



# Colorado Aerotropolis Visioning Study

## Colorado Aerotropolis Visioning Study

### Governance Options for the Colorado Aerotropolis

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## Governance Options for the Colorado Aerotropolis

### Introduction and Overview

An Aerotropolis is an urban plan in which the layout, infrastructure, and economy are centered on an airport.

The Colorado Department of Transportation (CDOT) conducted a study regarding the infrastructure requirements that could enhance economic development surrounding Denver International Airport (DIA). The Colorado Aerotropolis Visioning Study, funded by a Federal Highway Administration grant, along with additional funds from DIA, collaboratively engaged local jurisdictions to examine the benefits and impacts of a proactively planned Aerotropolis infrastructure surrounding DIA. An infrastructure framework for transportation, water, wastewater, power, communications, and drainage is critical to fostering and supporting economic development surrounding the airport.

CDOT engaged Adams County, City of Aurora, City of Brighton, City of Commerce City, City and County of Denver, as well as DIA, in the Visioning Study.

### Study Vision

At the onset, study participants jointly developed a vision for a Colorado Aerotropolis:

*A sustainable, efficient, well-connected, and globally recognized Colorado Aerotropolis that capitalizes on the economic opportunity surrounding the Denver International Airport through collaborative planning, development, and marketing.*

### Study Objectives

CDOT had the following objectives for the study:

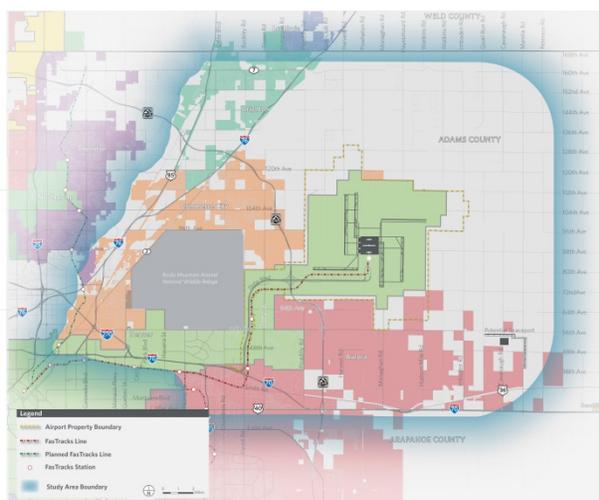
- Agree on a collaborative vision for a Colorado Aerotropolis.
- Learn about the aerotropolis concept.
- Identify commonalities among the local plans.
- Quantify the potential for economic growth—with or without a Colorado Aerotropolis.
- Identify a framework of possibilities for collaboration on infrastructure investments.
- Outline regional governance options to implement investments in transportation, water, wastewater, drainage, power, and communications systems.

## Study Area

Figure 1 displays the study area of the Colorado Aerotropolis Visioning Study. The study area boundaries defined an area of influence that impacts or would be impacted by the current and future economic conditions both on and off airport.

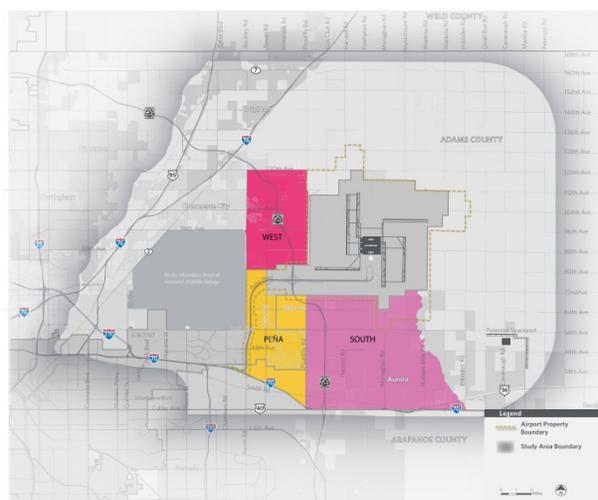
Given the low level of development within the large study area, the study team recognized that initial development near the airport will largely occur in the area to the south and west of DIA. This Concentrated Development Area is shown in Figure 2.

**Figure 1 Study Area for the Colorado Aerotropolis Visioning Study**



Source: Aerotropolis Study Team.

**Figure 2 Concentrated Development Area**



Source: Aerotropolis Study Team.

## Working Paper Organization

This working paper establishes the support for a regional governance entity, describes the existing jurisdictional governance entities in the study area, summarizes input from the primary stakeholder jurisdictions, provides a list of anticipated governance decision points, summarizes input from the primary stakeholder jurisdictions, identifies some potential types of regional entities, and suggests steps needed to determine and set up an Aerotropolis regional entity. The working paper is organized into the following sections:

- Support for a Regional Governance Structure
- Existing Governance Organizations
- Governance Structure Options

## Support for a Regional Governance Structure

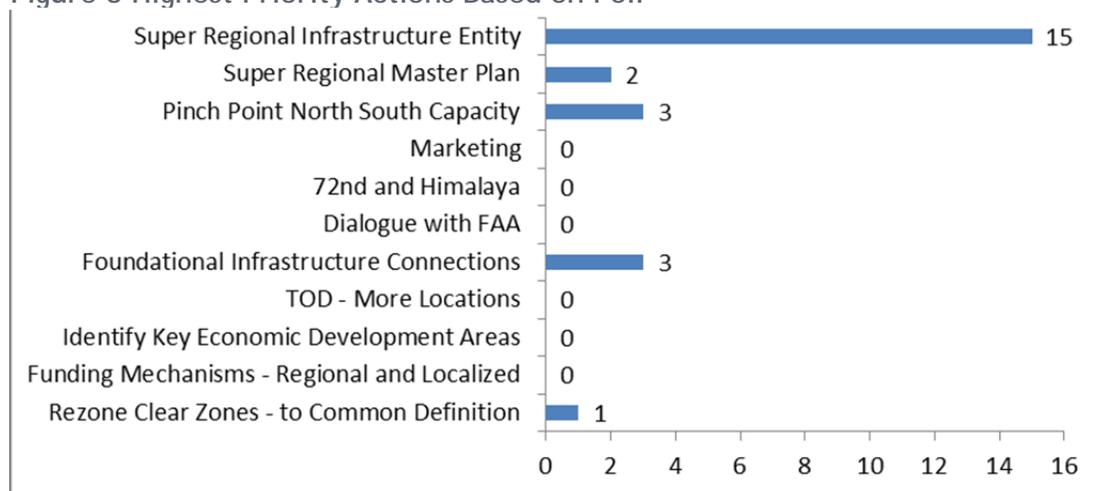
The Study Review Committee developed a critical interest in the establishment of a governance structure for infrastructure development in the Aerotropolis study area. Asked to identify priority issues for development of an Aerotropolis early in the study, committee members first identified governance in at least 11 of 21 responses, as shown.

Informal Survey	
What is the most important collaborative action in the near term?	
Red X denotes an issue related to governance.	
<ul style="list-style-type: none"> <li>• Multi-governmental regional committee structure beyond this plan <b>X</b></li> <li>• Infrastructure</li> <li>• Infrastructure</li> <li>• Infrastructure</li> <li>• Cross Jurisdictional Planning <b>X</b></li> <li>• Governance/financing structure <b>X</b></li> <li>• Funding <b>X</b></li> <li>• Pass IGA Amendment this Fall <b>X</b></li> <li>• Cost sharing <b>X</b></li> <li>• Funding for marketing and infrastructure <b>X</b></li> <li>• Establish some form of governance/oversight <b>X</b></li> </ul>	<ul style="list-style-type: none"> <li>• Link west side of DIA via Piccadilly Cargo</li> <li>• Peña Corridor solution</li> <li>• Priority development areas <b>X</b></li> <li>• Collaborative funding structure <b>X</b></li> <li>• Roads</li> <li>• Identify long-term funding stream <b>X</b></li> <li>• Pass IGA Amendment vote <b>X</b></li> <li>• Extend water supply to strategic areas outside DIA</li> <li>• Understand specific regional water and wastewater needs, sources, timing, constraints, and funding operations</li> </ul>

Source: Study Review Committee informal survey at meeting held June 18, 2015.

In an informal poll regarding these important near-term collaborative efforts, participants informally voted and zeroed in on the priority actions in Figure 3, collectively indicating the importance of a practical and workable governance structure as a way to work together for the Aerotropolis. However, it is recognized that elected officials at each of the jurisdictions may have different visions and expectations.

Figure 3 Highest Priority Actions Based on Poll



Source: Study Review Committee poll at meeting held June 18, 2015.

### IGA Amendment Pilot Program

The interest in a more formal way to work together was further reinforced by the Denver and Adams County voters approving an Intergovernmental Agreement (IGA) Amendment related to how the area jurisdictions will coordinate on DIA property. The ballot measure passed overwhelmingly in both counties, each with more than 70 percent in favor. The IGA Amendment is included in Appendix A.

The IGA Amendment will create a 1,500-net-leasable-acre pilot program for commercial developments on airport property. The 1,500 acres are located “within the fence” at several nodes along Peña Boulevard and the DIA property boundary where there would be new access roads to those areas. The counties will evenly share (50-50) tax revenues generated from the new commercial uses. Further, the IGA Amendment stipulates that Denver and Adams County will form a regional entity to jointly market opportunities.

The IGA Amendment, in Section V Regional Planning and Marketing Entity, provides direction to work together to implement a regional governance entity.

#### IGA Amendment Section V. Regional Planning and Marketing Entity

**The Amendatory IGA will provide that, via a separate agreement to be negotiated between the parties, Denver and the ACC jurisdictions will form a new regional entity to promote and market development opportunities on and around DIA and assist in coordinating land use and infrastructure planning efforts by the respective jurisdictions on and around DIA. However, the entity will have no authority to regulate or otherwise control land use or development within any of the jurisdictions. The entity will be governed by a board consisting of equal representation by Denver appointees and ACC appointees.**

Source: IGA Amendment, June 2015.

## Current Governance and Organizations in the Study Area

### County Governments

#### *Adams*

The majority of the Aerotropolis study area is within Adams County. In fact, most of the DIA property is encircled by Adams County (Figure 1), which is a result of Denver’s annexation in 1988 of the area for DIA. Significant portions of the county are slated for development in the Aerotropolis study area.

Adams County has more than 480,000 residents. Five members serve on the Board of County Commissioners. The Board performs legislative, executive, and quasi-judicial functions; and serves as the legislative, policy-making and administrative body governing the unincorporated areas of Adams County. The county manager is appointed by the Board to carry out policy directions and to supervise and coordinate the work of the staff in the departments that fall under direct control of the Board.

Adams County leads the effort to work with the City and County of Denver regarding implementation of the IGA terms and conditions. The County heads the Airport Coordinating

Committee (ACC), which comprises the municipalities within Adams County: Aurora, Commerce City, Brighton, Thornton, and Federal Heights.

Adams County also is the chief operator of Front Range Airport in the southeast quadrant of the Aerotropolis study area. The airport currently provides air cargo and general aviation operations. Front Range Airport has applied for spaceport designation by the Federal Aviation Administration (FAA) Office of Commercial Space Transportation. Spaceport designation would potentially allow horizontal launch space operations. This would further foster technological development of suborbital flight and aerospace research and development in Colorado. The Aeronautics Division of CDOT is based at Front Range Airport.

The Adams County Community and Economic Development Department supports and encourages economic growth throughout the county as a strategic priority of the County. Regional economic development opportunities are coordinated in concert with the Metro Denver Economic Development Corporation (Metro Denver EDC), a regional economic development organization that works in partnership with every city, county, and economic development group in the metropolitan Denver and northern Colorado area.

### *Denver*

DIA lies within the limits of the City and County of Denver's jurisdiction. Significant development has taken place to date within Denver's boundaries, characterized by such substantial residential developments as Green Valley Ranch and by such employment areas as Gateway and the new Peña Station development on RTD's commuter rail line to DIA.

Denver is a City and County with more than 650,000 residents. It has a non-partisan city government with a strong mayor and a city council. Denver is managed by the mayor. The City Council has 13 members.

Denver's Department of Aviation is a separate entity that oversees DIA. The Department of Aviation is an enterprise, as defined by the Colorado Constitution. As an enterprise, DIA does not use any taxpayer dollars for its operation. Denver's mayor appoints the Chief Executive Officer (CEO), who then serves as a member of the mayor's cabinet and reports directly to the mayor. The Denver City Council, while having no authority over appointing the CEO, has oversight of contracts and purchasing as prescribed by City rules.

The Denver Office of Economic Development (OED) is dedicated to advancing economic prosperity for the City of Denver, its businesses, neighborhoods and residents. Regional economic development opportunities are coordinated in concert with the Metro Denver EDC.

There are several special government districts in Denver that assist with infrastructure development. Denver Water is one of the major districts serving the Aerotropolis study area.

*Denver International Airport (DIA) is the 15th-busiest airport in the world and the 5th-busiest airport in the United States.*

*With more than 53 million passengers traveling through the airport each year, Denver International Airport is one of the busiest airline hubs in the world's largest aviation market. The airport is the primary economic engine for the state of Colorado, generating more than \$26 billion for the region annually.*

Denver Water has a Board that is independent of the mayor and Denver City Council. Denver Water is run by a five-member Board of Water Commissioners, which is charged with ensuring a continuous supply of water to the people of Denver and Denver Water's suburban customers. The mayor of Denver appoints Denver's five-member Board of Water Commissioners to staggered six-year terms. The Board designates a CEO/Manager to execute its policies and orders.

### ***Arapahoe***

The very southern edge of the study area along I-70 serves as the boundary between Adams County and Arapahoe County. The study area encompasses the 578-acre Fitzsimons campus located at the I-225 and Colfax Avenue interchange. Fitzsimons is made up of the Anschutz Medical Campus and the Fitzsimons Innovation Campus.

Arapahoe County has more than 615,000 residents. Arapahoe County is governed by the Board of County Commissioners. The Commissioners are elected by voters to represent five districts. The Board of County Commissioners oversees the County as the administrative and policy-making body.

### **City Governments**

In addition to Denver, there are three other cities in the Aerotropolis study area.

### ***Aurora***

The majority of the Aerotropolis study area directly south of the DIA property is within the jurisdiction of Aurora. Several active developments are within this area, including the Gaylord Rockies Resort and Convention Center at the northeast corner of 64th Avenue and Himalaya Street, which is expected to be complete in late 2018. The Anschutz Medical Campus and the Fitzsimons Innovation Campus located at the I-225 and Colfax Avenue interchange are also within Aurora's boundaries.

Aurora is the third largest city in Colorado, with more than 350,000 residents. The Aurora City Council is composed of a mayor and 10 council members. The City of Aurora is a full-service city governed by a council/manager form of government, which combines the political leadership of elected officials with the managerial expertise of an appointed local government manager.

The Aurora City Council serves as the board for Aurora Water. The City of Aurora operates, maintains and develops a complex, highly integrated water supply system that balances reservoir storage, municipal demands, and varying water supply conditions to meet the current and long-term water needs of its customers.

The Aurora City Council also oversees the Aurora Economic Development Council. This public/private partnership is helping build a regional economic powerhouse representing the state's most promising growth industries, including transportation, biosciences, aerospace and defense systems. Regional economic development opportunities are coordinated in concert with the Metro Denver EDC.

### ***Brighton***

Brighton lies in the northwest area of the Aerotropolis Study Area, further away from DIA than other municipalities within the study area. Direct development related to Aerotropolis is expected to occur in a later timeframe due to its relative proximity to DIA. There are several active developments in the City, including Adams Crossing located west of I-76 and E-470 and Prairie Center north of the same interchange.

Brighton, with almost 40,000 residents, is governed by a City Council made up of nine council members, including a mayor who is elected at-large. Brighton operates a City Manager form of government.

The City Council Brighton's Economic Development Corporation is a public/private partnership that promotes sustainable economic vitality in a competitive regional market, as well as new economic growth to meet the future needs of both residents and businesses. Regional economic development opportunities are coordinated in concert with the Metro Denver EDC, a regional economic development organization that works in partnership with every city, county, and economic development group in the Metro Denver and Northern Colorado area.

### ***Commerce City***

The jurisdictional boundary of Commerce City includes the area immediately west and north of DIA, including land adjacent to the E-470 corridor. This area includes Nob Hill and the DIA Tech Center properties, located north of Peña Boulevard east and west of Tower Road, respectively.

Over 50,000 persons reside in Commerce City. There are nine city council members, including a mayor. The nine members establish the vision for the city, set annual goals to achieve that vision and enact laws. City council appoints the city manager for the City Manager form of government.

The City operates an Economic Development Division. The Commerce City EDC promotes balanced growth through job creation, business assistance, housing options, neighborhood redevelopment and the growth of a skilled workforce. Regional economic development opportunities are coordinated in concert with the Metro Denver EDC, a regional economic development organization that works in partnership with every city, county, and economic development group in the Metro Denver and Northern Colorado area.

## **Regional Economic Entities**

### ***Metro Denver EDC***

An affiliate of the Denver Metro Chamber of Commerce, the Metro Denver EDC is the nation's first regional economic development entity, bringing together more than 70 cities, counties, and economic development agencies in the nine-county metropolitan Denver and northern Colorado area. The Metro Denver EDC's mission is to enhance the regional economy through the retention and expansion of primary jobs and capital investment. The organization also leads four industry-focused affiliates: the Colorado Energy Coalition, the Colorado Investment Services Coalition, the Colorado Space Coalition, and the Metro Denver Aviation Coalition.

The Metro Denver EDC provides extensive services to help site selectors and companies with location, expansion, and market decisions.

### Special Districts

Municipalities like the City of Commerce City, the City of Brighton, and the City and County of Denver may organize (1) general improvement districts (GID) and (2) business improvement districts (BID). A GID is governed by a board of directors, which is often the city council serving ex officio. It has the authority to issue debt and to construct, operate, and maintain public improvements, so long as the forming municipality is authorized to perform the service or provide the improvement. The revenue sources for GIDs are ad valorem property taxes, assessments, charges, rates, and tolls.

BIDs may also construct, operate, and maintain public improvements and issue debt supported by revenues from ad valorem property taxes, assessments, charges, rates, and tolls. The governing body of a BID may be the city council serving ex officio, a board of BID electors appointed by the city council or mayor, a board of BID electors elected by the BID's electors, or the governing body of an urban renewal authority, downtown development authority, or general improvement district serving ex officio.

Counties like Adams County and the City and County of Denver, may organize (1) public improvement districts (PID) and (2) local improvement districts (LIDs). A PID, which is governed by the board of county commissioners serving ex officio, has the authority to construct, operate, and maintain public improvements, so long as the forming county is authorized to perform the service or provide the improvement. PIDs have the authority to issue debt and may raise revenues from assessments, charges, rates, and tolls, in addition to ad valorem property taxes. LIDs, which are administrative entities directly governed by the board of county commissioners, may construct any public improvement that the county forming the district is authorized to provide, with limited exceptions; however, LIDs do not provide ongoing operations and maintenance functions, nor do they have the authority to collect ad valorem property taxes or charges, rates, and tolls. LIDs may levy assessments and have limited authority to levy a sales tax. LIDs and may issue revenue and special assessment bonds only.

Metropolitan districts may be organized within or across the boundaries of the cities and counties to provide two or more of certain services enumerated by statute. Metropolitan districts are governed by a board of directors directly elected by eligible electors of the district and have the authority to construct, operate, and maintain public improvements. They may also issue debt and levy ad valorem property taxes, assessments, charges, rates, and tolls.

### **Governance Structure Options**

In its role as a neutral third party, the study team investigated potential options for a regional governance structure or entity. The investigation process began with gaining an understanding of the needs and desires for an Aerotropolis regional entity.

### IGA Amendment

The IGA Amendment specifies that the regional entity will be required to have the following functions:

- Working organization among governmental jurisdictions.
- Coordinate planning.
- Coordinate infrastructure implementation.
- Coordinate marketing.

It is also recognized that the regional entity could be charged with additional elements. These are not precluded by the IGA Amendment and could include:

- Incorporate economic development functions.
- Working organization that also engages land owners and developers.
- Develop, implement and manage a funding source.
- Contribute to regional infrastructure investments.
- Interface and facilitate input from stakeholders including the general public.

### Meetings with Visioning Study Primary Stakeholders

Against this background, a series of individual meetings were held with representatives from the primary stakeholder governments participating in the Visioning Study: Adams County, the City of Aurora, the City of Brighton, the City of Commerce City, and the City and County of Denver. The purpose of the meetings was to solicit informal input regarding governance options, structures, and functions for a regional entity.

The interview team guided each of the primary stakeholder representatives to eight topics and invited additional comments. A compilation of the responses and comments are presented in this section. The full memo documenting the discussions is included in Appendix B.

#### ***A) Should the new governance entity be a funding mechanism and, if so, should it be a direct funding source or a collection point for revenues contributed by primary stakeholder governments and others?***

There was no consensus on whether the entity should participate in funding of Aerotropolis infrastructure and its promotion.

Some responses indicated a desire that the entity provide funding for regional projects. If that were the case, some representatives indicated a preference that the entity *not* be a direct taxing and funding entity, but rather be the recipient of revenues collected and contributed by the primary stakeholder governments. Pursuant to the Taxpayer's Bill of Rights or "TABOR," Section 20 of Article X of the Colorado Constitution, voter authorization would be required for a new entity to levy its own taxes directly. In contrast, if the entity were to serve as a recipient of funds from primary stakeholder governments, the entity would be free from voter TABOR authorization, although the contributed revenues would be at the expense of the primary stakeholder governments' budgets.

Along these lines, the study team was cautioned of likely opposition to an entity serving as an overlay property taxing district. At same time, we were cautioned that an arrangement by which revenues would flow from primary stakeholder governments to the entity would detract from the image and reality of a cohesive Aerotropolis governance and brand. However, if revenues were to flow from primary stakeholder governments to the entity, stakeholder sentiment favored a nexus between the primary stakeholder governments making contributions and the capital improvement projects undertaken with those contributions.

As an alternative to direct taxation or stakeholder flow-through of funds, the concept of a dedicated mill levy imposed through multiple special taxing/assessment districts was brought up. In the case of development districts, the example continued, a cross-jurisdictional mill levy for the Aerotropolis effort would increase as the developer districts' mill levies decreased with debt retirement and increased assessed value. (Figure 4)

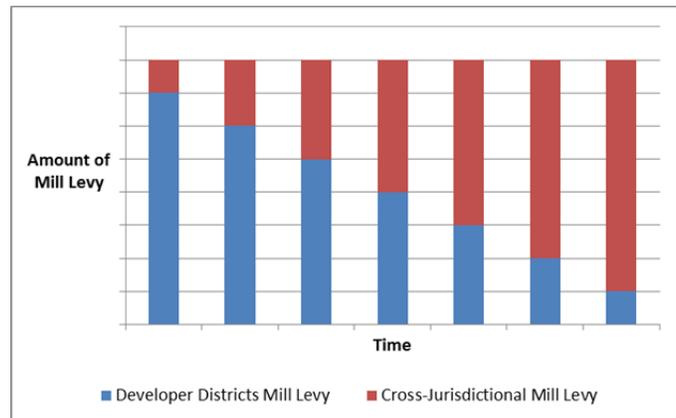
The concept of the entity establishing a revolving loan fund was also raised as a possible approach to either facilitate funding projects through the entity or as a stand-alone mechanism for Aerotropolis projects.

Additionally, there was some interest in "project-specific" revenue raising, which would seek funds for a particular project on a proportional basis, involving proximity, benefit, and other criteria.

With regard to revenue raising and spending, several representatives thought it likely that, regardless of the form of raising revenue, if the entity were to serve a funding function, the primary stakeholder governments would want revenues from their respective jurisdictions to be spent in their jurisdictions. Other representatives expressed the possibility that the revenue-raising and spending functions of the entity might be used to address "disparities" of tax and fee burdens from jurisdiction to jurisdiction.

Virtually all interviewed agreed that, whatever the revenue-raising and funding capabilities of the entity, but especially if revenues from the primary stakeholder governments were to be pooled, it would be important to establish a process that builds trust between and among primary stakeholder governments and that works to create a cohesive Aerotropolis.

**Figure 4 Potential for Relatively Constant Mill Levy Burden**



Source: Aerotropolis Study Team.

Finally, other than funding for the entity's own operation, some stakeholders expressed a substantial preference that the entity *not* participate in infrastructure or promotional project funding at all, but rather serve a planning and coordination function. This is more fully discussed in Question B.

**B) *What services and/or infrastructure should the new regional entity deliver: Planning, funding, design/construction, and/or operation?***

Note that activity related to marketing and promotion (also referred to as branding), which appear expressly in the IGA Amendment, is deferred for separate treatment in Question H.

One vision for the entity, consistent with the language of the IGA Amendment, was that of a regional (sub-regional) planning council or body that would serve as a facilitator for the Aerotropolis participants. As possibly an IGA entity or a non-profit corporation, it would span jurisdictional boundaries and have the ability and responsibility to coordinate and plan infrastructure and to seek state and federal funding. The entity would serve as the initial organization in promoting Aerotropolis regional cooperation among the primary stakeholder governments and might evolve into a more traditional and empowered governance entity. Initially, the entity would act as a regional planning body that prioritizes and phases projects, leverages funding, makes recommendations, and distributes funding to several layers of governments. The example of the Denver Regional Council of Governments (DRCOG), a metropolitan planning organization, may illustrate the concept.

Of those stakeholder representatives who thought that, additionally, the entity *could* be responsible for funding infrastructure and marketing/branding, there was little support that the entity construct, own, or operate infrastructure. After construction, the jurisdiction where the infrastructure was built should own and maintain it.

Additionally, the entity might provide circulator transportation services or similar activities, which would cause the entity to have an ongoing governance role, and is in contrast with the more limited role of a planning entity or an entity that would not provide operations and maintenance functions.

**C) *What is the geographic scope of the governance mechanism and its activities?***

While the entirety of what is to become the Aerotropolis was expected to benefit from the entity, many expected near- and even mid-term activity to occur largely to the west and south of DIA, the Concentrated Development Area (see Figure 2), which was also believed to be the logical focal point for the initial phases of Aerotropolis development. Representatives felt that the entity should take a regional, long-term approach and acknowledged the cross-jurisdictional nature of many infrastructure projects that may be undertaken or coordinated by entity. Stakeholder representatives appeared to find some efficacy in the entity undertaking infrastructure projects and development on a limited scale initially and adding more land - or jurisdictions - to the entity's efforts as needed and over time.

**D) *For what types of infrastructure, in addition to transportation, if any, should the regional governance entity undertake?***

Representatives variously identified roads, transit, water, sewer, and drainage as infrastructure needs potentially to be advanced by the entity, although transportation was the area of consensus. None appeared to favor relinquishing land use and entitlement

authority within the boundaries of their jurisdictions, in the contexts of both the public infrastructure projects and the private property developed in the Aerotropolis area. Some representatives felt that infrastructure projects should be determined by the needs of each primary stakeholder government.

In addition to capital projects, some stakeholder representatives cited the value of shared or common services. Suggestions were made that the entity could potentially undertake traffic circulator services, as well as marketing and branding.

**E) *Should the new regional governance entity's organizing "charter" specify infrastructure projects and/or sequence, or should it convene the primary stakeholders and only provide the process by which projects are selected and sequenced?***

Representatives agreed that the entity should retain flexibility to act and to have authority to develop agreement on and prioritize projects, especially in light of changing market conditions and other considerations. Therefore, representatives were generally opposed to specifying projects in an organizational document. Rather, they favored deciding upon projects as the need arises, possibly based on specific criteria. They cited DRCOG and regional and state transportation improvement plans as examples of project prioritization processes.

**F) *The governance mechanism's powers, authority, and limitations will likely be defined by statute, intergovernmental agreement, or a combination of the two. Are the Aerotropolis infrastructure goals best served by placing decisional control in the primary stakeholders' governing bodies or in the governing body of the new regional governance entity?***

In response to this question, representatives voiced a range of concerns and possibilities.

Most representatives agreed that the entity's decision-making (and its governing body) should be contained within the public sector, some favoring staff participation and some elected officials' participation.

Some representatives argued that the entity must have the authority to act on its own and without the approval of the primary stakeholder government's governing body, while others felt strongly that decisions must be taken back to primary stakeholder governments for ratification. As a compromise, the entity could be given the authority to act on its own with regard to a list of previously determined decisions, with some decisions reserved for approval or ratification by the primary stakeholder governments.

**G) *How can the governance mechanism best relate to public entity stakeholders (other than the primary stakeholders) and the private sector?***

Representatives approved of establishing advisory boards, committees, and commissions to participate in the entity. In general, they did not want citizens or landowners to be directly involved in the policy and the day-to-day governance of an Aerotropolis development.

As described in Question H, the collective marketing and branding of the Aerotropolis was seen as a direct way to relate to other public entity stakeholders and the private sector on state, national, and international scales. Additionally, the North Area Transportation Alliance

and DRCOG were given as examples of ways in which a governance entity can identify, develop, and advocate with a collective voice for infrastructure identified by the entity.

#### **H) *Marketing and branding***

Stakeholder representatives by and large indicated that marketing and branding should be left to those with subject-matter expertise (i.e., not the entity itself). As such, marketing and branding may be best handled by a separate organization, whether in existence now or to be formed, which would work closely with the new regional governance entity and perhaps receive partial or full funding from it. On more than one occasion, representatives alluded to the economic development councils currently serving various primary stakeholder governments in the metropolitan area. Stakeholder representatives thought these economic development councils represent a good example of existing organizations that could potentially collaborate, both among themselves and with the entity.

Representatives thought that marketing and branding would be most effective if tackled jointly, and some discussed the possibility of funding a joint economic development council to act in the collective interests of the primary stakeholder governments, the private sector, and the Aerotropolis.

However, some representatives thought that the primary stakeholder governments would want to also maintain their respective jurisdictional brands, while other stakeholder representatives hoped that branding and marketing of Aerotropolis could be used to improve and expand on a combined Aerotropolis brand.

#### **Anticipated Decision Points in Arriving at a New Entity**

A review of the discussion responses (summarized above) yields a conclusion that the primary stakeholder jurisdictions would need to negotiate and agree to the following terms and arrangements:

- Shall the entity be constrained to the functions listed in the IGA Amendment, to wit: promotion and marketing of development opportunities and coordination assistance in land use and infrastructure planning? The IGA Amendment can be narrowly or broadly construed, and the jurisdictions can by agreement expand the functions not listed, if desired.
- If the entity is to engage in funding, should it have direct taxes and/or fees, or should it rely upon stakeholder jurisdictions to remit taxes and/or fees over to the entity?
- Should the entity engage only in planning and coordination of infrastructure or also provide funding, design/construction, and/or operation?
- What area should the entity serve initially, mid-term, and ultimately?
- What infrastructure should the entity address: transportation, water, sewer, drainage, other?
- Should the entity bond to accelerate projects and/or serve as a lending fund or revolving loan bank?

- Should the entity’s decisional control be in its governing body or reside with the stakeholders’ governing bodies? Should there be a mixed approach, depending on subject matter?
- Should the entity try to bring the private sector and other public entities into its decisional process or seek to involve them in advisory committee(s) and the like?
- Should marketing and branding be within the scope of the entity or accomplished through a separate entity or coalition with expertise? Should the entity help fund marketing and branding?
- Should the entity’s governing body be elected officials or staff or others chosen for subject matter interest and expertise?

Recommended Process for Developing a Regional Entity

The study team recommends the primary stakeholder jurisdictions take the following steps in defining and setting up a regional entity:

- Discuss and negotiate, insofar as possible, areas of consensus and likely agreement. Some are identified in this memorandum.
- Consider use of a neutral facilitator and draftsman.
- Seek agreement on the major issues:
  - Scope of entity activity.
  - Whether a funding entity.
  - If a funding entity, direct or through stakeholders.
  - Consider wisdom of phasing and scaling activity of entity.
- Match major determinations to existing types of entities or collection of entities or consider customized entity through legislation or IGA.
- Work through refinement of lesser issues.

Likely Types of Organizations for the Regional Entity

Based on the interviews, the table below summarizes the regional entity types that would fulfill the requirements of the IGA Amendment and their likelihood of being adopted by the primary stakeholder jurisdictions as an Aerotropolis regional entity.

**Table 1 Types of Entity Candidates and Likelihood of Use**

Candidate	Comment	Likelihood of Use
Regional Transportation Authority	Limited to transportation, requires organizational vote of people of member counties, municipalities	Unlikely
Title 32 Metropolitan District	Not well-suited to have governing body populated by counties, municipalities	Unlikely
Non-profit Corporation	May qualify for some federal grants, but not a public entity	Unlikely

**Table 1 Types of Entity Candidates and Likelihood of Use**

Candidate	Comment	Likelihood of Use
Association of existing and future Metropolitan Districts	Developer and resident control; not stakeholder governments	Unlikely
Intergovernmental Agreement Entity	Can be imbued with powers common to local government stakeholders, although probably not some fundamental government powers, like taxes, exempt bonds, eminent domain; would include a regional transportation commission or a regional planning commission	Likely
Regional Planning Commission	If entity is to be limited to planning, established pursuant to Section 30-28-105, C.R.S.	Likely
New Legislative Entity	Can be customized, but requires action of General Assembly and Governor	Likely
Combination of Types of Entities	Cobble together contribution and involvement of different types of public entities through a functional IGA, with or without creating a new entity	Likely
Other Potential Entities	Research required	n/a

Responses to Initial Questions

Responses to initial questions from the Study Review Committee are below. These are also documented in a supplemental memo included in Appendix C.

***How can a Regional Planning Commission be considered a “likely” governance candidate? The 2015 IGA Amendment expressly prohibits land use planning.***

The prohibition against vesting land use powers in the Aerotropolis regional governance entity is expressed in the IGA Amendment and in the Aerotropolis stakeholder governance discussions. Additionally, in our discussions with the five primary stakeholders, none favored attempting to vest any land use powers in the regional entity. However, a regional planning commission would not have land use powers; instead, it would be advisory in nature, would engage in studies and collaborative master planning with its powers expressly defined and limited by an IGA creating such a commission.

***How can the regional entity take on funding? This wasn’t discussed in the IGA amendment process.***

The primary purpose of the discussions was to elicit from the primary stakeholders their aspirations for the regional entity and to objectively report on those aspirations. Funding was frequently mentioned and discussed, as documented in the previous sections, although not unanimously supported. In fact, one of the key obstacles that can be overcome by cooperative funding is infrastructure implementation across jurisdictional boundaries. As a matter of contract, the contemplated parties to the regional governance entity agreement may agree as they wish, so long as terms are in compliance with State law and not inconsistent with voter approvals.

*Why is a Title 32 metropolitan district not a likely governance candidate?*

Most discussions favored a form of governance directly controlled by the stakeholder counties and municipalities. Title 32 metropolitan districts are governed by independently elected boards of directors. Status as a mayor, councilmember, county commissioner, or public employee does not qualify a person to sit as one of the five or seven metro district directors. Metro districts are not, for the most part, well-suited to promoting and marketing development opportunities or to assisting and coordinating the land use and infrastructure planning of the Aerotropolis between and among the various municipalities and counties.



# Colorado Aerotropolis Visioning Study

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**Appendix A:  
Amendment to 1988 Annexation and Intergovernmental Agreements  
on a New Airport - June 2015**



# AMENDMENT TO 1988 ANNEXATION AND INTERGOVERNMENTAL AGREEMENTS ON A NEW AIRPORT

## Final Term Sheet

June 3, 2015

### **I. Approval process and timing**

- A. An Amendatory IGA reflecting the terms set forth herein will be approved by the governing bodies of Denver and Adams County, with the current municipal members of the Airport Coordinating Committee (the "ACC") also approving the Amendatory IGA as third-party beneficiaries, no later than *July 1, 2015*. The current municipal members of the ACC are: Aurora, Commerce City, Brighton, Thornton and Federal Heights. The Amendatory Agreement will, in one document, modify or supplement certain provisions of both the "Intergovernmental Agreement on Annexation" and the "Intergovernmental Agreement on a New Airport" dated April 21, 1988 (herein collectively referred to as the "1988 Agreements.")
- B. The Amendatory IGA will be referred to the voters of both Denver County and Adams County at the *November 3, 2015* state coordinated election. In the event the voters in either or both counties disapprove the agreement on that date, the Amendatory IGA may be re-submitted at the *November 8, 2016* state general election for voter approval in the county or counties where the measure was previously defeated.
- C. The ballot questions submitted to the voters in Adams County and Denver County will be compatible, with the voters in each county being asked to approve the Amendatory IGA. The ballot question in Denver County will additionally include language binding the city to a "multiple fiscal year financial obligation" to share tax revenue as described below.
- D. Upon approval by the voters in both Denver County and Adams County, the Amendatory IGA will become effective on the January 1 following the approval in both counties.

### **II. Preservation of the existing 1988 Agreements**

Except as specifically set forth below, all the terms and conditions of the 1988 Agreements (including by way of example but not limitation, the noise provisions, restrictions on residential development, the hotel formula, restrictions on land use in relation to the Scenic Buffer, and provisions related to access roads) will remain in full force and effect. Denver will retain the authority to develop Accessory Uses and natural resources located anywhere on the New Airport Site to the extent allowed by the 1988 Agreements and all other rights it has those agreements.

### **III. Amendments regarding land use restrictions**

The 1988 Agreements will be amended as follows:

- A. Fifteen-hundred acres located on the New Airport Site or in the Transportation Corridor north of 72<sup>nd</sup> Ave. will be released in perpetuity from the land use restrictions contained in the 1988 Agreement. Denver will exercise sole discretion to determine when and where to utilize the fifteen-hundred acres and create Development Parcels at DIA, subject only to the following restrictions: (1) residential development will be prohibited on this acreage; (2) businesses that would potentially compete with current and future business and institutional land uses at the Anschutz Medical Campus and the Fitzsimmons Life Science District in Aurora will be

prohibited on this acreage; (3) to the extent any hotels are located on this acreage, the limitation on number of hotel rooms in the 1988 IGA will continue to apply.

- B. Adams County on behalf of the ACC may negotiate and agree with Denver at any time to release additional acreage from the land use restrictions contained in the 1988 Agreements and allow for the creation of additional Development Parcels, either: (1) on a site-specific or project-specific basis; or (2) by releasing an additional amount of acreage.
- C. Restrictions on land use in the Clear Zones as set forth in the 1988 Agreements will be released entirely. Land use in the Clear Zones will remain subject to federal regulations on use and development. The parties will cooperate to modify zoning and other land use laws as necessary to allow development within the Clear Zones. Taxes derived from commercial development in the Clear Zones in Adams County will be retained entirely by the applicable governing Adams County jurisdiction(s).
- D. Denver will promptly notify the ACC jurisdictions of any proposed leasing and concessions activity at DIA (outside of the terminal complex area) when and to the extent such information has been made available to the general public. For example, Denver will provide notice when a request for proposals is published in regard to new leases and concessions, and when a specific lease or concession is submitted to the Denver City Council for approval.
- E. Adams County will sign the Amendatory IGA as a party. Aurora and Commerce City will remain third-party beneficiaries to the applicable provisions of the 1988 Agreements. Aurora and Commerce City will be third-party beneficiaries to the Amendatory IGA. The remaining ACC municipal members will be third party beneficiaries to the revenue sharing obligations. .
- F. Consistent with the 1988 Agreements, only those ACC municipalities with contiguity to the New Airport site (currently Aurora and Commerce City) will be treated as a third-party beneficiaries in regard to the land use provisions of the Amendatory IGA.

#### **IV. Financial terms in consideration for release of land use restrictions**

- A. Upon the effective date of the Amendatory IGA, Denver will transmit to Adams County a one-time cash payment of \$10 million, for distribution as determined by the ACC. No additional cash payment will be required for the discretionary release of additional acreage for Development Parcels as provided in III (B) of this Term Sheet.
- B. Beginning on the effective date and continuing in perpetuity, Denver will share with the ACC jurisdictions fifty percent (50%) of all Denver tax revenue derived from either the development or use of the Development Parcels, with the following exceptions: (1) revenue derived from any Denver tax or tax rate which, as of the effective date of the Amendatory Agreement, was obligated by voter-approval, bond covenant, or any other form of contract to be spent for a particular purpose, for as long as such revenues remain so obligated; (2) revenue derived from any voter-approved new, increased or extended Denver tax adopted after the effective date of the Amendatory Agreement and obligated for a particular purpose; or (3) revenue derived from Denver's debt service mill levies. If Denver ever allows a tax-exempt entity to develop or use any Development Parcel and negotiates a payment in lieu of taxes with such an entity, Denver will share with the ACC jurisdictions fifty percent (50%) of any such payment in lieu of taxes.
- C. The Amendatory IGA will contain procedures for documenting Denver's draws upon the 1500-acre "bank" for the establishment of Development Parcels; for documenting and remitting tax

revenue generation and sharing from the Development Parcels on no less than an annual basis; and for audit rights that may be exercised by the ACC jurisdictions in regard to the tax revenue sharing.

- D. Denver tax revenue shared with Adams County will be distributed as determined by the ACC. Any arrangement the ACC jurisdictions may negotiate among themselves for allocation of the Denver shared tax revenue will be reflected in a separate agreement between the ACC members and will not be a component of the Amendatory IGA. All current municipal members of the ACC will be treated as third-party beneficiaries in regard to the tax revenue sharing provisions of the Amendatory IGA.
- E. To the extent Denver offers tax incentives to commercial developers and tenants to induce businesses to locate or remain upon a Development Parcel, tax revenues that Denver is obligated to share with Adams County will *not* be utilized for such incentives, *unless* Adams County on behalf of the ACC agrees. Denver will not approve any form of tax increment financing resulting in a reduction in the amount of tax revenue from the Development Parcels that Denver is obligated to share with Adams County, unless Adams County on behalf of the ACC agrees.
- F. Denver will reserve the right to modify, decrease or eliminate Denver taxes that are subject to sharing under the Amendatory Agreement; however, Denver will not, without the consent of Adams County on behalf of the ACC, take or approve any action that would have the effect of reducing or eliminating any shared Denver tax or tax rate specifically imposed in or on the Development Parcels.

**V. Regional planning and marketing entity**

The Amendatory IGA will provide that, via a separate agreement to be negotiated between the parties, Denver and the ACC jurisdictions will form a new regional entity to promote and market development opportunities on and around DIA and assist in coordinating land use and infrastructure planning efforts by the respective jurisdictions on and around DIA. However, the entity will have no authority to regulate or otherwise control land use or development within any of the jurisdictions. The entity will be governed by a board consisting of equal representation by Denver appointees and ACC appointees.

**VI. Miscellaneous contract terms**

- A. The parties will agree to mutually defend the Amendatory IGA in the event of a challenge by any party who is not a third-party beneficiary to the Amendatory IGA.
- B. The parties' rights and remedies under the 1988 Agreements will remain in place outside of the Development Parcels for disputes that arise in the future about whether development falls within the range of land uses allowed upon the New Airport Site under the original 1988 Agreements. In the event of an alleged breach by Denver of the land use restrictions contained in the 1988 Agreements, as modified by the Amendatory IGA, the ACC party will provide written notice to Denver and the parties will attempt to resolve the dispute informally. Prior to either party filing suit over such a dispute, the parties will enter into formal non-binding mediation in an attempt to resolve the dispute. In the event the parties proceed to litigation and achieve a final judgment, the prevailing party will be awarded its attorney's fees and costs incurred in the litigation, and a prevailing ACC party will be awarded any withheld tax revenue sharing plus interest at the statutory rate. If Denver decides, prior to final judgment in any such litigation, to render the case

moot by locating the disputed land use in a Development Parcel, the ACC party will be awarded one-half of its attorney's fees and costs incurred to date in the case.

- C. The Amendatory IGA will also function as a settlement agreement in which Adams County, Aurora, Brighton, Commerce City, Federal Heights, and Thornton will waive any claims they may have against Denver regarding an alleged breach, or anticipatory breach, of the land use provisions in the 1988 Agreements based on the following: (1) any use or development of the New Airport Site, completed or in process (as demonstrated by the issuance of certificate of occupancy or building permit), that occurred prior to the date upon which Adams County referred the Amendatory IGA to a vote of the people; or (2) Denver's land use planning or marketing activities for the New Airport Site that occurred prior to the date upon which Adams County referred the Amendatory IGA to a vote of the people, but such planning or marketing efforts do not meet the requirements of waiver (1) unless a building permit or certificate of occupancy has been issued prior to the date upon which Adams County referred the Amendatory IGA to a vote of the people. This waiver will not be construed as changing in any manner the land use provisions of the 1988 Agreements to the extent those provisions will continue to govern the use of the New Airport Site in the future, nor will the waiver prevent the parties from enforcing those provisions in regard to any use or development of the New Airport Site established after the date upon which Adams County referred the Amendatory IGA to a vote of the people or from enforcing the 1988 Agreements in the future.
  
- D. At any time under the Amendatory Agreement, Denver may decide to locate a land use which Denver considers to be an Accessory Use in a Development Parcel. No such decision on Denver's part will be considered a waiver or admission by Denver that the land use in question or any similar land use may not qualify as an Accessory Use in the future.

This Term Sheet shall not be considered a binding contract, but is intended solely to serve as the basis for drafting the Amendatory IGA. Each party and third-party beneficiary agrees to submit to their respective governing bodies the Amendatory Agreement for approval by the governing body as a whole (either as a primary party or a third-party beneficiary), subject to ultimate approval by the voters before the Amendatory IGA will be executed or go into effect.



# Colorado Aerotropolis Visioning Study

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**Appendix B:  
Aerotropolis Stakeholder Governance Discussions Memo,  
January 19, 2016**





## ICENOGL SEAVR POGUE

### MEMORANDUM

TO: Chris Primus, HDR, Inc.

FROM: Ed Icenogle and Anna Wool

DATE: January 19, 2016

RE: Aerotropolis Stakeholder Governance Discussions

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### INTRODUCTION

Chris Primus of HDR, Inc. and Ed Icenogle and Anna Wool of Icenogle Seaver Pogue, P.C. held one-on-one meetings with senior staff (the “stakeholder representatives” or “stakeholders”) from the City and County of Denver and the City of Commerce City on January 6, 2016, the City of Aurora and Adams County on January 8, 2016, and the City of Brighton on January 15, 2016. The purpose of the meetings was to solicit from stakeholder representatives input regarding governance options and structures for the development of an “Aerotropolis” regional entity in the area of the Denver International Airport (“DIA”).

The 2015 Amendment to the 1988 Denver/Adams County agreements relating to the development of DIA specified, in Section V, that there will be negotiated an additional agreement between Denver and the Airport Coordinating Committee (“ACC”), by which a new regional entity will be formed for advancing the Aerotropolis concept. The ACC comprises Adams County, Aurora, Commerce City, Brighton, Thornton, and Federal Heights. The political subdivisions interviewed were selected as the “primary stakeholders” for the purpose of meetings to sample the sentiments of the Aerotropolis participants regarding this regional entity.

The 2015 Amendment’s description of the purposes of this new regional entity is, in total: “...to promote and market development opportunities on and around DIA and assist in coordinating land use and infrastructure planning efforts by the respective jurisdictions on and around DIA.” The 2015 Amendment also denies the new regional entity authority to regulate or otherwise control land use or development within any jurisdiction.

In pursuit of the new regional entity, the Study Review Committee polled Aerotropolis participants and identified a number of critical interests deemed most important for collaborative action in the near term. Among those critical interests, and of apparent especial relevance to the nature of the new regional entity, were: cross-jurisdictional planning, governance/financing structure, corroborative funding, marketing and infrastructure funding, form of governance/oversight, long-term roads funding stream, and regional water/wastewater.

Against this background, the one-on-one interview team guided the primary stakeholder representatives to eight topics and invited additional comments, as desired. This memorandum compiles the responses of the stakeholder representatives by topic and supplements with additional comments raised during the meetings.

This memorandum then concludes with a checklist of anticipated governance decision points, identification of some likely governance approaches, and recommended processes for determining the Aerotropolis new entity governance structure.

### **RESPONSE TO DISCUSSION ITEMS AND COMMENTS**

The eight discussion items (A through H) presented to representatives of the primary stakeholders (which are the City and County of Denver, the City of Commerce City, the City of Aurora, the City of Brighton, and Adams County), along with a summary of discussion comments, are presented in this section.

#### **A. Should the new governance entity be a funding mechanism and, if so, should it be a direct funding source or a collection point for revenues contributed by primary stakeholder governments and others?**

There was no consensus on whether the new entity should participate in funding of Aerotropolis infrastructure and promotion.

Some responses indicated a desire that the new entity provide funding for regional projects. If that is the case, some stakeholder representatives indicated a preference that the governance mechanism *not* be a direct taxing and funding entity, but rather serve as a recipient of revenues collected and contributed by the primary stakeholder governments. Pursuant to the Taxpayer's Bill of Rights or "TABOR," Section 20 of Article X of the Colorado Constitution, voter authorization would be required for a new entity to levy its own taxes directly. In contrast, if the governance entity were to serve as a recipient of funds from primary stakeholder governments, the new governance entity would be free from voter TABOR authorization, although the contributed revenues would be at the expense of the primary stakeholder governments' budgets.

Along these lines, we were cautioned of likely opposition to a new entity serving as an overlay property taxing district. At same time, we were cautioned that an arrangement by which revenues would flow from primary stakeholder governments to the new governance entity would detract from the image and reality of a cohesive Aerotropolis governance and brand. However, if revenues are to flow from primary stakeholder governments to a new governance entity, stakeholder sentiment favored a nexus between the primary stakeholder governments making contributions and the capital improvement projects undertaken with those contributions.

As an alternative to direct taxation or stakeholder flow-through of funds, the concept of a dedicated mill levy imposed through multiple special taxing/assessment districts was advanced for the new governance entity. In the case of development districts, the example continued, a

cross-jurisdictional mill levy for the Aerotropolis effort would increase as the developer districts' mill levies decreased with debt retirement and increased assessed value.

The concept of the entity establishing a revolving loan fund was also raised as a possible approach to either facilitate funding projects through the new entity or as a stand-alone mechanism for Aerotropolis projects.

Additionally, there was some interest in "project-specific" revenue raising, which would seek funds for a particular project on a proportional basis, involving proximity, benefit, and other criteria.

With regard to revenue raising and spending, several stakeholder representatives thought it likely that, regardless of the form of raising revenue, if the new governance entity is to serve a funding function, the primary stakeholder governments will want revenues from their respective jurisdictions to be spent in their respective jurisdictions. Other stakeholder representatives expressed the possibility that the revenue raising and spending functions of the governance entity might be used to address "disparities" of tax and fee burdens from jurisdiction to jurisdiction.

Virtually all interviewed agreed that, whatever the revenue raising and funding capabilities of the new governance entity, but especially if revenues from the primary stakeholder governments are to be pooled, it would be important to establish a process that builds trust between and among primary stakeholder governments and works to create a cohesive Aerotropolis.

Finally, other than funding for the new governance entity's own operation, some stakeholders expressed a substantial preference that the new governance entity *not* participate in infrastructure or promotional project funding at all, but rather serve a planning and coordination function. This is more fully discussed in Section B, below.

**B. What services and/or infrastructure should the new regional entity deliver: Planning, funding, design/construction, and/or operation?**

For this discussion, activity related to marketing and promotion (also referred to as branding), which appear expressly in the 2015 Amendment, is deferred for separate treatment in Section H, below.

One vision for the regional entity, consistent with the language of the 2015 Amendment, was that of a regional (sub-regional) planning council or authority, which would serve as a facilitator for the Aerotropolis participants. Possibly an IGA entity or a non-profit corporation, it would span jurisdictional boundaries and have the ability and responsibility to coordinate and plan infrastructure and to seek state and federal funding. The governance entity would serve as an initial step in Aerotropolis regional cooperation among the primary stakeholder governments and might evolve into a more traditional and empowered governance entity. Initially, the governance mechanism would act as a regional planning authority which prioritizes and phases projects, leverages funding, makes recommendations, and distributes funding to several layers of

governments. The example of DRCOG, a metropolitan planning organization, may illustrate the concept.

Of those stakeholder representatives who thought that, additionally, the governance mechanism *could* be responsible for funding infrastructure and marketing/branding, there was little support for new entity construction, ownership, or operation of infrastructure. Upon completion of infrastructure, the jurisdiction within which the infrastructure exists should own and maintain it.

A possible exception to avoiding an ongoing role for the new entity might be circulator transportation or similar activities.

**C. What is the geographic scope of the governance mechanism and its activities?**

While the entirety of what is to become Aerotropolis was expected to benefit from the new regional entity, many expect near- and even mid-term activity to occur largely to the west and south of DIA, those areas forming an “L” shape, which was believed to be the logical focal point for the initial phases of Aerotropolis development. Stakeholder representatives felt that the new governance mechanism should take a regional, long-term approach and acknowledged the cross-jurisdictional nature of many infrastructure projects that may be undertaken or coordinated by the new governance mechanism. Stakeholder representatives appeared to find some efficacy in the new entity undertaking infrastructure projects and development on a limited scale initially and adding more land – or jurisdictions – to the new governance mechanism’s efforts as needed and over time.

**D. For what types of infrastructure, in addition to transportation, if any, should the regional governance entity undertake?**

Stakeholder representatives variously identified roads, transit, water, sewer, and drainage as infrastructure needs potentially to be advanced by the new governance mechanism, although transportation was the area of consensus. None appeared to favor relinquishing land use and entitlement authority within the boundaries of their jurisdictions, in the contexts of both the public infrastructure projects and the private property developed in Aerotropolis. Some stakeholder representatives felt that infrastructure projects should be determined by the needs of each primary stakeholder government.

In addition to capital projects, some stakeholder representatives cited the value of shared or common services. Suggestions were made that the governance mechanism could potentially undertake traffic circulator services, as well as marketing and branding.

**E. Should the new regional governance entity’s organizing “charter” specify infrastructure projects and/or sequence, or should it convene the primary stakeholders and only provide the process by which projects are selected and sequenced?**

Stakeholder representatives agreed that the governance entity should retain flexibility to act, as well as the capability to develop agreement on and prioritization of projects, especially in light of changing market conditions and other considerations. Thus, stakeholder representatives were generally opposed to specifying projects in an organizational document. Rather, stakeholder representatives favored deciding upon projects as the need arises, possibly based on specific criteria. Stakeholder representatives cited DRCOG and regional and state transportation improvement plans as examples of project prioritization processes.

**F. The governance mechanism's powers, authority, and limitations will likely be defined by statute, intergovernmental agreement, or a combination of the two. Are the Aerotropolis infrastructure goals best served by placing decisional control in the primary stakeholders' governing bodies or in the governing body of the new regional governance entity?**

In response to this question, stakeholder representatives voiced a range of concerns and possibilities.

Most comments agreed that the new regional entity's decision-making (and its governing body) should be contained to the public sector, some favoring staff participation and some elected officials' participation.

Some stakeholder representatives argued that the entity must have the authority to act on its own and without the approval of the primary stakeholder government's governing body, while others felt strongly that decisions must be taken back to primary stakeholder governments for ratification. As a compromise, a new governance entity could be given the authority to act on its own with regard to a list of previously determined decisions, with some decisions reserved for approval or ratification by the primary stakeholder governments.

**G. How can the governance mechanism best relate to public entity stakeholders (other than the primary stakeholders) and the private sector?**

Primary stakeholder representatives approved of establishing advisory boards, committees, and commissions to participate in the governance mechanism. In general, stakeholder representatives did not want citizens or landowners to be directly involved in the policy and the day-to-day governance of Aerotropolis.

As described in Section H, below, the collective marketing and branding of the Aerotropolis was seen as a direct way to relate to other public entity stakeholders and the private sector on state, national, and international scales. Additionally, NATA and DRCOG were given as examples of ways in which a governance mechanism can identify, develop, and advocate with a collective voice for infrastructure identified by the new regional entity.

**H. Marketing and Branding.**

Stakeholder representatives by and large indicated that marketing and branding should be left to those with subject matter expertise (i.e., not the governance mechanism). As such,

marketing and branding may be best handled by a separate organization or entity, whether in existence now or to be formed, which would work closely with the new regional governance entity and perhaps receive partial or full funding from it. On more than one occasion, primary stakeholder representatives alluded to the economic development councils currently serving various primary stakeholder governments in the metropolitan area. Stakeholder representatives thought these economic development councils represent a good example of existing organizations that could potentially collaborate, both together and with the new regional entity.

Stakeholder representatives thought that marketing and branding would be most effective if tackled jointly, and some discussed the possibility of funding a joint economic development council to act in the collective interests of the primary stakeholder governments and Aerotropolis.

However, some stakeholder representatives thought that the primary stakeholder governments would want to also maintain their respective jurisdictional brands, while other stakeholder representatives hoped that branding and marketing of Aerotropolis could be used to improve and expand on a combined Aerotropolis brand.

#### **ANTICIPATED DECISION POINTS IN ARRIVING AT A NEW ENTITY**

A review of the discussion responses (summarized above) yields a conclusion that the following terms and arrangements need to be negotiated and agreed:

1. Shall the entity be constrained to the functions listed in the 2015 Amendment, to wit: promotion and marketing of development opportunities and coordination assistance in land use and infrastructure planning? The 2015 Amendment can be narrowly or broadly construed, and the jurisdictions can by agreement expand the functions not listed, if desired.
2. If the entity is to engage in funding, should it have direct taxes and/or fees, or should it rely upon stakeholder jurisdictions to remit taxes and/or fees over to the entity?
3. Should the entity engage only in planning and coordination of infrastructure or also provide funding, design/construction, and/or operation?
4. What area should the entity serve initially, mid-term, and ultimately?
5. What infrastructure should the entity address: Transportation, water, sewer, drainage, other?
6. Should the entity bond to accelerate projects and/or serve as a lending fund or revolving loan bank?
7. Should the entity's decisional control be in its governing body or reside with the stakeholders' governing bodies? Should there be a mixed approach, depending on subject matter?
8. Should the entity try to bring the private sector and other public entities into its decisional process or seek to involve them in advisory committee(s) and the like?
9. Should marketing and branding be within the ambit of the entity or accomplished through a separate entity or coalition with expertise? Should the entity help fund marketing and branding?

10. Should the entity's governing body be elected officials or staff or others chosen for subject matter interest and expertise?

### **RECOMMENDED PROCESS FOR DEVELOPING A NEW ENTITY**

- Discuss and negotiate, insofar as possible, areas of consensus and likely agreement. Some are identified in this memorandum
- Consider use of a neutral facilitator and draftsman
- Seek agreement on the major issues
  - Scope of entity activity
  - Whether a funding entity
  - If a funding entity, direct or through stakeholders
  - Consider wisdom of phasing and scaling activity of entity
- Match major determinations to existing types of entities or collection of entities or consider customized entity through legislation or IGA
- Work through refinement of lesser issues

### **POSSIBLE ENTITY CANDIDATES AND WHY OR WHY NOT LIKELY OF USE**

- Regional Transportation Authority – Limited to transportation, requires organizational vote of people of member counties, municipalities – unlikely
- Title 32 Metropolitan District – Not well-suited to have governing body populated by counties, municipalities – unlikely
- Non-profit corporation – May qualify for some federal grants, but not a public entity – unlikely
- Association of existing and future Metropolitan Districts – Developer and resident control; not stakeholder governments – unlikely
- Intergovernmental Agreement entity – Can be imbued with powers common to local government stakeholders, although probably not some fundamental government powers, like taxes, exempt bonds, eminent domain; would include a regional transportation commission or a regional planning commission – likely candidate
- Regional planning commission (if entity is to be limited to planning), established pursuant to Section 30-28-105, C.R.S. – likely candidate
- New legislative entity – Can be customized, but requires action of General Assembly and Governor – likely candidate
- Combination of entities – Cobble together contribution and involvement of different types of public entities through a functional IGA, with or without creating a new entity – likely candidate
- Research other potential entities





# Colorado Aerotropolis Visioning Study

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**Appendix C:  
Supplement to Memorandum regarding  
Aerotropolis Stakeholder Governance Discussions, February 4, 2016**





## ICENOGL SEAVR POGUE

**PRIVILEGED & CONFIDENTIAL  
ATTORNEY/CLIENT COMMUNICATION  
ATTORNEY WORK PRODUCT**

**MEMORANDUM**

TO: Chris Primus, HDR, Inc.

FROM: Ed Icenogle and Anna Wool

DATE: February 4, 2016

RE: Supplement to Memorandum regarding Aerotropolis Stakeholder Governance Discussions

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Subsequent to the release of the Memorandum of January 19, 2016 regarding Aerotropolis Stakeholder Governance Discussions, we have received a few comments and questions. The questions and our responses thereto are:

**(1) How can a Regional Planning Commission be considered a “likely” governance candidate? The 2015 IGA Amendment expressly prohibits land use planning.**

The prohibition against vesting *land use powers* in the Aerotropolis regional governance entity is express in the 2015 IGA Amendment and in the Aerotropolis Stakeholder Governance Discussions. Additionally, in our discussions with the five primary public stakeholders, none favored attempting to vest any land use powers in the regional governance entity. However, a regional planning commission would not have land use powers; instead, it would be advisory in nature and its powers would be expressly defined and limited by the intergovernmental agreement creating such a commission.

**(2) How can the regional entity take on funding? This wasn’t discussed in the IGA amendment process.**

The primary purpose of the discussions and the governance paper was to elicit from the stakeholders their aspirations for the regional governance entity and to objectively report on those aspirations. Funding was frequently mentioned and discussed (in the many forms reported in the paper), although not unanimously supported. As a matter of contract, the contemplated parties to the regional governance entity agreement may agree as they wish, so long as terms are in compliance with State law and not inconsistent with voter approvals.

**(3) Why is a Title 32 metropolitan district not a likely governance candidate?**

Most discussions favored a form of governance directly controlled by the stakeholder counties and municipalities. Title 32 metropolitan districts are governed by independently-elected boards of directors. Status as a mayor, councilmember, county commissioner, or public employee does not qualify a person to sit as one of the 5 or 7 metro district directors. Metro districts are not, for the most part, well suited to either promoting and marketing development opportunities or to assisting and coordinating the land use and infrastructure planning of the Aerotropolis municipalities and counties.