

Resolution # TC-16-5-[]

R2 Trinidad Critical Culvert, Project Number IM 025A, Project Code 21323

Authorizing the Chief Engineer to either negotiate and tender damages to The Charles Milosevich Family Limited Partnership or 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 _____, 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 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, 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 or 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 either tender landowners the amount of damages, as estimated by the Chief Engineer or authorize condemnation without tender to the landowner; and

WHEREAS, CDOT seeks to acquire necessary Property, for the Trinidad Critical Culvert MP 12.73, Project Number IM 025A-039, Project Code 21323, parcels PE-1, TE-1A and TE-1B ("Project").

WHEREAS, CDOT may negotiate with The Charles Milosevich Family Limited Partnership.

WHEREAS, the property owned by The Charles Milosevich Family Limited Partnership is located at the North West corner of the intersection of Las Animas County Road 20.8 and Interstate 25 more particularly described as the SW1/4 of the NW1/4 of Section 24, Township 33 South, Range 64 West of the 6th PM ("Property"), which is within the Project boundaries.

WHEREAS, CDOT seeks to acquire Permanent Easement PE-1 consisting of 0.806 acres, Temporary Easement TE-1A consisting of 0.729 acres, and Temporary Easement TE-1B consisting of 0.29 acres of the Property for the Project and for necessary draining improvements; and

WHEREAS, the Transportation Commission acknowledges that it has reviewed the written report of the Chief Engineer, which included all information and documents required pursuant to Section 43-1-208(1), in relation to the Project and the Property; and

WHEREAS, after reviewing the Chief Engineer's written report regarding Project and the Property, the Transportation Commission has determined that the proposed changes to State Highway I-25 and County Road 20.8 will serve the public interest and convenience of the traveling public and that acquisition of the Property described in the report is necessary and in the public interest; and

WHEREAS, the Transportation Commission also approves the Chief Engineer's Cost Estimate of damages and benefits, if any, set forth in his written report.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby declares that the public interest and convenience will be served by the proposed changes to State Highway I-25 and County Road 20.8 by virtue of the Trinidad Critical Culvert MP 12.73 Project Number IM 025A-039, Project Code 21323, parcels PE-1, TE-1A and TE-1B and authorizes the CDOT staff either to negotiate and tender the Owner of the Property the amount of estimated damages or CDOT may initiate and conduct condemnation proceedings for the Property. CDOT is authorized to increase or decrease the size of its acquisition based on sound engineering principals and determinations, subject to approval by the Transportation Commission upon conclusion of the acquisition. Further, if a settlement amount, certificate of ascertainment and assessment, or verdict is reached with respect to the amount of just compensation due to the landowner, the final settlement,

certificate of ascertainment and assessment, or verdict amount is subject to approval by the Transportation Commission. 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 if necessary.

Herman Stockinger, Secretary
Transportation Commission of Colorado

Date



COLORADO

Department of Transportation

Office of the Chief Engineer
4201 East Arkansas Ave, Suite 262
Denver, CO 80222

MEMORANDUM

TO: TRANSPORTATION COMMISSION

FROM: JOSH LAIPPLY, CHIEF ENGINEER 

DATE: October 27, 2016

SUBJECT: REPORT PURSUANT TO COLORADO REVISED STATUTES, §43-1-208 REGARDING PROJECT NUMBER IM 025A-039, I-25 Trinidad Critical culvert MP 12.73

Background

This written report to the Transportation Commission is pursuant to Colorado Revised Statutes ("C.R.S."), Section 43-1-208(1) (statute attached with this memorandum). I deem it desirable to repair a portion of eroding slopes adjacent to Interstate 25.

IM 025A-039, I-25 Trinidad Critical culvert MP 12.73 ("Project") is necessary for the construction of embankment protection and the placement of manholes and pipe extensions at the outfalls of two existing culverts extending under I-25 and County Road 208. An access and maintenance road will be constructed from CR208 to the pipe outlets. This will protect existing eroding slopes and prevent future erosion of the slopes supporting I-25 and is therefore, desirable. I hereby request that the Transportation Commission determine that the proposed changes of the Project serve the public interest and/or convenience of the travelling public.

The property required is located at the North West corner of the intersection of Las Animas County Road 20.8 and Interstate 25 more particularly described as the SW1/4 of the NW1/4 of Section 24, Township 33 South, Range 64 West of the 6th PM.

If the Transportation Commission determines that the proposed changes will serve the public and/or convenience of the travelling public, I respectfully request that the Transportation Commission enter a resolution upon its minutes, approve the same, and authorize CDOT to either make tender or to initiate and conduct condemnation proceedings for the Property.

Description of Portion of Highway to be Changed and Proposed Changes

The Project will construct embankment protection and the placement of manholes and pipe extensions at the outfalls of two existing culverts extending under I-25 and County Road 208. An access and maintenance road will be constructed from CR208 to the pipe outlets. The Project is a critical culvert, drainage improvement which was initially approved by the

Transportation Commission, and the Region Program Engineer approved the Design data form 463 on July 1, 2016. I have determined that it is necessary to repair this portion of Interstate 25 to repair and maintain eroding slopes and protect the integrity of I-25.

The Property is located at the North West corner of the intersection of Las Animas County Road 20.8 and Interstate 25 more particularly described as the SW1/4 of the NW1/4 of Section 24, Township 33 South, Range 64 West of the 6th PM. and is necessary for the placement of culvert extensions and the construction of an access and maintenance road from CR208. The legal descriptions of the Charles Milosevich Family Limited Partnership parcels are attached with this memorandum.

Estimate of Damages and Benefits

On September 21, 2016, Neil J. Lacey, PE approved an estimate of land acquisition costs and damages for property in this Project area. He estimated that the Property is valued at \$4,220. Mr. Lacey's Land Acquisition Approval was based on comparable sales in the area. Mr. Lacey's estimate represents a reasonable budget of the costs and damages related to the Property. There are no benefits to the Property.

The estimate provided is for budgetary purposes only, and are subject to change. I anticipate that this figure will increase or decrease as the Department obtains additional information about the acquisition and the Property, as appraisals are considered and evaluated, and as litigation expenses and risks are considered. CDOT will re-submit the final settlement, ascertainment or verdict for commission approval.

Attachments
§43-1-208, C.R.S.
Legal Descriptions of Parcels PE-1
Right-of-Way Plans
Chief Engineer's Cost Estimate
Proposed Resolution

EXHIBIT "A"

**PROJECT NUMBER: IM 025A-039
PERMANENT EASEMENT: PE-1
PROJECT CODE: 21323
DATE: OCTOBER 14, 2016**

DESCRIPTION

A Permanent Easement No. PE-1 of the Department of Transportation, State of Colorado, Project No. IM 025A-039 containing 35,121 sq. ft. (0.806 acres), more or less, being a portion of that tract of land described in that document recorded at Reception No. 200100653550 in the Las Animas County Clerk and Recorder's Office, said tract or parcel of land being more particularly described as follows:

BEGINNING at a point on the east line of said tract of land, being on the west Right-of-Way line of I-25 (June, 2016), whence the West 1/4 corner of Section 24, Township 33 South, Range 64 West, of the 6th P.M., bears South 66°08'23" West, a distance of 1,289.70 feet, said point also being the TRUE POINT OF BEGINNING;

1. Thence South 60°06'52" West, a distance of 14.19 feet;
2. Thence South 69°52'26" West, a distance of 79.77 feet;
3. Thence South 75°33'59" West, a distance of 118.93 feet;
4. Thence South 81°07'00" West, a distance of 72.69 feet;
5. Thence South 90°00'00" West, a distance of 102.07 feet;
6. Thence South 74°15'57" West, a distance of 15.12 feet;
7. Thence North 78°47'41" West, a distance of 42.26 feet;
8. Thence North 42°47'51" East, a distance of 32.23 feet;
9. Thence North 74°15'57" East, a distance of 30.23 feet;
10. Thence North 90°00'00" East, a distance of 104.25 feet;
11. Thence North 81°07'00" East, a distance of 68.15 feet;
12. Thence North 75°33'59" East, a distance of 115.39 feet;
13. Thence North 69°52'26" East, a distance of 74.91 feet;
14. Thence North 32°06'52" East, a distance of 79.14 feet;
15. Thence North 57°10'19" West, a distance of 39.75 feet;
16. Thence North 32°49'41" East, a distance of 36.00 feet;
17. Thence North 11°56'40" East, a distance of 157.28 feet;
18. Thence North 71°00'49" East, a distance of 44.00 feet;
19. Thence North 53°46'53" East, a distance of 50.99 feet to said east line of tract of land and said west Right-of-Way line;
20. Thence along said east and west lines South 00°40'28" East, a distance of 93.01 feet;
21. Thence continuing along said east and west lines South 25°18'02" West, a distance of 275.73 feet to the TRUE POINT OF BEGINNING,

The above described tract or parcel of land contains 35,121 sq. ft. (0.806 acres), more or less.

The purpose for the above described permanent easement is for the construction, maintenance, and access to culvert and drainage areas.

Basis of Bearings: Bearings are based on a grid bearing of North 11°51'51" East from Point No. 1330 to Point No. 1340. Both monuments are CDOT Type II, marked appropriately for their milepost location and control position.

Prepared for and on behalf of the
Colorado Department of Transportation
Jeffrey P. Eickelman, PLS #29034
Farnsworth Group, Inc.
5613 DTC Parkway, Suite 1100
Greenwood Village, CO 80111

EXHIBIT "A"

**PROJECT NUMBER: IM 025A-039
TEMPORARY EASEMENT: TE-1A
PROJECT CODE: 21323
DATE: OCTOBER 14, 2016**

DESCRIPTION

A Temporary Easement No. TE-1A of the Department of Transportation, State of Colorado, Project No. IM 025A-039 containing 31,753 sq. ft. (0.729 acres), more or less, being a portion of that tract of land described in that document recorded at Reception No. 200100653550 in the Las Animas County Clerk and Recorder's Office, said tract or parcel of land being more particularly described as follows:

BEGINNING at a point on the east line of said tract of land, being on the west Right-of-Way line of I-25 (June, 2016), whence the West 1/4 corner of Section 24, Township 33 South, Range 64 West, of the 6th P.M., bears South 56°18'53" West, a distance of 1,557.76 feet, said point also being the TRUE POINT OF BEGINNING;

1. Thence South 53°46'53" West, a distance of 50.99 feet;
2. Thence South 71°00'49" West, a distance of 44.00 feet;
3. Thence South 11°56'40" West, a distance of 157.28 feet;
4. Thence South 32°49'41" West, a distance of 36.00 feet;
5. Thence South 57°10'19" East, a distance of 39.75 feet;
6. Thence South 32°06'52" West, a distance of 79.14 feet;
7. Thence South 69°52'26" West, a distance of 74.91 feet;
8. Thence South 75°33'59" West, a distance of 115.39 feet;
9. Thence South 81°07'00" West, a distance of 68.15 feet;
10. Thence South 90°00'00" West, a distance of 104.25 feet;
11. Thence South 74°15'57" West, a distance of 30.23 feet;
12. Thence South 42°47'51" West, a distance of 32.23 feet;
13. Thence North 78°47'41" West, a distance of 37.78 feet;
14. Thence North 20°47'09" East, a distance of 95.92 feet;
15. Thence South 69°23'00" East, a distance of 55.41 feet;
16. Thence South 85°35'00" East, a distance of 79.02 feet;
17. Thence North 82°14'00" East, a distance of 209.41 feet;
18. Thence North 25°18'02" East, a distance of 268.46 feet;
19. Thence North 00°40'28" West, a distance of 69.95 feet;
20. Thence North 89°19'32" East, a distance of 100.00 feet to the TRUE POINT OF BEGINNING,

The above described tract or parcel of land contains 31,753 sq. ft. (0.7293 acres), more or less.

The purpose for the above described permanent easement is for the construction and maintenance of culvert and drainage areas.

Basis of Bearings: Bearings are based on a grid bearing of North 11°51'51" East from Point No. 1330 to Point No. 1340. Both monuments are CDOT Type II, marked appropriately for their milepost location and control position.

Prepared for and on behalf of the
Colorado Department of Transportation
Jeffry P. Eickelman, PLS #29034
Farnsworth Group, Inc.
5613 DTC Parkway, Suite 1100
Greenwood Village, CO 80111

EXHIBIT "A"

**PROJECT NUMBER: IM 025A-039
TEMPORARY EASEMENT: TE-1B
PROJECT CODE: 21323
DATE: SEPTEMBER 20, 2016**

DESCRIPTION

A Temporary Easement No. TE-1B of the Department of Transportation, State of Colorado, Project No. IM 025A-039 containing 12,641 sq. ft. (0.290 acres), more or less, being a portion of that tract of land described in that document recorded at Reception No. 200100653550 in the Las Animas County Clerk and Recorder's Office, said tract or parcel of land being more particularly described as follows:

BEGINNING at a point on the east line of said tract of land, being on the west Right-of-Way line of I-25 (June, 2016), whence the West 1/4 corner of Section 24, Township 33 South, Range 64 West, of the 6th P.M., bears South 66°08'23" West, a distance of 1,289.70 feet, said point also being the TRUE POINT OF BEGINNING;

1. Thence along said east and west line South 25°18'02" West, a distance of 93.74 feet;
2. Thence South 86°10'54" West, a distance of 201.97 feet;
3. Thence North 86°17'22" West, a distance of 81.60 feet;
4. Thence North 78°47'41" West, a distance of 69.12 feet;
5. Thence North 74°15'57" East, a distance of 15.12 feet;
6. Thence North 90°00'00" East, a distance of 102.07 feet;
7. Thence North 81°07'00" East, a distance of 72.69 feet;
8. Thence North 75°33'59" East, a distance of 118.93 feet;
9. Thence North 69°52'26" East, a distance of 79.77 feet;
10. Thence North 60°06'52" East, a distance of 14.19 feet to the TRUE POINT OF BEGINNING,

The above described tract or parcel of land contains 12,641 sq. ft. (0.290 acres), more or less.

The purpose for the above described permanent easement is for the construction and maintenance of culvert and drainage areas.

Basis of Bearings: Bearings are based on a grid bearing of North 11°51'51" East from Point No. 1330 to Point No. 1340. Both monuments are CDOT Type II, marked appropriately for their milestone location and control position.

Prepared for and on behalf of the
Colorado Department of Transportation
Jeffrey P. Eickelman, PLS #29034
Farnsworth Group, Inc.
5613 DTC Parkway, Suite 1100
Greenwood Village, CO 80111

Colorado Department of Transportation
 905 Erie Avenue
 Pueblo, CO 81002
 Phone: 719-546-5751 FAX: 719-546-5414
 Region 2

Sheet Revisions			Sheet Revisions		
Date	Description	Initials	Date	Description	Initials
10-14-2016	Revised sheets 5.01 and 7.01	CCP			

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Right-of-Way Plans			
Title Sheet			
Project Number: IM 025A-039			
Project Location: I-25 MP 12.8 - TRINIDAD, CO			
REGION 2 CRITICAL CULVERTS			
Project Code	Last Mod. Date	Subset	Sheet No.
21323	09-20-2016	1.01 of 1.01	1.01

DEPARTMENT OF TRANSPORTATION STATE OF COLORADO

RIGHT OF WAY PLANS OF CRITICAL CULVERT CDOT PROJECT NO. IM 025A-039 INTERSTATE NO. 25 - MP 12.8 SECTION 24 T33S, R64W, OF THE 6TH P.M. LAS ANIMAS COUNTY, COLORADO

Construction Length of Project = 200 Feet (0.004 Miles)
 R.D.W. Length of Project = 200 Feet (0.004 Miles)

SHEET NO.	INDEX OF SHEETS
1.01	(1) Title Sheet
-	(NA) Tabulation of Properties
3.01-3.03	(3) Project Control Diagram
4.01-4.04	(4) Land Survey Control Diagram
5.01	(1) Monumentation Sheets
-	(NA) Tabulation of Road Approach Sheets
7.01	(1) Plan Sheets
-	(NA) Ownership Map
(10) Total Sheets	

Scales of Original 11"x17" Drawings
 Plan Sheet 1"=50'

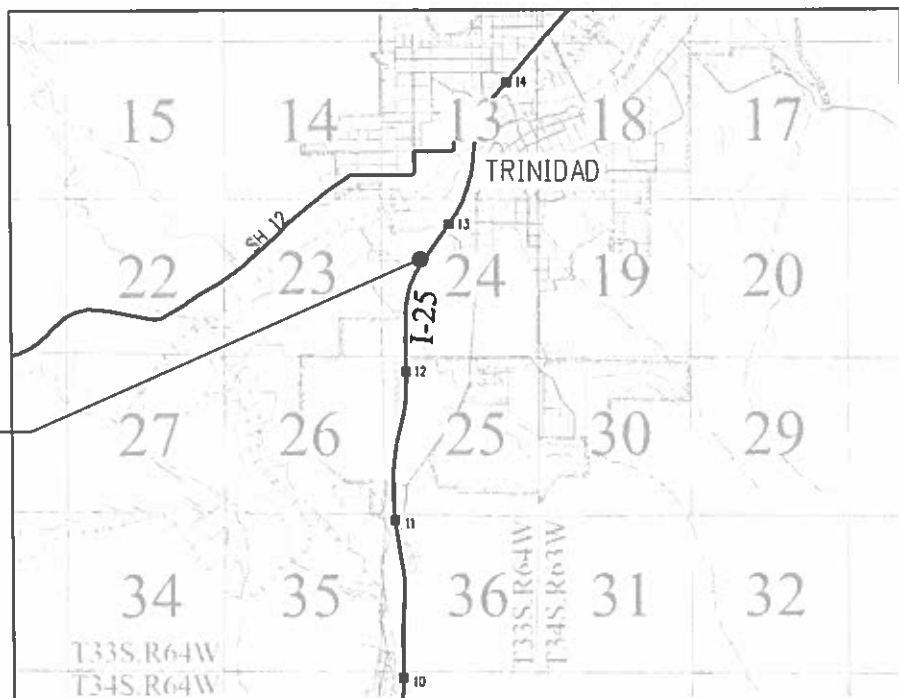
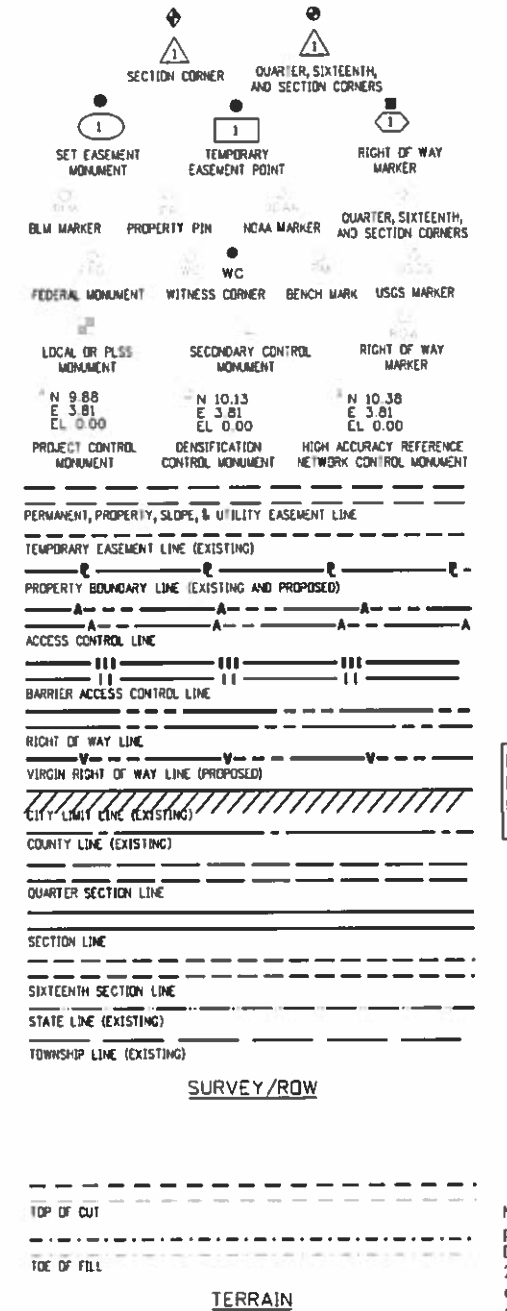
Basis of Bearings: Bearings used in the calculations of coordinates are based on a grid bearing of N11° 51' 51" E from point 1330 to point 1340. Both monuments are CDDT Type II, marked appropriately for their milepost location and control position. The survey data was obtained from a Global Positioning System (GPS) survey based on the Colorado High Accuracy Reference Network (CHARN).

- This Right-of-Way Plan is not a boundary survey of the adjoining property and is prepared for the Colorado Department of Transportation purposes only.
- For title information, The Colorado Department of Transportation relied on (Title Policy), (Title Commitments), (Memorandums of Ownership) prepared by (Title Co. or individual) for (Title Insurance Co. or consultant)
- This plan set is subject to change and may not be the most current set. It is the user's responsibility to verify with CDOT that this set is the most current. The information contained on the attached drawing is not valid unless this copy bears an original signature of the Professional Land Surveyor hereon named.

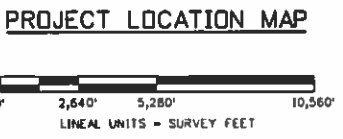
NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 AUTHORIZED: *Chut Lee* 11-4-16
 DIVISION ADMINISTRATOR DATE

FILING CERTIFICATION: DAY OF ... AT ...
 DEPOSITED THIS ... OF THE COUNTY LAND SURVEYS/RIGHT OF WAY
 IN BOOK ... RECEPTION NUMBER ...
 SECURED



Note: For a complete listing of symbols used within this set of plans, please refer to the M-100-1 Standard Symbols of the Colorado Department of Transportation M&S Standards Publication dated July 2012. Existing features are shown as screened weight (gray scale), except as noted with the word (existing). Proposed or new features are shown as full weight without screening, except as noted with the word (proposed).



SURVEYOR STATEMENT (ROW PLAN)
 I, *Jeffrey P. Fickelman*, a professional land surveyor licensed in the State of Colorado, do hereby state to the Colorado Department of Transportation that based upon my knowledge, information and belief, research, calculations and evaluation of the survey evidence were performed and this Right-of-Way Plan was prepared under my responsible charge in accordance with applicable standards of practice defined by Colorado Department of Transportation publications. This statement is not a guaranty or warranty, either expressed or implied.
 PLS No. 29034

Colorado Department of Transportation

905 Erie Avenue
Pueblo, CO 81002
Phone: 719-546-5751 FAX: 719-546-5414

Region 2

Sheet Revisions

Date	Description	Initials
10-14-2016	Revised PE's and TE's	CCP

Sheet Revisions

Date	Description	Initials
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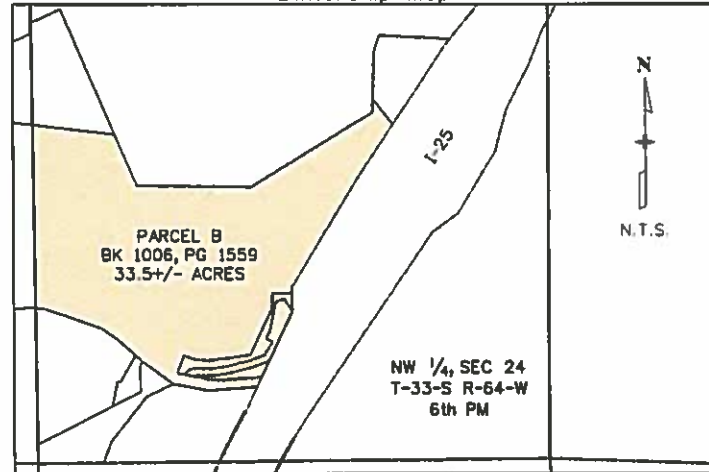
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Right-of-Way Plans
Plan Sheet

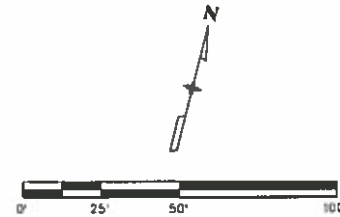
Project Number: IM 025A-039
Project Location: I-25 MP 12.8 - TRINIDAD, CO
REGION 2 CRITICAL CULVERTS
Project Code: 21323
Last Mod. Date: 09-20-2016
Subset: 7.01 of 7.01
Sheet No.: 7.01

Ownership Map



APN: 10179500
THE CHARLES MILDSEVICH
FAMILY LIMITED PARTNERSHIP
REC. NO. 200100653550

- ✓ PE-1 AREA: 35,121+/- SQ. FT. (0.806+/- ACRES)
- ✓ TE-1A AREA: 31,753+/- SQ. FT. (0.729+/- ACRES)
- ✓ TE-1B AREA: 12,641+/- SQ. FT. (0.290+/- ACRES)



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