




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: November 4, 2016

SUBJECT: REPORT PURSUANT TO COLORADO REVISED STATUTES, §43-1-208 REGARDING PROJECT NUMBER STU1211-084/19868, AMERCO REAL ESTATE PROPERTY

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 widen State Highway 121 ("SH 121" or "Wadsworth") as recommended by the Environmental Assessment completed in 2010.

SH 121 - Wadsworth Capacity Project, Highland to 10th ("Project") is necessary for the continuation of three through lanes and construction of a multi-use path in both directions on SH 121. The multi-use path will travel underneath Wadsworth from east to west. The new underpass will allow pedestrians and bicyclists to safely travel from the east to west side (or west to east side) of Wadsworth without crossing a six-lane highway. This Project will increase the capacity and safety on Wadsworth to meet current and future demands of the traveling public 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 traveling public.

The property required is located on the east side of Wadsworth between 6th (US 6) and 9th Avenue, addressed as 820 Wadsworth Boulevard, Lakewood, Colorado 80214 and owned by Amerco Real Estate Company ("Property"). This Property was at issue in the recent Colorado Supreme Court case titled *Department of Transportation v. Amerco Real Estate Company*, 2016SA75. The Colorado Supreme Court issued its opinion on September 26, 2016.

If the Transportation Commission determines that the specific Property and proposed changes to SH 121 will serve the public and/or convenience of the traveling 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 additional travel lanes on SH 121 to increase highway capacity and make improvements to Lakewood Gulch, including installation of a multi-use trail, enhancement of the floodplain characteristics, and provide maintenance access to Lakewood Gulch. The Project is a highway expansion project. The Transportation Commission previously approved this Project on July 23, 2009. I have determined, as recommended by the Environmental Assessment completed in 2010, that it is necessary to widen this portion of SH 121 to increase the capacity on SH 121, install a multi-use trail, enhance the floodplain characteristics, install maintenance access to the Gulch, and match the existing section of SH 121 north of 10th.

Description of Amerco's Property Needed for Project

The Amerco property is a 2.9-acre site located on the east side of Wadsworth between 6th (US 6) and 9th Avenue addressed as 820 Wadsworth Boulevard, Lakewood, Colorado 80214, operated as a U-Haul Rental business. CDOT seeks to acquire approximately 71,343 square feet (1.638 acres) from Amerco, most of which is located in Lakewood Gulch. The acquisitions are necessary to widen the highway, to install the multi-use trail and drainage improvements, and to facilitate future floodplain maintenance. The multi-use trail will pass underneath Wadsworth and connect with a similar multi-use trail on the west side of Wadsworth. Legal descriptions of the Amerco parcels are attached with this memorandum. The following description demonstrates how CDOT intends to use each parcel for the Project:

1. RW-53: This parcel will be used for installation of an extra travel lane. CDOT will also use the parcel for the multi-use trail, utilities, drainage, appurtenances, access, and maintenance.
2. RW-53A-Rev : This parcel will be used for the multi-use trail, drainage structures, utilities, drainage and appurtenances, access, and maintenance.

It is not feasible to move the multi-use trail from its planned location. First, the trail cannot be moved south because Highland Drive occupies the area south of the Amerco Property. Also, a move north or south of its planned location would involve acquisition of several private residences. Furthermore, the approved Environmental Assessment noted that the planned location of the multi-use trail was designed to conform with existing floodplain requirements. Additionally, the Environmental Assessment particularly discussed that multi-use trail was designed for the safety of the traveling public. The new Wadsworth alignment was designed to handle 68,700 vehicles per day. Currently, there are no nearby signalized crossings for pedestrians and bicycles to safely cross Wadsworth. As a result, people frequently attempt to cross Wadsworth in this area, which is highly dangerous to pedestrians, bicyclists, and the traveling public.

Finally, CDOT will retain ownership of this property and per the Intergovernmental Agreement with Lakewood dated October 20, 2015, Lakewood will maintain the multi-use path.

3. PE-53: This parcel will be used for the construction, use, and maintenance of sidewalk, utility facilities and associated appurtenances.

4. PE-53A: CDOT will use this parcel for the construction, use and maintenance of utility facilities and associated appurtenances.

5. TE-53Rev: CDOT will use this parcel for access and construction of driveway, utilities, and associated appurtenances.

Estimate of Damages and Benefits Accruing to Amerco

CDOT obtained an independent appraisal dated November 3, 2016, authored by Stephen M. Rothweiler, MAI, who valued the acquired Property at \$1,070,000.00. No benefits were identified for the Property. CDOT's independent appraisal represents a reasonable budget of the costs and damages related to the Property. A copy of the appraisal was emailed to Counsel for Amerco Real Estate Company on November 3, 2016. A copy of the appraisal is available to the Commission upon request.

Attachments

§43-1-208, C.R.S.

Legal Descriptions of Parcels RW-53, RW-53A-Rev, PE-53, PE-53A, TE-53Rev

Right-of-Way Plans

Proposed Resolution

Resolution # TC-16-5-[]

R1 SH 121 – Wadsworth Capacity Project, Highland to 10th, Project Number STU1211-084, Project Code 19868

Authorizing the Chief Engineer, in the event settlement negotiations fail, to initiate and conduct condemnation proceedings pursuant to articles 1 to 7 of title 38, C.R.S. for the Amerco Real Estate Company (“Amerco”) property.

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 highway 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 and 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 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 either tender landowners the amount of damages, as estimated by the Chief Engineer or authorize condemnation without tender to the landowner; and

WHEREAS, the property owned by Amerco is located at 820 Wadsworth Boulevard, Lakewood, Colorado 80214 (“Property”), which is within the Project boundaries.

WHEREAS, CDOT seeks to acquire 71,343 square feet (1.638 acres) of the Property for widening State Highway 121 and for necessary drainage improvements and floodplain maintenance; and

WHEREAS, the Property may include tenant-owned improvements, personal property, and other real estate; and

WHEREAS, CDOT has an immediate need for the Property and the inability to work on the Property will likely cause delay to the Wadsworth Capacity Project, Highland to 10th (Project Number STU1211-084/19868)(“Project”), resulting in significant monetary harm to CDOT; and

WHEREAS, on November 17, 2016 the Transportation Commission passed a resolution finding that the public interest and convenience will be served by the Project and approved an anticipated settlement in the amount of \$1,200,000 between Amerco and CDOT; 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

NOW THEREFORE BE IT RESOLVED, if settlement negotiations fail between Amerco and CDOT, the Transportation Commission hereby authorizes CDOT staff to initiate and conduct condemnation proceedings for the Amerco Property. Further, if settlement negotiations fail and CDOT initiates and conducts condemnation proceedings, and 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 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 if necessary.

Herman Stockinger, Secretary
Transportation Commission of Colorado

Date