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**TO:** City Council Neighborhood and Plans Subcommittee  
**FROM:** David Gaspers, Senior City Planner  
**DATE:** December 4, 2014  
**RE:** Official Zoning Map Amendment Application #2014I-00065  
17601 East 60<sup>th</sup> Avenue, rezoning from OS-C/AIO to DIA/AIO Zone District

### Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2014I-00065 for a rezoning from OS-C (**O**pen **S**pace –**C**onservation)/AIO (**A**irport **I**nfluence **A**rea Overlay) zone district to the Denver International Airport (“DIA”) Zone District, retaining the AIO overlay designation.

### Request for Rezoning

|                                |   |
|--------------------------------|---|
| Application:                   | #2014I-00065  |
| Address:                       | 17601 East 60 <sup>th</sup> Avenue  |
| Neighborhood/Council District: | DIA Neighborhood/ Council District 11   |
| RNOs:                          | Alliance for Justice<br>Denver Neighborhood Association, Inc.<br>Montbello 2020<br>Northern Corridor Coalition<br>Green Valley Ranch Citizen's Advisory Board<br>Inter-Neighborhood Cooperation (INC) |
| Area of Property:              | 655,977 square feet and 15.06 acres   |
| Current Zoning:                | Denver Zoning Code, OS-C/AIO Zone District  |
| Proposed Zoning:               | Denver Zoning Code, DIA/AIO Zone District   |
| Property Owner(s):             | Denver International Airport  |
| Owner Representative:          | Dan Poremba, DIA Managing Director of Airport City Development  |

### Summary of Rezoning Request

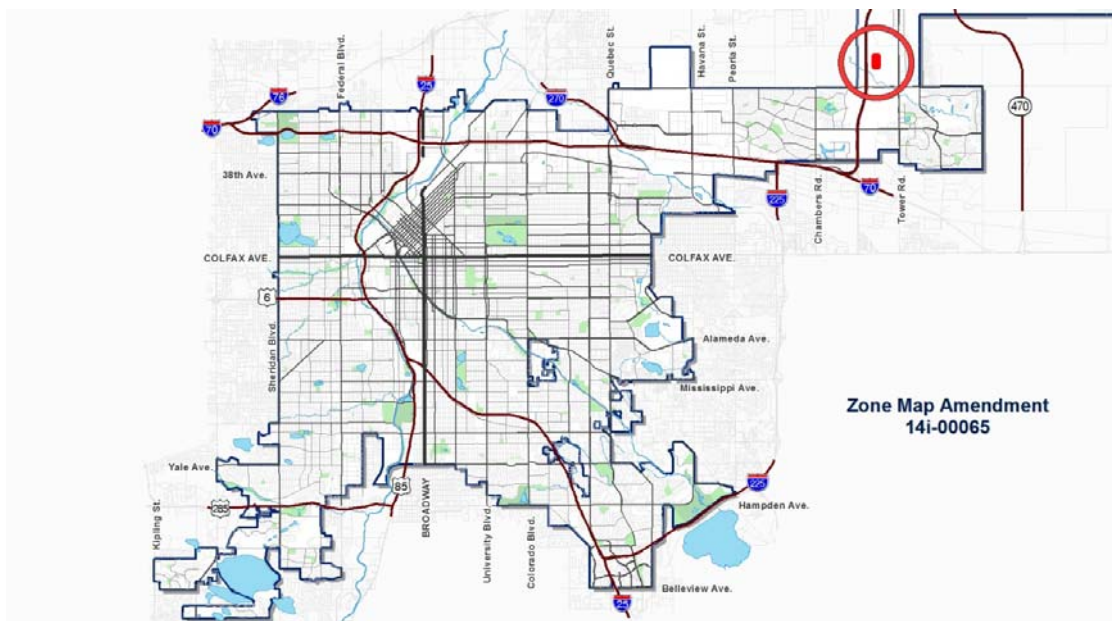
Application #2014-00065 seeks to rezone approximately 15 acres of vacant land in the DIA Neighborhood, currently owned by the Denver International Airport (“DIA”), from an OS-C, “Open Space – Conservation” zone district with the Airport Influence Overlay (“AIO”) zone, to a special airport context DIA zone district under the Denver Zoning Code (“DZC”), retaining the AIO overlay. DIA acquired the subject property in 1990 as in anticipation of the Pena Boulevard and airport construction and ultimate opening to the public in 1995.

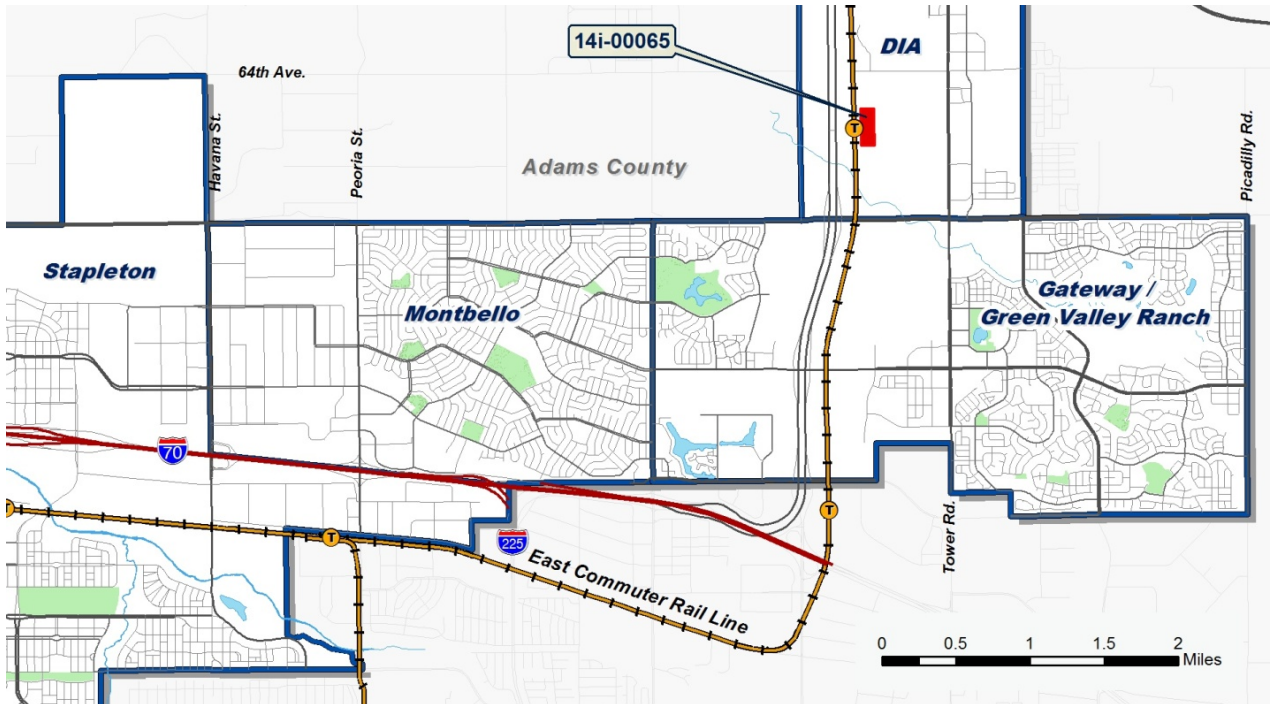
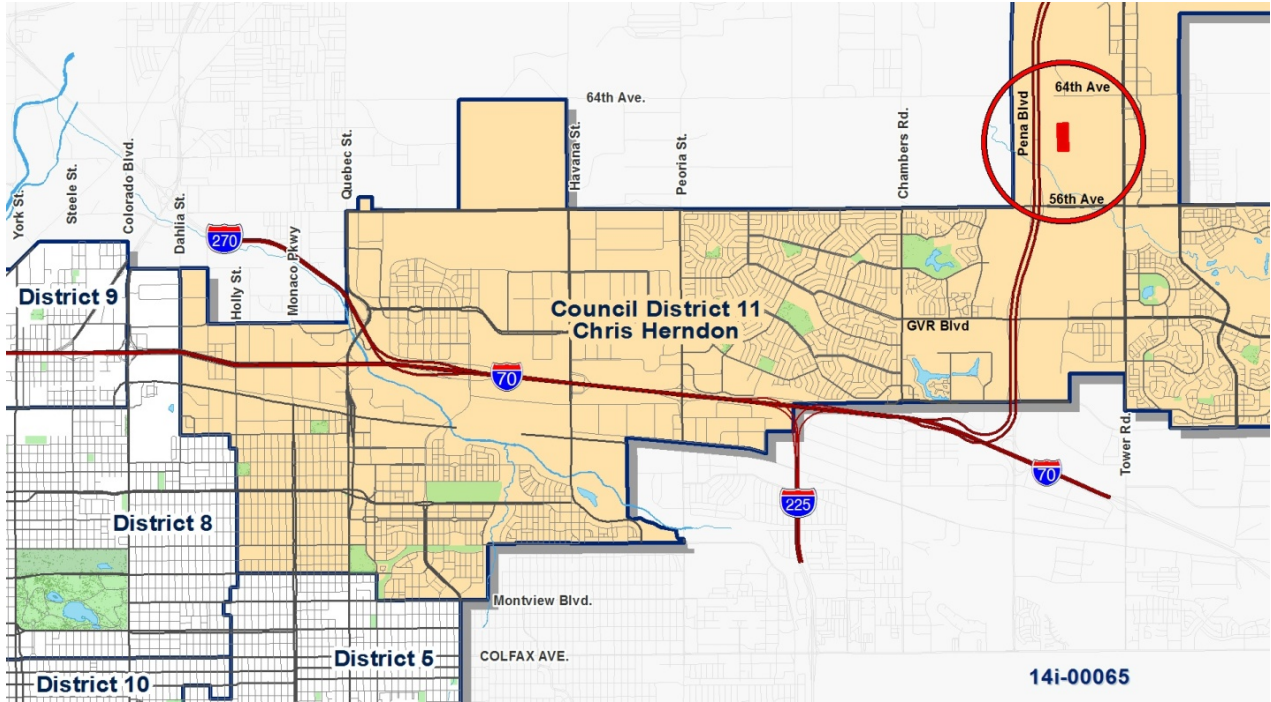
The subject property is located within an area known as the “Pena Boulevard Transportation Corridor,” which is subject to the terms of a 1988 Intergovernmental Agreement (“IGA”) between the City of Denver and Adams County. This portion of the Transportation Corridor, located just outside the boundaries of the Scenic Buffer sub-area (1,000 feet on either side of Pena Boulevard), is generally available for future nonresidential and multi-unit residential development.

As part of the 2010 Denver Zoning Code update, the subject property was rezoned into the OS-C district from Former Chapter 59 zoning of O-2 (the O-2 was the only zone district in the former code that allowed airport use). The current base zoning, OS-C, is a special open space context zone district intended to strictly prohibit most vertical development and permanent structures, with the primary intent to maintain such lands for the conservation of open and natural areas. At the time of the 2010 citywide rezoning, CPD and the City Council were working closely with airport planners on the new airport zone districts and remapping the O-2 lands to those new zones. In hindsight, it appears the fact that DIA owned the subject property and that it was part of their airport land holdings, was overlooked; consequently, the property was not rezoned to the DIA zone district as were DIA's other land holdings in the Pena Boulevard Transportation Corridor.

The property owner, DIA, now seeks to make the base zoning of the subject property consistent with the rest of DIA-owned lands in the Pena Boulevard Transportation Corridor, which are all zoned into the DIA zone district. The applicant states rezoning to the DIA zone district will allow future development of the subject property consistent with the City's adopted 61<sup>st</sup> and Pena Station Area Plan and the approved 61<sup>st</sup> and Pena General Development Plan, planning goals that the current OS-C zoning stymies.

The DIA zone district was approved by City Council as part of the Denver Zoning Code update in 2010 to apply to all lands owned by the airport; the zoning cedes control over such lands' future land use and development to DIA consistent with the airport's master plans and other controlling agreements and laws, such as the IGA. Accordingly, the DIA zoning does not specify allowed land uses or applicable building form standards or other development or design standards; instead, final decision over such matters is left to the discretion of the Denver Manager of Aviation, subject to already existing checks and balances in Denver's legislative and executive systems to ensure the public's health, safety and general welfare.





### Existing Context

As noted previously, the subject property is vacant and part of the Pena Boulevard Transportation Corridor. The immediate surrounding properties, in all directions, are also vacant. Abutting the east side of Tower Road, there are two nodes of existing retail/hotel and multi-unit residential, all developed under Former Chapter 59 mixed use and Gateway zoning.



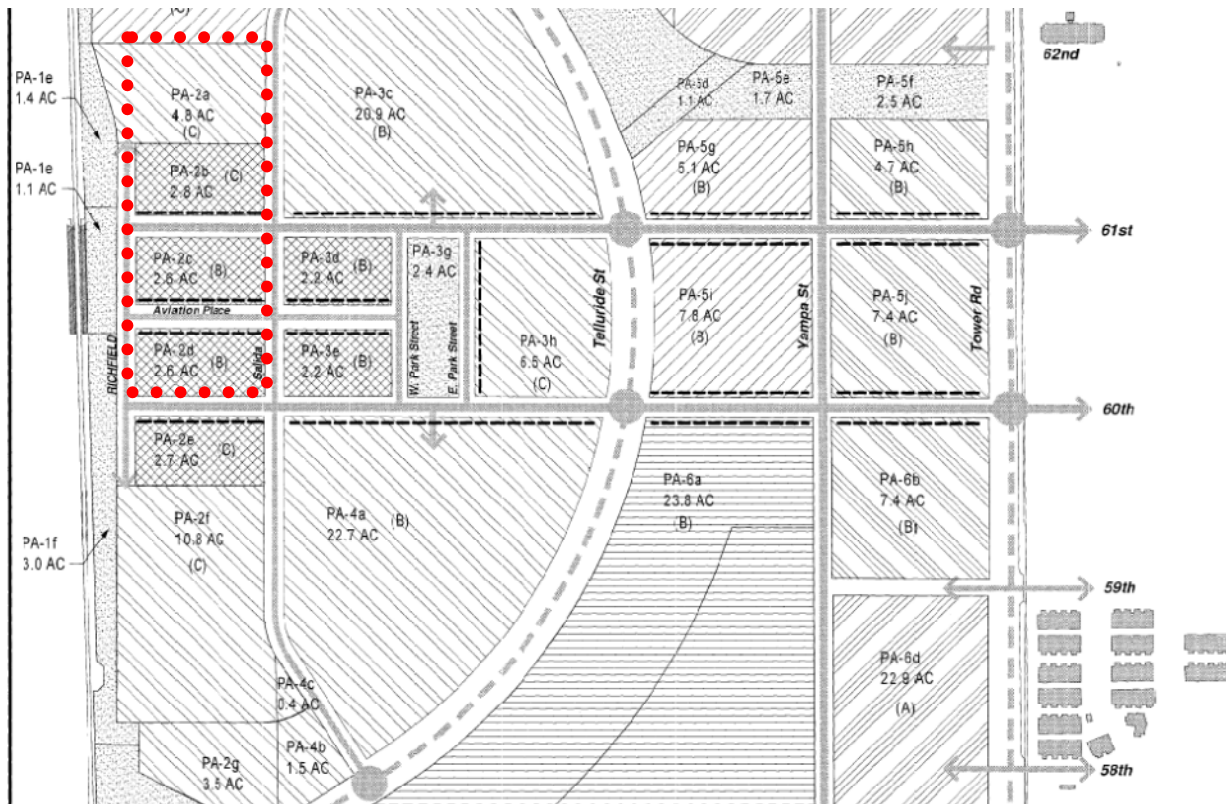
The following table summarizes the existing context proximate to the subject site:

|       | Existing Zoning      | Existing Land Use   | Existing Building Form/Scale | Existing Block, Lot, Street Pattern |
|-------|----------------------|---|------------------------------|-------------------------------------|
| Site  | OS-C                 | Vacant  | None                         | None                                |
| North | C-MU-30 with Waivers | Vacant  | None                         |                                     |
| South | DIA                  | Vacant/open – part of Pena Blvd Transportation Corridor                   | None                         |                                     |
| East  | C-MU-30 with Waivers | Vacant  | None                         |                                     |
| West  | DIA                  | Vacant/open – part of Pena Blvd Transportation Corridor and Scenic Buffer | None                         |                                     |

### 1. 61<sup>st</sup> & Pena Station General Development Plan

The 61<sup>st</sup> & Pena Station General Development Plan (“GDP”), approved by the City’s Development Review Committee in June 2014, is a framework plan for future land use, development and public infrastructure. The GDP provides a master plan for coordinating public and private development, infrastructure improvements, and regulatory decisions as development proceeds. According to DZC, Section 12.4.12.15.B, the City Council “may approve an official map amendment (rezoning) application for property located within an approved GDP area, taking into consideration the approved GDP.” Accordingly, this staff reports includes this analysis of whether the proposed DIA/AIO rezoning is consistent with the approved GDP.

The GDP confirms and further implements the vision adopted in the 61<sup>st</sup> & Pena Station Area Plan (January 2013), which is to create a dense, walkable, mixed-use Transit Community at this critical greenfield site over time. The subject property falls within the GDP’s designated “Transit Community Core A” and “Transit Community Core B” character areas. See excerpt from Sheet 6 of the GDP below.



| LAND USE / CHARACTER AREAS  | CONCEPTUAL BUILDING HEIGHTS  |
|---|--|
| <ul style="list-style-type: none"> <li>— PLANNING AREAS</li> <li>□ OPEN SPACE</li> <li>▨ TRANSIT COMMUNITY CORE A</li> <li>▩ TRANSIT COMMUNITY CORE B</li> <li>▧ MIXED-USE EMPLOYMENT</li> <li>▦ MIXED-USE RESIDENTIAL</li> <li>▥ COMMERCIAL CORRIDOR</li> <li>▤ TOWN CENTER</li> <li>--- PRIMARY STREET ZONE LOT LINE</li> </ul> | <ul style="list-style-type: none"> <li>(A) MAXIMUM 5 STORIES</li> <li>(B) MAXIMUM 8 STORIES</li> <li>(C) MAXIMUM 12 STORIES</li> </ul> |

Generally, the GDP vision for Transit Community Core A, comprised of the 6 blocks closest to the future 61<sup>st</sup> & Pena rail transit station, is to become the focus of density and activity by incorporating a mix of higher density residential, offices, hotels, and neighborhood and transit-serving commercial and retail uses. Building height is planned to cap at 8 stories, and buildings should be oriented to both the transit station and planned transit plaza and a future mixed-use “main street” (Aviation Street) between 60<sup>th</sup> and 61<sup>st</sup> Avenues.

The GDP vision for Transit Community Core B is similar to the Core A character district, but at taller building heights (up to 12 stories) and potentially implemented over a longer time horizon. Future land use mix is planned for moderate-to-high density residential, offices, hotels, and a mix of neighborhood- and transit-serving commercial and retail. Distinct from Core A, blocks in Core B should be designed in a manner that allows early phases of development to be surface parked internal to the block with the ability to transition to more dense uses over time.

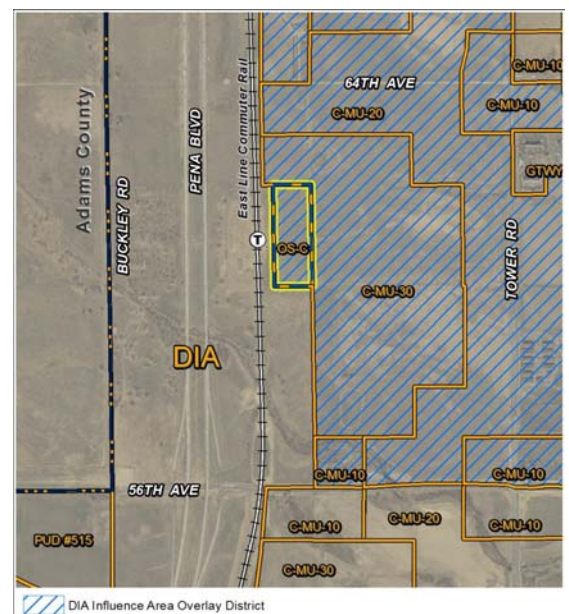
The GDP calls out specifically DIA-controlled property. The GDP states that DIA-owned property within the GDP area, including the subject property, will continue to be owned and managed under the charter authority of the Manager of Aviation, implying the GDP cannot conflict with that authority or with other DIA legal obligations, such as compliance with its Federal Aviation Authority mandates and requirements. See GDP, Sheet 5, paragraph J.

The requested rezoning to the DIA zone district is consistent with the adopted General Development Plan and its framework plan recommendations. Future development under DIA zoning will ensure the Manager of Aviation’s full authority over what happens on DIA-controlled lands. As a key property owner, DIA and the Manager of Aviation participated fully in the drafting and adoption of the GDP and the 61<sup>st</sup> & Pena Station Area Plan, and they have publicly assured the city’s decision-makers and CPD that future development of the subject property will be consistent with the GDP.

## 2. Existing Zoning

As earlier noted, the subject property is currently zoned to the OS-C, Open Space-Conservation zone district. In addition, the AIO, Airport Influence Area Overlay zone applies. The OS-C zone is a special open space context zone district intended to strictly prohibit most vertical development and permanent structures. The OS-C zoning’s primary intent is to permanently conserve lands for open space and natural habitat.

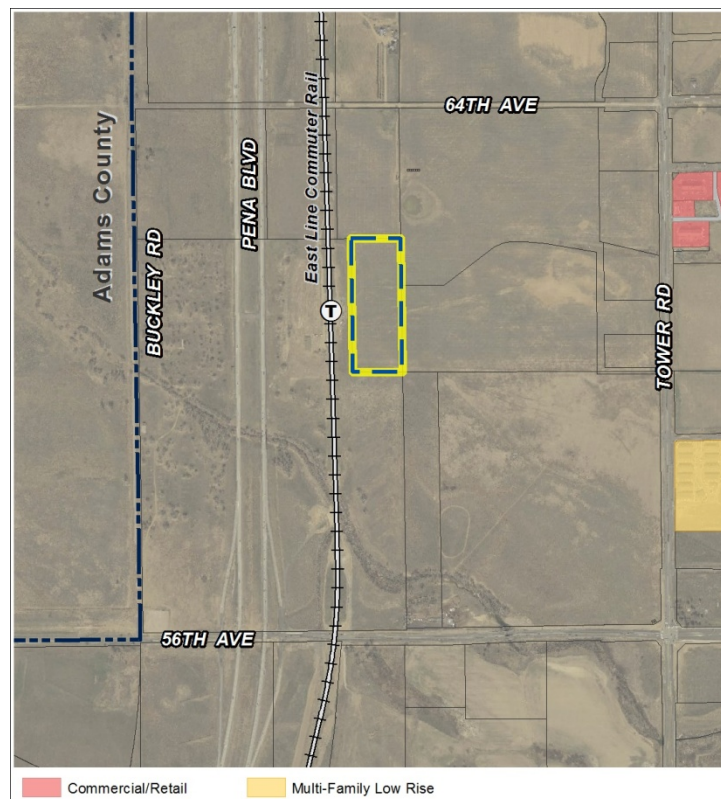
The AIO overlay zone district is intended to protect land uses and businesses operating near DIA from the adverse impacts of airport operation, and to minimize noise impacts on residential and other sensitive land uses. More specifically, the AIO zone district prohibits single-family and duplex residential land uses north of 56<sup>th</sup> Avenue, and prohibits multi-unit residential uses north of 62<sup>th</sup> Avenue. See DZC, Section 9.5.3.



As part of the 2010 Denver Zoning Code update, the subject property was rezoned into the OS-C/AIO district from Former Chapter 59 zoning of O-2. At the time of the 2010 citywide rezoning, CPD and the City Council were working closely with airport planners on the new airport zone districts and remapping DIA's lands to those new zones. In hindsight, the fact that DIA owned the subject property and that it was part of their airport land holdings, was apparently overlooked; consequently, the property was not rezoned to the DIA zone district as were DIA's other land holdings in the Pena Boulevard Transportation Corridor.

### 3. Existing Land Use Map

The existing land use on the subject property, as shown in the map below, is shown as "vacant," as is all the adjoining and immediately surrounding properties. This is truly a "greenfield" site. Further east, on the east side of Tower Road, existing development is comprised of a retail/hotel project at Tower Road and 62<sup>nd</sup> Avenue, and a low-rise multi-unit development at Tower Road and 59<sup>th</sup> Avenue.



### 4. Existing Building Form and Scale

The subject property and the immediate context are vacant and do not contain any significant buildings or structures.

## Summary of City Agency Referral Comments

As part of the DZC review process, the rezoning application is referred to potentially affected city agencies and departments for comment. A summary of agency referral responses follows:

**Asset Management:** Approve – No comments.

**Development Services-Project Coordination:** Approve – No comments.

**Parks Department:** Approve – No comments.

**Denver Fire Department:** Approve – No comments.

**Development Services – Wastewater:** Approve – No comments.

**Public Works – City Surveyor:** Legal description is approved.

## Public Review Process

- Notice of Planning Board Public Hearing Notification: The subject property was legally posted for a period of 15 days announcing the November 19, 2014, Denver Planning Board public hearing.
- CPD sent written (email) notification of the hearing to all affected registered neighborhood organizations and City Council members 15 days prior to the hearing date on November 4, 2014.
- To date, no public comments have been received on this application.
- Following Planning Board review, the rezoning application was referred to the Neighborhood and Plans Sub-Committee of the City Council for review at a public meeting scheduled on December 10, 2014 and written notification of the hearing has been sent to all affected registered neighborhood organizations and City Council members.

## Criteria for Review / Staff Evaluation

The criteria for review of this rezoning application are found in DZC, Sections 12.4.10.7 and 12.4.10.8, as follows:

### **DZC Section 12.4.10.7 – Criteria Applicable to All Rezonings**

1. Consistency with Adopted Plans
2. Uniformity of District Regulations and Restrictions
3. Public Health, Safety and General Welfare

### **DZC Section 12.4.10.8 – Additional Criteria Applicable to All Non-Legislative Rezonings**

4. Justifying Circumstances
5. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements

## **1. Consistency with Adopted Plans**

The following adopted plans apply to this property:

- Denver Comprehensive Plan 2000



- Blueprint Denver (2002)
- 61<sup>st</sup> & Pena Station Area Plan (Jan. 2014)

### **Denver Comprehensive Plan 2000**

The proposal is consistent with Denver Comprehensive Plan objectives and general objectives related to supporting the growth and maintenance of Denver International Airport and its environs as a major economic engine and opportunity area for future growth in Denver, including:

1. **Land Use Strategy 4-A** – Encourage mixed-use, transit-oriented development that makes effective use of existing (and planned) transportation infrastructure, supports transit stations, increases transit patronage, reduces impacts on the environment, and encourages vibrant urban centers and neighborhoods.
2. **Mobility Strategy 3-A**–Strengthen multimodal connections and transportation improvements within and between existing and potential urban centers, including Downtown, DIA/Gateway, Stapleton, and the Denver Tech Center.
3. **Mobility Strategy 4-E** – Continue to promote mixed-use development, which enables people to live near work, retail and services.
4. **Mobility Objective 10 – Air Transportation** – Provide residents and visitors using DIA with an airport that is a leader in service, efficiency, innovative practices, safety, convenience and aesthetics.
5. **Denver’s Legacies Strategy 3-A**–Identify areas in which increased density and new uses are desirable and can be accommodated.
6. **Housing Strategy 6-E**–Identify and capitalize on opportunities to develop housing along transit lines.

The proposed rezoning of the subject property to the DIA zone district will enable DIA to ensure development of a mix of uses, including high-density residential and commercial uses, which can support the substantial public investment in new rail transit at the 61<sup>st</sup> & Pena station. The DIA zoning substantially broadens the variety of uses and building forms allowed on the subject zoning compared to the current OS-C zoning. Accordingly, CPD staff finds the rezoning is consistent with Denver Comprehensive Plan 2000 recommendations.

### **Blueprint Denver**

Blueprint Denver is the City’s long-range Land Use and Transportation Plan, adopted in 2002. Blueprint Denver provides broad guidance in the rezoning process through its adopted land use and development policies, objectives, and strategies.

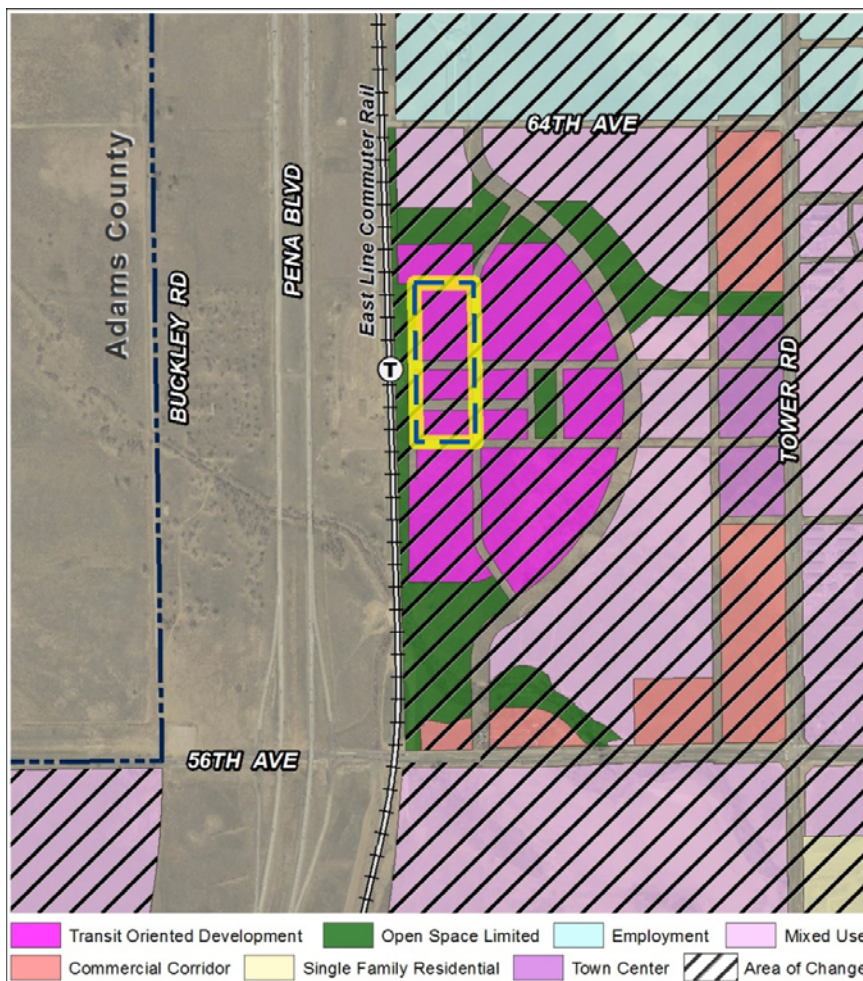
#### **Future Land Use and Area of Stability/Area of Change**

One component of Blueprint Denver is the “Future Land Use Map,” which provides a high-level recommendation of future land use for all property in Denver. According to the Blueprint Future Land Use Map, the specific subject property is planned for future “transit oriented development” land use and is within an identified “Area of Change.” See map below.

“Transit oriented development” is described in Blueprint Denver, page 44, as unique development areas in Denver and land uses that “have direct correlations to the function of a mass transit

system,” typically located at stations or stops along bus or rail lines. Some key attributes of TOD commonly include:

- A balanced mix of uses
- Compact mid- to high-density development
- Close proximity to transit, emphasizing a pedestrian-friendly environment
- Reduced emphasis on auto parking and surface parking lots
- Urban design guidelines to improve character and create a sense of place
- A variety of housing types and prices
- Access to open space and recreational amenities
- A high degree of connectivity between the station area and surrounding neighborhoods



Blueprint Denver  
Future Land Use Map  
(updated by the 2014 61<sup>st</sup>  
& Pena Station Area Plan)

As noted, the subject area, and indeed the entire 61<sup>st</sup> & Pena station area is within a designated Area of Change. In general, “The goal for Areas of Change is to channel growth where it will be beneficial and can best improve access to jobs, housing and services with fewer and shorter auto trips” (p. 127).

The proposed rezoning of the subject property to the DIA zone district will enable both a wide mix of uses and substantial intensity and scale of development that are necessary to implement Blueprint Denver's TOD future land use recommendation, and direct substantial future job and housing growth to this important Area of Change.

### **Street Classifications**

Because there are no current streets abutting the subject property, Blueprint Denver provides little guidance as to appropriate zoning choice based on its future street classification recommendations.

For the all the foregoing reasons, CPD finds that the proposed DIA rezoning is consistent with the Blueprint Denver plan.

### **61<sup>st</sup> & Peña Station Area Plan (2014)**

The Denver 61<sup>st</sup> & Peña Station Area Plan was adopted by City Council in January 2014 as a supplement to the Comprehensive Plan and as an update to Blueprint Denver. The overall vision for the 382 acres adjacent to the planned 2016-opening of the East Commuter Rail Station at 61<sup>st</sup> Avenue is to encourage "development of a vibrant urban center and compact, transit-oriented community." The four plan principles that establish this framework are:

- *Transit Community*: Building neighborhoods with a rich mix of uses and urban character
- *Connected*: The multi-modal lifestyle
- *Vibrant*: Place-making with urban design, parks, and public space
- *Catalyze*: Sustainable development for generations.

(Station Area Plan at pages 6-7).

The subject property is at the core of the envisioned transit community. It comprises a significant portion of land immediately adjacent to the new station platform. The subject property, together with additional properties abutting the subject property to the east, north, and south are planned for "TOD-Transit Community Core" land uses and development. See excerpt from page 11 of the plan at right.

Generally, the vision is for mixed-use residential, employment, and town center uses development at relatively high densities/intensities and varying scales (building heights

61ST & PEÑA STATION CONCEPTUAL LAND USE MAP



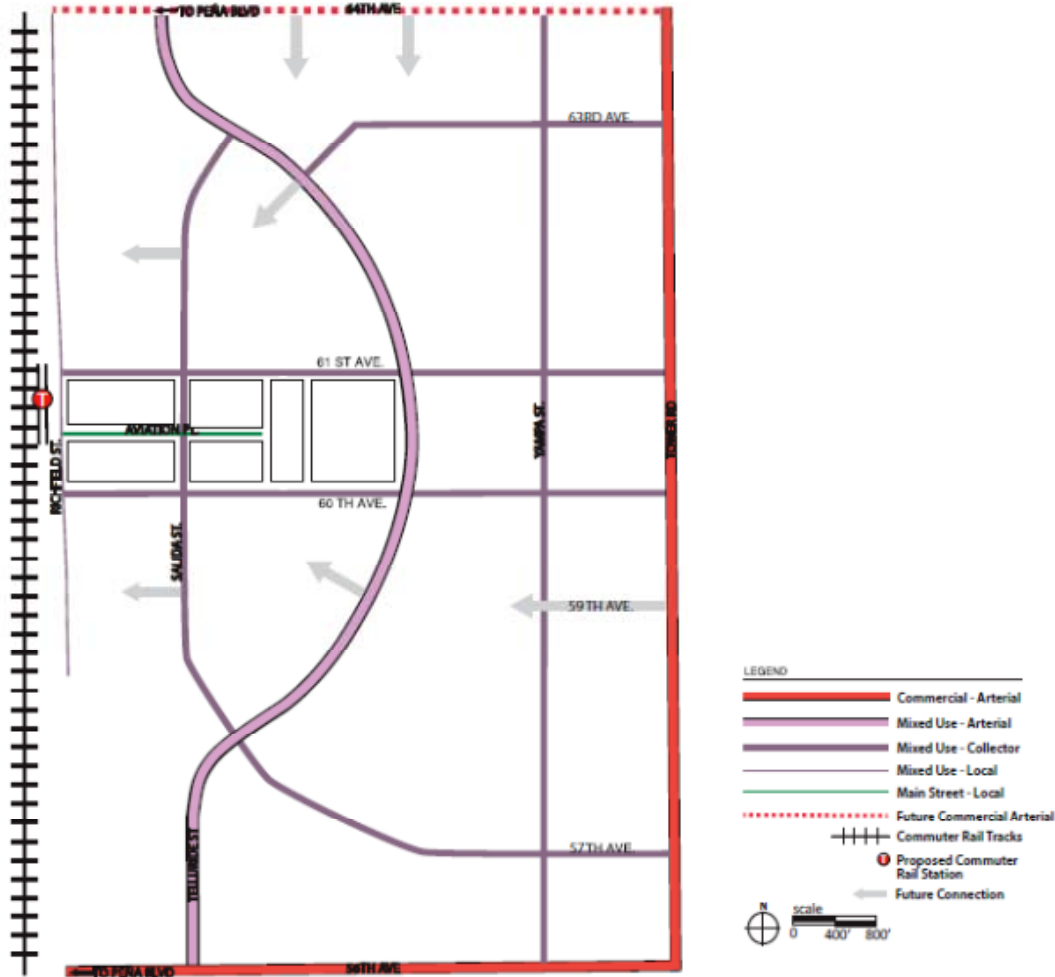
LEGEND

- TOD - Transit Community Core
- Mixed Use - Employment
- Mixed Use - Residential
- Commercial Corridor
- Town Center
- Proposed Open Space Network
- Commuter Rail Tracks
- Proposed Commuter Rail Station
- Future Connection

All streets shown in this plan are conceptual and adjustments may need to be made to the final layout and alignment to meet City roadway design criteria.

from 8-12 stories are recommended closest to the station), all within close walking distance to each other and to the transit station. Altogether, the mix of uses is intended to create a vibrant, compact place that supports transit use, both as an origin and destination, throughout the day.

The Station Area Plan also recommends a highly-connected street grid of arterial, collector streets, and special local streets closest to the station platform. See below (Station Area Plan, p. 17). This part of the plan updates Blueprint Denver, and designates the streets bounding the subject property - 60<sup>th</sup> Avenue, 61<sup>st</sup> Avenue, and Salida Streets – as “Mixed Use Collector” street types. In addition, Aviation Place, which bisects the subject property close to its southern boundary, is designated a “Main Street – Local” street. “Mixed use” collectors are intended to promote development of a rich mix of residential and commercial uses along such streets, and should emphasize accommodation of a variety of travel choices such as pedestrians, bicycle and transit use. “Main Street” local streets are intended to serve high-intensity uses in mixed-use centers, and should be designed to promote walking, bicycling, and transit within a highly attractive design. (Blueprint, pp. 56-57)



All streets shown in this plan are conceptual and adjustments may need to be made to the final layout and alignment to meet City roadway design criteria.

The proposed rezoning of the subject property to the DIA/AIO zone district is consistent with the adopted 61<sup>st</sup> & Pena Station Area Plan, because it will enable DIA to propose and oversee development of its property consistent with the plan vision of a mixed-use, TOD - transit community core.

## **2. Uniformity of District Regulations and Restrictions**

The proposed rezoning to DIA/AIO will result in the uniform application of zone district building form, use and design regulations within this special context zone district, as authorized by the DZC, Division 9.5, DIA Zone Districts.

## **3. Public Health, Safety and General Welfare**

The proposed official map amendment furthers the public health, safety, and general welfare of the City primarily through implementation of the City's adopted land use plans, as described in more detail above. Achieving uniformity of zoning of all lands owned by DIA in the Pena Boulevard Transportation Corridor, including the subject property, will also facilitate the airport's control and management of its land use and development obligations under FAA guidelines and the IGA, among other controlling documents, which furthers the public's general welfare.

## **4. Justifying Circumstance**

The application states the following Justifying Circumstance under DZC Section 12.4.10.14.A.2, "The existing zoning of the land was based on a mistake of fact." As explained above, in 2010, it was the City's intent to zone all O-2 land owned and controlled by DIA, to the new DIA zone district. CPD and City Council worked closely with DIA to identify all such land areas, but the final list of such properties inadvertently excluded the subject property, even though the subject property was also zoned O-2 and owned by DIA. The City Council adopted a new zoning map in 2010 changing the base zoning of all O-2 zoned lands owned by DIA to the new DIA zone district, with the exception of the subject property. Thus, the subject property's existing OS-C/AIO zoning was the result of a mistake of fact by the City Council in believing the subject property was not owned by DIA.

## **5. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements**

The Denver Zoning Code does not provide a description of the special DIA context. However, in Section 9.5.5.1, the DZC spells out a detailed DIA zone district purpose and intent. The DIA zone district is intended to acknowledge the special character of the 53 square miles of land that comprise the Denver International Airport and its environs, all owned and managed by the City of Denver's Department of Aviation. The zoning is more specifically intended to, among other things, maintain consistency with DIA's vision, mission and goals and to support DIA's role as the key economic engine for the region and state.

Rezoning the subject property to DIA/AIO zoning is consistent with the above-stated intent of the DIA zone district because the new zoning will allow DIA to manage all of its property within the Pena

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17601 East 60<sup>th</sup> Avenue  
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Boulevard Transportation Corridor under the same set of land use laws. This ease in future land management supports DIA's mission and goals to ensure compliance with the terms of the IGA, with FAA regulations, and to implement the long-range vision in the adopted 61<sup>st</sup> & Pena Station Area Plan and approved GDP.

### Planning Board Recommendation

The Denver Planning Board held a properly noticed public hearing on this application on November 19, 2014. The Planning Board voted to recommend approval 10-1.

### Staff Recommendation

Based on the analysis set forth above, CPD staff finds that the application for rezoning 17601 East 60th Avenue to DIA/AIO zoning meets the requisite review criteria. Accordingly, staff recommends **approval**.

### Attachments

1. Application #2014I-00065

## Zone Map Amendment (Rezoning) - Application

| PROPERTY OWNER INFORMATION*   |                              | PROPERTY OWNER(S) REPRESENTATIVE**   |  |
|---|------------------------------|--|--|
| <input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION  |                              | <input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION   |  |
| Property Owner Name   |                              | Representative Name  |  |
| Address   |                              | Address  |  |
| City, State, Zip  |                              | City, State, Zip   |  |
| Telephone   |                              | Telephone  |  |
| Email   |                              | Email  |  |
| <p><b>*If More Than One Property Owner:</b><br/>           All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.</p> |                              | <p><b>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</b></p> |  |
| <p>Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date.</p>                              |                              |  |  |
| SUBJECT PROPERTY INFORMATION  |                              |  |  |
| Location (address and/or boundary description):   |                              |  |  |
| Assessor's Parcel Numbers:  |                              |  |  |
| Area in Acres or Square Feet:   |                              |  |  |
| Current Zone District(s):   |                              |  |  |
| PROPOSAL  |                              |  |  |
| Proposed Zone District:   |                              |  |  |
| Does the proposal comply with the minimum area requirements specified in DZC Sec. 12.4.10.3:  | <input type="checkbox"/> Yes | <input type="checkbox"/> No  |  |

| REVIEW CRITERIA  |  |
|--|--|
| <p>General Review Criteria: The proposal must comply with all of the general review criteria<br/>DZC Sec. 12.4.10.13</p>                                     | <input type="checkbox"/> Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan<br><br>Please provide an attachment describing relevant adopted plans and how proposed map amendment is consistent with those plan recommendations; or, describe how the map amendment is necessary to provide for an unanticipated community need.   |
|  | <input type="checkbox"/> Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.   |
|  | <input type="checkbox"/> Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.   |
| <p>Additional Review Criteria for Non-Legislative Rezoning: The proposal must comply with both of the additional review criteria<br/>DZC Sec. 12.4.10.14</p> | <p><b>Justifying Circumstances - One of the following circumstances exists:</b></p> <input type="checkbox"/> The existing zoning of the land was the result of an error.<br><input type="checkbox"/> The existing zoning of the land was based on a mistake of fact.<br><input type="checkbox"/> The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage.<br><input type="checkbox"/> The land or its surroundings has changed or is changing to such a degree that rezoning that it is in the public interest to encourage a redevelopment of the area to recognize the changed character of the area<br><input type="checkbox"/> It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of this Code. |
|  | <p>Please provide an attachment describing the justifying circumstance.</p> <input type="checkbox"/> The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District.  |
|  | <p>Please provide an attachment describing how the above criterion is met.</p>   |

## REQUIRED ATTACHMENTS

Please ensure the following required attachments are submitted with this application:

- Legal Description (required to be attached in Microsoft Word document format)
- Proof of Ownership Document(s)
- Review Criteria

## ADDITIONAL ATTACHMENTS

Please identify any additional attachments provided with this application:

- Written Authorization to Represent Property Owner(s)

Please list any additional attachments:



**PROPERTY OWNER OR PROPERTY OWNER(S) REPRESENTATIVE CERTIFICATION/PETITION**

We, the undersigned represent that we are the owners of the property described opposite our names, or have the authorization to sign on behalf of the owner as evidenced by a Power of Attorney or other authorization attached, and that we do hereby request initiation of this application. I hereby certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate. I understand that without such owner consent, the requested official map amendment action cannot lawfully be accomplished.

| Property Owner Name(s)<br>(please type or print legibly)                                  | Property Address<br>City, State, Zip<br>Phone<br>Email                       | Property Owner Interest % of the Area of the Zone Lots to Be Rezoned | Please sign below as an indication of your consent to the above certification statement (must sign in the exact same manner as title to the property is held) | Date     | Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved | Property owner representative written authorization? (YES/NO) |
|---|--|--|---|----------|--|---|
| <b>EXAMPLE</b><br>John Alan Smith and<br>Josie Q. Smith                                   | 123 Sesame Street<br>Denver, CO 80202<br>(303) 555-5555<br>sample@sample.gov | 100%   | <i>John Alan Smith</i><br><i>Josie Q. Smith</i>   | 01/01/12 | (A)  | NO  |
| Dan Poremba<br>representative for<br>City & County of<br>Denver-Department of<br>Aviation | 8500 Peña Blvd.<br>Denver CO 80249<br>303-342-2260                           | 100%   | <i>Dan Poremba</i>  | 9/30/14  | (D)  | (Y)   |
|   |  |  |   |          |  |   |
|   |  |  |   |          |  |   |
|   |  |  |   |          |  |   |
|   |  |  |   |          |  |   |

**Parcel 1-****Justifying Circumstance:**

This parcel is currently zoned OS-C because of a mistake of fact. At the time of the citywide rezoning in 2010 the City was unaware that this parcel was owned by the City and County of Denver-Department of Aviation.

**Consistency with the applicable neighborhood context:**

This parcel is proposed to be rezoned to DIA Zone District. This parcel abutts DIA Zone District to the south and west. This parcel lies within the 61<sup>st</sup> and Pena Station Area Plan adopted by City Council January 13, 2014 and the 61st and Pena General Development Plan recorded July 18, 2014. Permitted uses, required minimum parking, number of uses, and any applicable use limitations in the DIA Zone District, shall be determined by the Denver Manager of Aviation.

## Parcel No. 1

The east half of the east half of the southeast quarter of the northwest quarter and the east half of the west half of the east half of the southeast quarter of the northwest quarter of Section 9, Township 3 South, Range 66 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, being more particularly described as follows:

Beginning at the center quarter corner of Section 9; thence  $S89^{\circ} 48' 07''W$  along the south line of the northwest quarter of Section 9 a distance of 494.62 feet; thence  $N00^{\circ} 42' 58''W$  a distance of 1324.98 feet to a point on the north line of the southeast quarter of the northwest quarter of Section 9; thence  $N89^{\circ} 48' 50''E$  along the north line of the southeast quarter of the northwest quarter of Section 9 a distance of 495.59 feet to a point on the north-south centerline of Section 9; thence  $S00^{\circ} 40' 27''E$  along the north-south centerline of Section 9 a distance of 1324.87 feet to the Point of Beginning.

Parcel contains 655,977 Sq. Ft. or 15.06 acres, more or less.

Bearings are based on the Colorado Coordinate System, Central Zone, as determined from a grid bearing of  $N24^{\circ} 59' 48''W$  from the Station "Henderson" to Station "McKinley," North American Datum of 1927.

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO  
CASE NO. 88 CV 24566, Courtroom 7

**RULE AND ORDER**

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado,

Petitioner,

v.

L. C. FULENWIDER, INC., a Colorado corporation; VAN SCHAAK HOLDINGS, LTD., a Colorado limited partnership; CHERRY CREEK NATIONAL BANK; DEAN RACE; DELPHA RACE; PLATTE VALLEY BANK; WEST ADAMS SOIL CONSERVATION DISTRICT; FIRST CREEK METROPOLITAN DISTRICT; EAST DENVER MUNICIPAL IRRIGATION DISTRICT; BOWLES-BUFFE IRRIGATED LAND CO.; FARMERS RESERVOIR AND IRRIGATION COMPANY; JOHN GRATTAN; G. E. WILSON; LONNIE NICK KALLSEN, aka NICK KALLSEN; GLORIA J. KALLSEN; PAUL C. WARNER; CONNIE WARNER; V. DENNIS KRAFT, aka DENNIS KRAFT; KAY J. KRAFT; DAN KRAFT; UNITED BANK OF BRIGHTON, fka FIRST BANK OF BRIGHTON; ARTHUR D. WALL; CENTRAL COLORADO WATER CONSERVANCY DISTRICT; CENTRAL COLORADO GROUNDWATER MANAGEMENT SUBDISTRICT; THE DISTRICT LANDOWNERS TRUST; WATKIN CANAL AND CONDUIT COMPANY; ADAMS M. FAHRINGER; BOX ELDER VALLEY IRRIGATION DISTRICT; MARY CARTER; LENA R. RUSSELL; W. J. MARTINE; LONE TREE DITCH AND RESERVOIR CO.; W. I. HOOPES; WILLIAM E. THORNTON; JANET M. THORNTON; E. L. OUDERKIRK; BOX ELDER GRANGE #232; ROBERT ZIEGLER; ANN ZIEGLER; RAY BEIERLE; EVA BEIERLE; HAROLD BEIERLE; JOYCE BEIERLE; ROGER HANSON; IRVIN HANSON; MOLLIE ZIEGLER; GLADYS FISHER; RON FISHER; JANE FISHER; THIRD CREEK FARMING COMPANY; SAM WAGNER; ROBERT DAVID WAGNER; WELLS FARGO BANK, N.A.; DENVER NATIONAL BANK; ACCOUNTS INCORPORATED; ART W. EPPINGER; APACHE OIL CORPORATION; MORTIMER F. SULLIVAN; ANTARES OIL CORPORATION, a Colorado corporation; GEO-PARTNERS, LTD., a Colorado corporation; ANNA BOYLE; JOHN STOBENER; BARBARA A. KEIL; DEL CIMYOTT; MILLIE JAMES; HOMCO INTERNATIONAL, INC., a Delaware corporation; THE BOARD OF COUNTY COMMISSIONERS, ADAMS COUNTY, STATE OF COLORADO; FELICIA MUFTIC, Public Trustee of the City and County of Denver, State of Colorado; JUDITH A. KAHLE, Public Trustee of Adams County, State of Colorado; ALAN CHARNES, Manager of Revenue and Ex Officio Treasurer of the City and County of Denver, State of Colorado; HELEN HILL, Treasurer of Adams County, State of Colorado; AND ANY AND ALL PERSONS WHO MAY CLAIM AN INTEREST IN THE SUBJECT MATTER OF THIS ACTION,

**Respondents.**

THIS MATTER, came on regularly for hearing this day upon the Commission's Certificate of Ascertainment and Assessment filed June 15, 1990, which Commission was duly appointed to determine the compensation to be paid Respondents interested in the property and the property interests which are the subject of this action; and it appearing to the Court from the pleadings herein that all persons interested as owners or otherwise, as appearing of record, have been joined herein:

THE COURT FINDS that it has full and complete jurisdiction of the subject matter of this action and the parties thereto; that service has been made upon all interested parties as required by law; that the Commission, after hearing the evidence and arguments of the parties and after viewing the subject property, did find and determine in accordance with the laws of the State of Colorado:

1. That the accurate description of the property and property interests being acquired by the Petitioner herein is attached hereto as Exhibit A; that by stipulation of the parties, said property acquired by Petitioner includes the right to withdraw and use an average annual amount of 12,819 acre feet per year of bedrock groundwater underlying the land described in Exhibit A, as decreed in the cases identified on pages 1-3 of Exhibit A, of which 3,270 acre feet are from the Denver Aquifer, 3,429 acre feet from the Upper Arapahoe Aquifer, 2,495 acre feet from the Lower Arapahoe Aquifer, and 3,625 acre feet from the Laramie-Fox Hills Aquifer;

2. That the value of the property actually taken by the Petitioner is \$52,321,000.00;

3. That by stipulation of the parties, the value to be paid for growing crops existing on the property as of the date the Petitioner took possession of the property is \$100,479.60.

THE COURT FURTHER FINDS that the sum of \$52,421,479.60 plus pre-judgment interest pursuant to Section 38-1-116, C.R.S. and post-judgment interest pursuant to law (such pre-judgment interest is computed by Petitioner to be \$3,085,691.87; post-judgment interest is calculated by the Petitioner to be \$185,177.19 through July 18, 1990; Respondents claim additional pre-judgment interest and post-judgment interest, which claims will be resolved at a later date), represents the full just compensation to be paid for taking the above-described property, all appurtenances thereto, all interests therein, damages, and payment for growing crops.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the property described in Exhibit A attached hereto and incorporated herein by reference has been duly and lawfully taken by the Petitioner pursuant to the statutes and Constitution of the State of Colorado; that the interests of Respondents in said property have been acquired by Petitioner and that the title to said property, together with all appurtenances thereto belonging, free

and clear of all liens and encumbrances, is hereby vested in Petitioner; that the interests so acquired include the right to withdraw and use an average annual amount of 12,819 acre feet per year of bedrock groundwater underlying the land described in Exhibit A, as decreed in the cases identified on pages 1-3 of Exhibit A, of which 3,270 acre feet are from the Denver Aquifer, 3,429 acre feet from the Upper Arapahoe Aquifer, 2,495 acre feet from the Lower Arapahoe Aquifer, and 3,625 acre feet from the Laramie-Fox Hills Aquifer; and it is

FURTHER ORDERED that Petitioner shall deposit into the Registry of the Court the total sum of \$25,787,348.66 (such amount being comprised of the amount of the award of \$52,421,479.60 less the amount previously deposited by Petitioner of \$29,905,000.00, plus \$3,085,691.87 as the Petitioner's calculation of Section 38-1-116, C.R.S. interest, and plus \$185,177.19 in post-judgment interest, as computed by Petitioner through July 18, 1990, which amounts are subject to the Respondents' outstanding claim for additional interest as set forth herein; and it is

FURTHER ORDERED that the sum of \$25,787,348.66 upon deposit shall be forthwith invested in the same manner as the funds which are presently on deposit in this case have been invested. All funds on deposit shall thereafter be subject to disbursement pursuant to further orders of this Court; and it is

FURTHER ORDERED that any issues relating to the amount of reimbursable costs or the compensability and amounts of any fees and expenses necessarily incurred by the parties shall be resolved by the Court at a later time, and each party shall have the right to raise any issues and make any claims and assert any defenses thereto; and it is

FURTHER ORDERED that a certified copy of this Rule and Order be recorded and indexed in the offices of the Clerk and Recorder for Adams County and the City and County of Denver, State of Colorado, in like manner and with like effect, as if it were a deed of conveyance from the owner and parties interested to the Petitioner herein.

DONE IN OPEN COURT this 20 day of July, 1990.

BY THE COURT:

Nancy E. Rice  
District Court Judge

3



District Court  
City & County of Denver, Colo.  
Certified to be a full, true and correct  
copy of the original in my custody.

JUL 26 1990

Court  
By [Signature]  
Deputy Clerk

APPROVED AS TO FORM:

OPPERMAN & ASSOCIATES, P.C.

By 

Marlin D. Opperman #3946  
William M. Schell, #11848  
Timothy L. Goddard, #17645  
511 16th Street, Suite 410  
Denver, CO 80202  
(303) 623-1970

SPECIAL COUNSEL FOR PETITIONER  
CITY AND COUNTY OF DENVER

CITY AND COUNTY OF DENVER  
Stephen H. Kaplan, #7826  
City Attorney

By: Catherine C. Gale, #12279  
Assistant City Attorney  
Stapleton International Airport  
Terminal Building, Room 3233  
Denver, CO 80207

FAEGRE & BENSON

By 

Joseph M. Montano, #3695  
Leslie A. Fields, #11232  
2500 Republic Plaza  
370 17th Street  
Denver, CO 80202-4004  
(303) 592-5690

ATTORNEYS FOR RESPONDENTS  
L. C. FULENWIDER, INC. and  
VAN SCHAACK HOLDINGS, LTD.

BAKER & HOSTETLER

By *Fred M. Winnar*

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303 East 17 Avenue  
Suite 1100  
Denver, CO 80203  
(303) 861-0600

ATTORNEYS FOR RESPONDENT  
VAN SCHAACK HOLDINGS, LTD.

BRENMAN, RASKIN, FRIEDLOB & TENENBAUM, P.C.

By *Albert Brenman*

Albert Brenman, #3190  
Richard H. Goldberg, #3365  
1400 Glenarm Place  
Suite 300  
Denver, CO 80202  
(303) 571-1400

ATTORNEYS FOR RESPONDENT  
VAN SCHAACK HOLDINGS, LTD.

CARPENTER & KLATSKIN, P.C.

By *Willis V. Carpenter*

Willis V. Carpenter, #359  
518 17th Street, Suite 1500  
Denver, CO 80202  
(303) 534-6315

ATTORNEYS FOR RESPONDENT  
L. C. FULENWIDER, INC.



**EXHIBIT A**

All of the following parcels of land and interests in land identified as Parcel A through Parcel RR (parcel designations are for convenience only), and

**Together with**

All property interests in, above, on and below the surface of the following described Land.

Any and all improvements and fixtures located on the following described Land.

All appurtenances thereunto appertaining.

All water rights and related licenses, rights of way, easements and priorities associated with or appurtenant to the following described Land and owned by Respondents, including but not limited to all water, water rights, geothermal water, geothermal water rights, ditches, ditch rights, priorities, reservoirs and reservoir rights, livestock watering tanks, springs, filings, wells, well permits and underground water, adjudicated and unadjudicated, tributary and nontributary, on or used on or appurtenant to the following described Land, including but not limited to all nontributary underground water, water rights and well permits, including but not limited to those waters, water well rights and well permits described in Sections 37-90-101 et seq., and 37-92-101 et seq., C.R.S., the "Statewide Nontributary Ground Water Rules," 2 CCR 402-7, 9 CR 2, effective March 2, 1986, and "The Denver Basin Rules," 3 CCR 402-6, 8 CR 12, effective December 30, 1985, with respect to nontributary ground water underlying the following described Land, including without limitation all water rights associated with the following: Patents recorded February 12, 1896 in Book A24 at Page 459 in the office of the Clerk and Recorder for Adams County, Colorado and January 9, 1905 in Book 16 at Page 258 in the office of the Clerk and Recorder for Adams County, Colorado; Receiver's Deed recorded February 18, 1947 in Book 331 at Page 533 in the office of the Clerk and Recorder for Adams County, Colorado; Deed recorded December 18, 1948 in Book 367 at Page 242 in the office of the Clerk and Recorder for Adams County, Colorado; and including but not limited to those rights determined by or related to cases numbered 85CW412, 85CW413 and 85CW414; Decree recorded September 12, 1986 in Book 3200 at Page 576 in the office of the Clerk and Recorder for Adams County, Colorado; and Decree recorded November 3, 1986 in Book 3224 at Page 489 in the office of the Clerk and Recorder for Adams County, Colorado; and including but not limited to all water rights associated with cases numbered 86CW033, 86CW034, and 86CW035, District Court, Water Division No. 1, State of Colorado (Initial Findings and Rulings in the above cases have been recorded on November 3, 1986 in Book 3224 at Pages 476 and 525 and on November 4, 1987 in Book 3269 at Page 577 in the office of the Clerk and Recorder for Adams County, Colorado); further, including but not limited to those water rights, if any,

represented by well permits numbered 43498, 30886M, 30883M, 30887M, 45088, 13311, 30888M, 30884M and 43957; and also including but not limited to the following historic ditches, laterals and reservoirs: Abbott Reservoir and outlet ditch, Terminal Reservoir and outlet ditch, Hoopes Reservoirs No. 1 and 2, Irondale Reservoir and outlet ditch, Second Creek Reservoirs No. 1, 2 and 3 and outlet ditches, Highline Extension Canal and laterals, Martine Ditch & Reservoir, East Line Reservoir, Clark Reservoir, Henry Lake Reservoir, Grass Valley Reservoir, Watkin Canal & Conduit Co. Ditches 2 and 4, Lone Tree Ditch & Reservoir, Grattan Ditch, and Third Creek Reservoir No. 2; and further including the following well and well permits decreed in case number W-1777, District Court, Water Division No. 1, State of Colorado:

- Well No. 1-18380-#1
- Well No. 2-10029R
- Well No. 3-Unregistered
- Well No. 4-P5254F
- Well No. 5-18380-#2
- Well No. 6-10026R
- Well No. 7-18380-#3
- Well No. 8-18380-#5
- Well No. 9-10024R
- Well No. 10-18380-#6
- Well No. 11-18380-#7
- Well No. 12-18380-#8
- Well No. 13-18380-#9
- Well No. 14-18380-#10
- Well No. 15-10023R
- Well No. 16-18380-#11
- Well No. 17-18380-#12
- Well No. 18-10025R
- Well No. 19-18380-#14
- Well No. 20-RF 1010
- Well No. 21-10028R
- Well No. 22-10027R
- Well No. 23-P03169F
- Well No. 24-10497
- Well No. 25-16962
- Well No. 26-29887
- Well No. 27-30892

and also including the following wells and well permits: 18380-18, 18380-4, 18380-13, 18380-15, 18380-16, 18380-17, 18380-19, 18380-20, 18380-21, RF1016, and 10022R,

and also including but not limited to those water rights, if any, decreed in cases numbered 80CW165 and 80CW166, District Court, Water Division 1, State of Colorado, which are recorded in Book 2589 at Pages 12 and 14 in the office of the Clerk and Recorder for Adams County, Colorado and also including, but not limited to, those water rights, if any, relating to cases numbered 86CW231,

86CW230, and 86CW213, District Court, Water Division 1, State of Colorado, which are still pending.

Any rights and interests of Respondents in and to the property described as the west 210 feet of the west 210 feet of the west half of the northwest quarter of Section 28, Township 2 South, Range 65 West of the 6th P.M. and the 210 foot strip deeded to Public Service Company in the instrument recorded in Book 1034 at Page 317 in the office of the Clerk and Recorder of Adams County, Colorado.

Any rights, interest, or title of Respondents in and to the real property situated in the northeast quarter of the northeast quarter of Section 35, Township 2 South, Range 66 West of the 6th P.M.

**PARCEL A**

Legal description of land being acquired

The east half of the east half of the southeast quarter of the northwest quarter and the east half of the west half of the east half of the southeast quarter of the northwest quarter of Section 9, Township 3 South, Range 66 West of the Sixth Principal Meridian, City and County of Denver, Colorado, more particularly described as follows:

Bearings are based on the Colorado Coordinate System, Central Zone, as determined from a grid bearing of N. 24°59'48" W. from station "Henderson" to station "McKinley," North American Datum of 1927.

Beginning at the center quarter corner of Section 9;

1. thence S. 89°48'07" W. along the south line of the northwest quarter of Section 9 a distance of 494.62 feet;
2. thence N. 00°42'58" W. a distance of 1324.98 feet to a point on the north line of the southeast quarter of the northwest quarter of Section 9;
3. thence N. 89°48'50" E. along the north line of the southeast quarter of the northwest quarter of Section 9 a distance of 495.59 feet to a point on the north-south centerline of Section 9;
4. thence S. 00°40'27" E. along the north-south centerline of Section 9 a distance of 1324.87 feet to the Point of Beginning.

Together with

All the rights, title and interest of Respondents in and under the Oil and Gas Lease between Box Elder Farms Co. and The Anschutz Corporation, Inc. dated May 13, 1970 and recorded June 8, 1970 in Book 1603 at Page 373 in the office of the Clerk and Recorder for Adams County, Colorado, and any amendments or extensions thereof, to the extent that such rights, title and interests relate to the land being acquired.

Subject to

1. Easement and right of way for pipeline and incidental purposes as granted to Phillips Petroleum Company by Box Elder Farms Co., a Colorado corporation, by instrument recorded June 25, 1971 in Book 1708 at Page 93 in the office of the Clerk and Recorder for Adams County, Colorado, in which the specific location of the easement is not defined.
2. Oil and Gas Lease between Box Elder Farms Co. and The Anschutz Corporation, Inc., dated May 13, 1970, recorded June 8, 1970 in Book 1603 at Page 373 in the office of the Clerk and Recorder for Adams County, Colorado, and any assignments, amendments and extensions thereof.
3. The reservation of all minerals except coal and iron as contained in United States Patent recorded June 25, 1883 in Book A2 at Page 238 in the office of the Clerk and Recorder for Adams County, Colorado.
4. Terms, agreements, provisions, conditions and obligations as contained in Stipulation recorded July 29, 1980 in Book 2477 at Page 159 and rerecorded September 4, 1981 in Book 2584 at Page 355 in the office of the Clerk and Recorder for Adams County, Colorado.
5. The grant of all water contained in the Laramie-Fox Hills, Denver and Arapahoe aquifers as contained in Deed recorded November 14, 1985 in Book 3073 and Page 423 in the records office of the Clerk and Recorder, Adams County, Colorado.

**PARCEL B**Legal description of land being acquired

A parcel of land situated in the northeast quarter of Section 4, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, Colorado, more particularly described as follows:

Beginning at the north quarter corner of Section 4;

1. thence N 89°28'14" E along the north line of the northeast quarter of Section 4 a distance of 1962.13 feet;



Executive Office  
Airport Office Building  
8500 Peña Boulevard, Room 9860  
Denver, Colorado 80249

(303) 342-2206  
www.flydenver.com



September 29, 2014

Tina Axelrad, Principal City Planner  
Community Planning & Development, Planning Services  
201 W. Colfax Ave., Dept. 205  
Denver, Colorado 80202

Re: Application for Rezoning of Four DIA Properties

Dear Ms. Axelrad:

As you know, the Department of Aviation is applying for rezoning of four parcels of property managed by DIA, as described in the recently submitted application. As CEO of DIA, I have authority over these parcels under the Denver Revised Charter. This letter is to inform Community Planning and Development that I have authorized Dan Poremba, DIA's Managing Director of Airport City Development, to sign for, represent, and speak for the Department of Aviation on all matters related to the rezoning of these four parcels.

Please contact Mr. Poremba or Assistant City Attorney Debra Overn if you have any questions.

Sincerely,

Kim Day  
Chief Executive Officer  
Denver International Airport

cc: Dan Poremba  
Debra Overn