety but also improve rail capacity.

Staff recommendation is to proceed with negotiations with the intent that a solution that provides mutual benefit to the UP and CDOT will have cumulative benefit to the public and Colorado's economy.



