

City's Determination Not to Acquire OU2 (Lowry Vista)

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The Denver Department of Parks & Recreation's plan for the former Lowry Air Force Base provided for extensive open space throughout Lowry. The plan, however, never included the OU2 landfill. In fact, OU2 was initially envisioned as part of the Mira Vista Golf Course. The possibility of OU2 lands being part of Mira Vista, however, was foreclosed several years ago when the Colorado Department of Public Health and Environment (CDPHE) approved the Air Force's current landfill cap.

There is no particular date when the City determined it did not want to acquire OU2. The question arose before and during Privatization II. In August 2003, the Deputy Manager of DPR indicated that it was not interested in acquiring OU2. DPR had many concerns about the former landfill. The remedy that the Air Force proposed and CDPHE approved limited use to non-irrigated, open space. For the City to acquire it for park or open space, DPR would have been responsible for funding the costs of maintaining the former landfill as open space and the long-term environmental liabilities. The potential for native vegetation would have been very limited and required intensive maintenance. At that time, DPR's Natural Areas program was in its infancy and was not able to take responsibility for an additional 80 acres (particularly when the City was faced with a \$70 million budget deficit forcing City departments to cut budgets). DPR could not take on responsibility, fiscally or otherwise, for the operation and maintenance of the landfill cap or the groundwater monitoring.

Also, in making decisions regarding acquisitions for parks and open space, DPR compares neighborhoods throughout the City in terms of the amount of park space and population. Lowry has more open space per 1,000 residents than the average City neighborhood and exceeds the national average. If open space owned by third parties is factored in; Lowry has 32 acres of open space per 1,000 residents. For all these reasons, DPR determined that it was not interested in OU2 as non-irrigated open space.

Privatization II

Privatization of the soil clean up was prompted by the discovery of asbestos contaminated soils in Lowry's Northwest Neighborhood, which nearly halted redevelopment throughout Lowry.

In late 2004, the Air Force indicated that Privatization II needed to be finalized in January 2005. As explained in the Lowry Vista Property Transaction Fact Sheet, the Air Force was also requiring Lowry Economic Redevelopment Authority (LRA) to accept the remaining 720 acres at Lowry. In a December 2004 meeting attended by Denver representatives, LRA and LAC, LRA again inquired as to whether Denver was interested in acquiring OU2. For the reasons explained above, DPR had already determined that it did not want to acquire OU2 and this was

related to LRA and LAC. At the meeting, the City explained its concerns about LRA holding on to OU2, noting that LRA could dissolve (in accordance with the sunset provision in the intergovernmental agreement creating LRA) forcing Denver to take title to OU2. To protect taxpayers, the City's charter prohibits it from assuming unfunded liabilities. Thus, if title were to be transferred to Denver, it would have had to appropriate funding necessitated by the remedy.

During discussions regarding OU2, Denver representatives were clear with LRA about the City's concerns. The group discussed the possibility of LAC taking title to OU2 as part of Privatization II. The City, however, never "agreed" that LRA convey OU2 to any particular party. The City's primary interest was that there be no lose strings in terms of LRA holding onto title of OU2 given the impending conveyance from the Air Force.

Lowry Re-use Plan, Value of OU2 & Post-closure Obligations

The Lowry Reuse Plan is a visionary plan for the Lowry area. Its implementation requires additional steps. One such step is rezoning areas to match uses. Rezoning follows the City's established extensive public process, including City Council approval.

Generally, Denver has not been involved in the negotiations between LRA and third parties regarding sale of property and except as explained in this letter, Denver was not involved in those between LRA and LAC for OU2. Denver representatives did not participate in negotiations between LRA and LAC regarding the purchase price or land values. Similarly, Denver representatives did not make agreements with LRA or LAC about whether OU2 could be redeveloped or the type or density of redevelopment. Denver made it clear that if LAC acquired the property for redevelopment, LAC would be subject to all applicable legal requirements, including zoning, and obtaining any necessary approvals.

Finally, in terms of what information was "given" to Denver regarding long-term liability and monitoring responsibilities and by whom, the Department of Environmental Health has been involved with the remedial process base-wide. The Department of Environmental Health's staff participated in the public process regarding remedy selection and submitted comments opposing the landfill cap that was ultimately approved. Since the City was involved in this public process, it was aware of the remedy for which the Air Force was pressing and the resulting closure requirements.