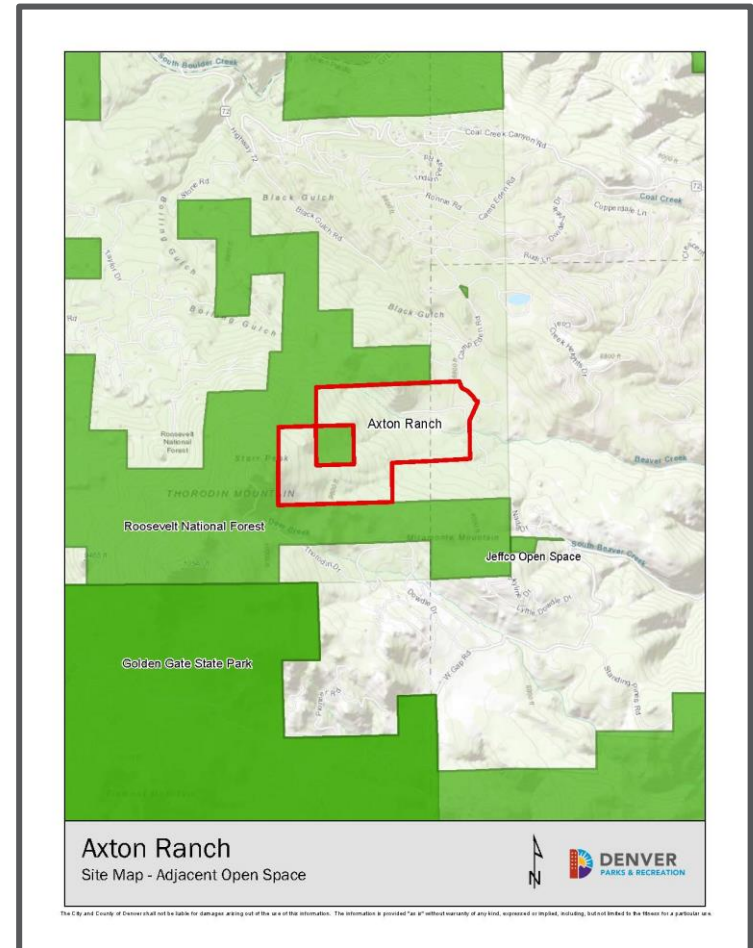

Axton Ranch Access Easement

Finance and Governance Committee
December 13, 2022
Bill #22-1449

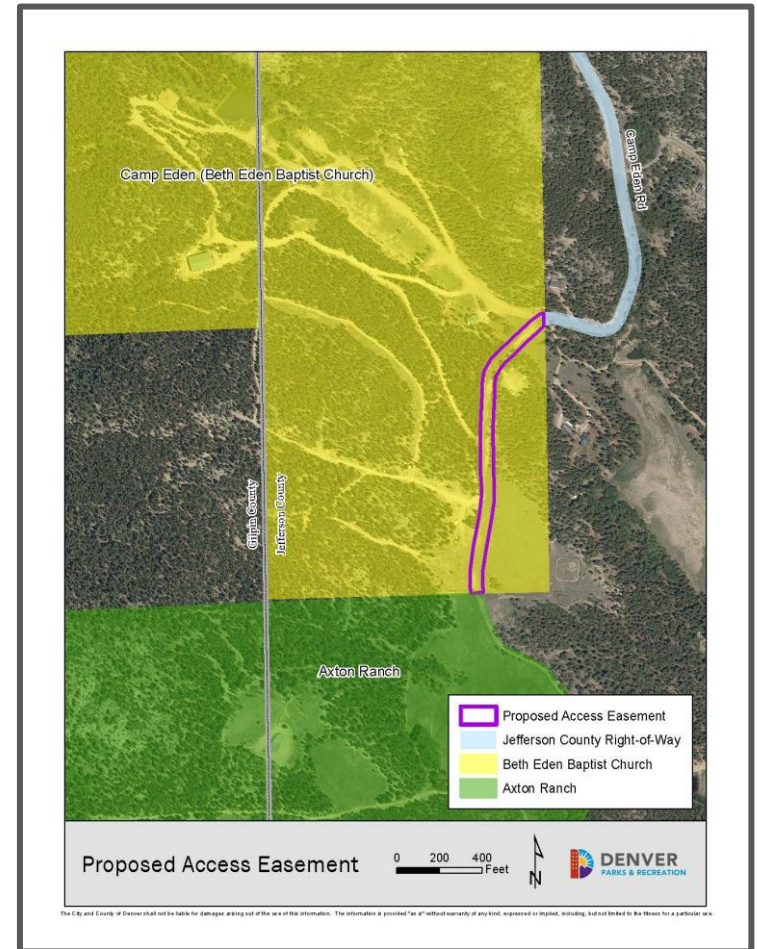
Background

- City Council approved the Axton Ranch donation in March 2021, RR 21-0164, and closed on November 30, 2021
- Once designated it will be the first new Denver Mountain Park in over 80 years



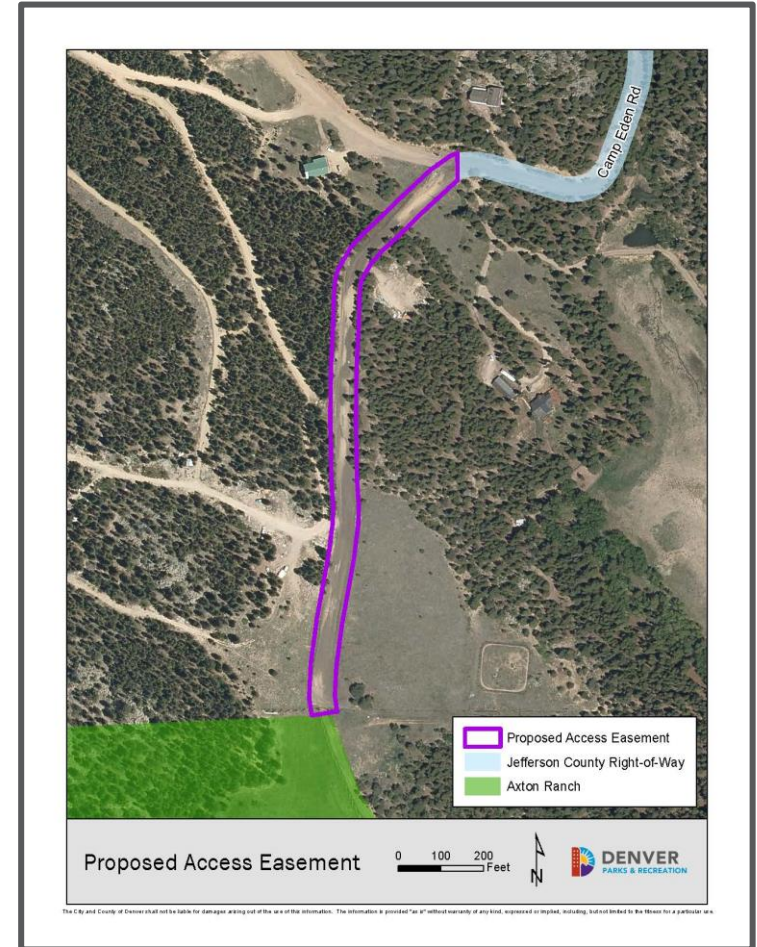
Background

- Axton Ranch does not have a legal right of access over an approximately ¼ mile section of private road in Jefferson County
- The road is on property owned by Beth-Eden Centenary Baptist Church, which operates a camp facility on 160 acres adjacent to Axton Ranch



Access Easement Overview

- The proposed access easement is approximately 60 feet wide with an approximate distance of 1,425 feet
- The proposed access easement is over a road that has been in existence since at least 1954
- There are no other vehicular points of public access to Axton Ranch nor are there any other feasible alternative routes of access



Access Easement Overview

- The City has spent over 18 months trying to come to an agreement on an access easement with the property owner but those negotiations have been unsuccessful
- The owner has insisted on terms and conditions in the easement agreement that would significantly restrict and limit DPR's ability to manage and steward Axton Ranch as a public park and prohibit the City from fulfilling its obligations to the Axton Family as agreed upon in the deed restrictions restricting the donation of the ranch

Land Acquisition Ordinance

- The City uses a Land Acquisition Ordinance (LAO) to acquire interests in real property, such as easements, for critical projects that provide a public purpose
- An LAO grants the City the authority to acquire needed property through negotiated purchase or condemnation. Following Federal Guidelines, owner will be compensated a fair market value for the easement
- Only one property is impacted by this LAO for the proposed access easement

Land Acquisition Ordinance

- Due to the necessity of having legal public access to Axton Ranch, the Division of Real Estate requests moving forward with an LAO so that the City may proceed in acquiring legal public access to Axton Ranch
- Acquisition of the access easement will be funded by the Parks Legacy Fund





DENVER
THE MILE HIGH CITY

APPENDIX

Right of Way Process including Land Acquisition Ordinance

December 13, 2022

The government cannot take private property for a public use without just compensation...

- fifth amendment, takings clause

Condemnation is
authorized by the
constitution and a
creature of Statute

Read the Statute:
- C.R.S. 38-1-101 et seq



- Whenever possible, the City builds within existing right of way. However, certain projects may require the acquisition of additional land to complete a project.
- Executive Order 100 requires the Division of Real Estate oversee all transactions that involve any interest in property (all easements, licenses, fee title acquisitions and dispositions).
- The Division of Real Estate is required by law to follow the Federal/CDOT ROW guidelines, including the Uniform Relocation Act, for all Federal and State funded projects.
- By practice, the Division of Real Estate also follows Federal/CDOT ROW guidelines, including the Uniform Relocation Act, for projects funded through other sources (bond, CIP, etc.).

Uniform Relocation Act

- Ensures fair compensation and assistance for those whose property was acquired for public use under "eminent domain" law.
- The Uniform Act requires acquiring agencies to make “every reasonable effort to acquire expeditiously real property by negotiation.” 42 U.S.C. § 4651. The objective is to encourage agreements with property owners to minimize litigation and promote public confidence in Federal and federally assisted land acquisition programs.

LAND ACQUISITION ORDINANCE

- The City uses a Land Acquisition Ordinance (LAO) to acquire land for transportation projects, including roadway and pedestrian projects, and other key City projects which provide a public purpose.
 - Must have a public purpose.
 - Grants authority to acquire needed property through negotiated purchase or condemnation.
 - Can include full or partial property acquisition or temporary or permanent easements.
 - City cannot acquire more property than is anticipated for use (not a mechanism to land bank).
 - City will sometimes acquire a whole property when only a portion is needed if the remainder property would become useless to the land owner
 - Individual transactions do not come to City Council for approval.
 - Funding for acquisition is included as part of the project budget.
 - Large roadway projects typically use vesting deeds to describe the LAO area. This is due to timing of the engineering design and approval and construction schedule.
 - Describes a broader area within which acquisitions will happen.
 - Smaller sidewalk and pedestrian projects use legal descriptions as described in the right of way plans to describe the LAO area.
 - More precise; limited to a more specific area for acquisition.

Right of Way Process

- Property owner and tenant, if applicable, are notified in writing of the project through a Letter of Intent.
- City orders an appraisal to determine fair market value based upon the engineering plans and legal descriptions defining the required area.
- City sends a Relocation General Information Notice, if applicable, and the Acquisition Offer Letter Packet based upon the fair market value.
- Owner has the right to obtain its own appraisal at City's expense.
- City negotiates with Owner to come to a settlement agreement.
- If Owner accepts offer, City prepares Purchase Agreement and moves forward with acquisition, relocation and closing.
- City sends a Final Offer and Last and Final Offer Letter if there has been no response from the owner during the initial 30 day period.

- If owner rejects offer or does not respond to offer, City moves forward with condemnation.
 - Requires approval from the Mayor to condemn.
 - Documents are filed with the Courts.
 - An Immediate Possession Hearing (IP) date is scheduled.
 - IP Hearing authorizes possession of the property; fair market value is deposited with the Courts.
 - Resolution through a settlement or trial.

RIGHT OF WAY DEFINITIONS

- **Eminent domain:** The legal process that allows the government to take title and possession of private property from the landowner for a public purpose or necessity. In the United States, just compensation must be paid for private property acquired through eminent domain.
- **Condemnation:** The legal process of acquiring private property for public use or purpose through the acquiring agency's power of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An acquiring agency then goes to court to acquire the needed property.

- **JUST COMPENSATION:** The price the Agency must pay to acquire real property under eminent domain. The price offered by the Agency is considered to be fair, equitable and “just” to both the property owner and the public. The Agency’s offer to the owner is determined as “just compensation” and may not be less than the amount established in the approved valuation report as the fair market value for the property. If you and the Agency cannot agree on the amount of compensation to be paid for the property needed, and it becomes necessary for the acquiring Agency to use the condemnation process, the amount determined by the court is the just compensation for your property. See also definition of “Fair Market Value” (Reasonable Market Value) above.

- **FAIR MARKET VALUE (REASONABLE MARKET VALUE):** For purposes of eminent domain acquisition in Colorado, the term “Fair Market Value” is considered to have the same meaning and definition as the term “Reasonable Market Value” described in Colorado Jury Instructions for eminent domain acquisition: “Reasonable [Fair] Market Value means the fair, actual, cash market value of the property. It is the price the property could have been sold for on the open market under the usual and ordinary circumstances, that is, under those circumstances where the owner was willing to sell and the purchaser was willing to buy, but neither was under an obligation to do so.”
- **Uniform Relocation Act:** Ensures fair compensation and assistance for those whose property was acquired for public use under "eminent domain" law.

- **Fee Interest:** The legal possession of both the surface and mineral rights for a property.
 - Full take: City acquires entire parcel.
 - Partial take: City acquires only what it needs and does not negatively impact the remainder of the parcel.
- **Easement:** An interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.
 - Temporary easement: Typically needed only during construction.
 - Permanent easement: Attached to the deed and continues to affect the land through subsequent changes in ownership.