



STAFF REPORT

Planning Commission

CASE #Z-897-12

PC Date:	May 1, 2012	Case Planner:	Paul Workman
CC Date:	December 17, 2012		
Location:	5801 Brighton Boulevard, Commerce City, CO 80022		
Applicant:	Suncor Energy (USA) Inc	Owner:	Same as Applicant
Address:	5801 Brighton Boulevard	Address:	Same as Applicant

Case Summary

Request:	Suncor Energy (USA) Inc is requesting to rezone their refinery property that is generally located at the intersection of Brighton Boulevard and E. 56 th Avenue from the current I-3 designation to a Planned Unit Development (PUD) designation.
Project Description:	The subject property operates as a petroleum refinery. This use creates a unique set of needs for the property owner. While the existing I-3 zoning designation adequately addresses the development needs of most heavy industrial users, it does not adequately address petroleum refining. Therefore, the property owner has submitted a PUD zone document to customize their zoning to reflect their needs as a refinery.
Issues/Concerns:	<ul style="list-style-type: none"> • Unique land use • Existing use • Retaining a long-time corporate citizen
Key Approval Criteria:	<ul style="list-style-type: none"> • Compliance with the Comprehensive Plan • Compliance with the PUD approval criteria
Staff Recommendation:	Approval
Current Zone District:	I-3 (Heavy Intensity Industrial Zone District)
Comp Plan Designation:	General Industrial

Attachments for Review: *Checked if applicable to case.*

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|---|--|
| <input checked="" type="checkbox"/> Applicant's Narrative Summary | <input checked="" type="checkbox"/> Vicinity Map |
| <input checked="" type="checkbox"/> PUD Zone Document | |

Background Information

Site Information

Site Size:	230 acres +/-
Current Conditions:	The property currently operates as a petroleum refinery
Existing Right-of-Way:	Brighton Boulevard (CDOT Hwy 265) & E. 56 th Avenue
Existing Roads:	Brighton Boulevard (CDOT Hwy 265) & E. 56 th Avenue
Existing Buildings:	There are hundreds of existing buildings and structures located on this site
Buildings to Remain?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Site in Floodplain	<input checked="" type="checkbox"/> Yes (portions of the site along Sand Creek) <input type="checkbox"/> No
Railroad right-of-way	Burlington Northern Santa Fe Railroad, Union Pacific Railroad, & Chicago Burlington Quincy Railroad (Market St. Spur)

Surrounding Properties

Existing Land Use		Occupant	Zoning
North	Open Space	Sand Creek	I-3
South	Industrial	Several heavy industrial users such as Colorado Asphalt & NU Star Logistics	I-3
East	Industrial	Several heavy industrial users such as Rentech, & the Sand Creek Business Park	I-3
West	Industrial	Heavy industrial users such as Metro Wastewater and Packaging Corporation of America	I-3

Case History

There is extensive case history related to this property which highlights the need for a customized zoning.

Related to Zoning/Use:

Case	Date	Request	Action
CU-20-91	6/17/91	Conditional Use Permit to operate a refinery	Approved with Conditions

CU-20-91:

- In June of 1991, City Council approved a Conditional Use Permit for the property located west of Brighton Boulevard to operate a refinery. This request was approved subject to conditions, which have been satisfied.

No Conditional Use Permit has been obtained for the refining operations on the east side of Brighton Boulevard.

Related to Plat(s):

Case	Date	Request	Action
S-193-97	6/2/97	Consolidate the property on the west side of Brighton into one lot and block	Approved with Conditions

S-193-97:

- In June of 1997, City Council approved a consolidation plat for the property located west of Brighton Boulevard. This request was approved subject to conditions, which have been satisfied.

The refining operations on the east side of Brighton Boulevard are proposed to be consolidated via S-583-12.

Related to Development:

Case	Date	Request	Action
A-257-76	11/16/76	Sign setback variance	Approved
A-367-78	10/17/78	Setback variance for a warehouse building	Approved
A-1069-91	5/7/91	Height variances for hydrotreaters	Approved with Conditions, which were satisfied
A-1075-91	5/21/91	Construct a pipe bridge in the floodway	Approved with Conditions, which were satisfied
A-1223-95	2/7/95	Setback variance for an electrical switchgear building	Approved with Conditions, which were satisfied
A-1513-01	4/4/01	Height variances	Approved
A-1658-08	1/9/08	Use-by-Permit to construct pedestrian connection in the floodplain	Approved
A-1682-10-10	12/14/10	Height exception for gasoline benzene reduction project	Approved with Conditions, which were satisfied
AH-1695-11	2/8/11	Height exception for the Boiler Replacement Project	Approved with Conditions, which were satisfied

Related to Temporary Uses/Temporary Structures:

Case	Date	Request	Action
A-269-77	1/18/77	Temporary permit for 5 trailers	Approved
A-410-79	6/19/79	Variance for 17 temporary trailers	Approved with Conditions, which were satisfied
A-562-82	1/6/82	Temporary dwelling units	Approved with Conditions, which were satisfied
A-693-83	12/6/83	Temporary dwelling units	Approved with Conditions, which were satisfied
A-810-85	11/26/85	Temporary dwelling units	Denied
A-1073-91	5/21/91	Use-by-Permit for 15 mobile office structures	Approved with Conditions, which were satisfied
A-1074-91	5/21/91	Use-by-Permit for 11 mobile office structures	Approved with Conditions, which were satisfied
A-1080-91	5/21/91	Use-by-Permit for 2 mobile office structures	Approved with Conditions, which were satisfied
A-1109-92	1/15/92	Use-by-Permit for 2 mobile office structures	Approved with Conditions, which were satisfied
A-1195-94	6/7/94	Approved a Use-by-Permit for a temporary office trailer for 2 years	Approved with Conditions, which were satisfied

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
A-1199-94	7/5/94	Continuation of mobile office structures from A-1073-91	Approved with Conditions, which were satisfied
A-1213-94	12/6/94	Use-by-Permit for 50 mobile office structures	Approved with Conditions, which were satisfied
A-1450-00	2/1/00	Renewal of A-1213-94	Approved with Conditions, which were satisfied
A-1603-05	3/8/05	Extension for A-1213-94	Approved with Conditions, which were satisfied

Site History

First known as the Continental Oil Refinery, the site was originally developed in 1930 (the area west of what is known today as Brighton Boulevard) and has had several different owners. Over the course of time, the refining operations spread across Brighton Boulevard to encompass the subject property that is considered in this case. During the 1980's Conoco owned and operated the area west of Brighton Boulevard and Valero owned and operated the area east of Brighton Boulevard. The refining operations were consolidated under the current owner and operator of the refinery, which is Suncor Energy (USA) Inc. in the 2000's.

Applicant's Request

Suncor Energy (USA) Inc has submitted this application to rezone their existing refinery site that is generally located at 5801 Brighton Boulevard from the current I-3 (Heavy-Intensity Industrial District) designation to a Planned Unit Development (PUD) designation. The proposed PUD would divide the property into 5 separate areas with distinct land use characteristics and standards. Area A, Area B, and Area C of the PUD are located adjacent to right-of-way (Brighton Boulevard and E. 56th Avenue) and are intended to provide "buffer areas" that are more restrictive in terms of uses and height requirements. Area D is located along Sand Creek and the refinery's eastern property line and is intended to be the most restrictive of the 5 Areas in order to buffer Sand Creek and I-270. The remainder of the site is identified as Area E, which is intended to be the area where the majority of the refining process will take place and the related equipment will be located. Suncor believes that the proposed rezoning and the distinction of the different zone districts embraces the City's regulatory objectives and achieves Suncor's goals of uninterrupted operations.

In coordination with the City, Suncor moved forward with this application in order to facilitate land use requirements and review processes. Under the existing I-3 zoning, the City regularly considers and evaluates variance applications, height exceptions, and Use-by-Permits that are prepared by Suncor. These applications are necessary due to the continually evolving regulatory framework governing petroleum refining operations. The previous process of reviewing all those applications was inefficient and cumbersome for both Suncor and the City.

The PUD was created in order to create efficiency in the review processes and provide predictability for both parties. In addition, the proposed PUD respects the existing refinery conditions and proactively plans for logical extensions of the regulatory framework. The result is a customized zoning that is tailored to the refinery, which should alleviate the need for repetitive and unnecessary City review.

Development Review Team (DRT) Analysis

Since May of 2012:

On May 1, 2012, Planning Commission voted 5-0 to recommend that City Council approve Z-897-12 and S-583-12. Zoning case Z-897-12 will rezone the Suncor refining operations from the current I-3 designation to a customized PUD designation that meets the unique needs of a refinery. Subdivision case S-583-12 will consolidate the Suncor Energy property on the southeast side of Brighton Boulevard.

These cases were originally heard by Planning Commission in May of 2012 in order to accommodate some personnel changes on the Suncor legal team. The delay in bringing them to City Council was a result of an ongoing effort between the City and Suncor to work on several agreements unrelated to these cases. The plan was to package these applications with the other agreements for City Council's approval. It is necessary to move these applications forward at this time in order to minimize the operational impacts for Suncor.

Comprehensive Plan Analysis:

The Development Review Team (DRT) began the review of this application by evaluating the request against the City's Comprehensive Plan. That analysis is as follows:

Comprehensive Plan

The DRT recommendation for this case is supported by the following Comprehensive Plan Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 1a	<u>Future Land Use Plan (FLUP) as a Guide:</u> Use the Future Land Use Plan (FLUP) to guide development patterns and mix of uses and amendments to the Land Development Code (LDC).
<u>Analysis:</u>		The FLUP identifies the subject property and the surrounding area for General Industrial uses. This designation includes heavy industrial users, which is consistent with the current and continued use of the property as a refinery. The Comprehensive Plan envisions that the southwestern portion of the City that is south of I-270 remain as the City's most heavy industrial area.

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Economic Development	ED3a	<u>Future Land Use Plan (FLUP) to Guide Decisions:</u> Use the FLUP to guide land use decisions.
<u>Analysis:</u>		Rezoning the subject property to a PUD designation that allows for a refinery is consistent with the FLUP.

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Fiscal Stability	FS2a	<u>FLUP Consistency:</u> Retain, support, and expand the community's industrial base by approving development that is consistent with the FLUP and <i>Economic Development Strategic Plan</i> and modifying the LDC to reflect the FLUP.
<u>Analysis:</u>		The approval of the requested PUD is consistent with the FLUP and the applicant is an existing business in Commerce City. The approval of this application will help to retain and support a long-time corporate citizen.

After determining that the proposal is consistent with the above Comprehensive Plan goals and the FLUP, DRT reviewed the proposal for consistency with development in the area. DRT determined that development in the area is generally heavy industrial in nature and the approval of a PUD that is customized for refining operations would be consistent with the surrounding heavy industrial users. Also important to DRT was helping to retain a long-time corporate citizen.

Operational Characteristics:

In reviewing the PUD application, it was clear to DRT that the operational characteristics of petroleum refining are unique and there are many contributing factors that make this use so unique. In fact, the nature of the use prohibits them from meeting traditional zoning standards. It was also clear that the federal regulations that govern petroleum refining are constantly evolving and require entities that refine petroleum to meet ever increasing standards. Given that this use is so unique and so heavily regulated by the federal government, DRT felt that the best way for the City to regulate petroleum refining as a land use would be to work with the applicant and draft a customized set of land use standards that address the City's concerns regarding the operations on the property while providing flexibility for the property owner to meet federally mandated regulations.

Benefits of a PUD designation:

In reviewing the PUD, DRT identified several benefits to the proposed rezoning.

1. The proposed PUD would make the refining operations on the east side of Brighton Boulevard legal and conforming.
 - The refining operations located on the west side of Brighton Boulevard were approved for a CUP in 1991 (the zoning ordinance in effect in 1991 and the current LDC require that all refining operations have an approved CUP). The refining operations on the east side of Brighton Boulevard have not been approved through the CUP process. With the approval of the proposed PUD, all of the refining operations would become legal and conforming.
2. The proposed PUD allows for customized standards that meet the needs of a petroleum refinery. The traditional I-3 zoning designation does a good job of regulating traditional heavy industrial development within the City, but a refinery is a unique use that has a special set of requirements due to the number of governing bodies and the nature of their operations. The proposed PUD allows for a customized set of standards that creates review efficiencies for both the property owner and the City.
3. The proposed PUD has been drafted with multiple planning areas in an effort to create more restrictive requirements along the most visible corridors while customizing the requirements for the interior of the site to meet the needs of the refinery. Specifically:
 - The PUD identifies an area 45' in depth along Brighton Blvd and E. 56th Avenue that restricts the allowed uses and the height of structures.
 - The area of the PUD that is most restrictive is located along Sand Creek. This area is most restrictive in order to help to protect the nature of the Sand Creek corridor and minimize potential visual impacts from I-270.
 - The interior of the site allows for a wide range of uses related to petroleum refining operations and allows for taller structures, which will create flexibility for the property owner to meet the requirements of their numerous regulating agencies.
4. Refinery operations are regulated by multiple agencies at every level of government. With the approval of the proposed PUD, duplicative reviews will be minimized. For example, when the refinery is mandated by the Federal Government to install new equipment that improves emissions, but the equipment exceeds the traditional I-3 height standard (50'), the PUD will allow for those sorts of improvements to the interior of the site without adding an additional review through one of the City's public hearing processes.
5. The approval of the PUD will provide predictability for both the applicant and the City regarding development standards.

PUD Outline:

Sheet 1 – This sheet contains the vicinity map, the signature blocks, sheet references, and outlines the general intent and purpose of the PUD.

Sheet 2 – This sheet details the different Areas of the PUD that are located on the northern half of the site.

Sheet 3 – This sheet details the different Areas of the PUD that are located on the southern half of the site.

Sheet 4 – This sheet identifies the bulk standards for each Area, it identifies the allowed uses for each Area, it contains the General Notes related to the PUD, and it identifies the definitions and specific standards related to uses and structures.

Sheet 5 – This sheet identifies a customized set of Performance Standards and regulates signage on the property.

General intent of Areas:

Area A – This area is generally intended to provide a 45’ buffer between the refining operations and public space along the west side of Brighton Boulevard and the north side of E. 56th Avenue on the east side of the refining operations. This area allows for petroleum refining and related equipment so long as it does not exceed 40’ in height and all outdoor storage will be regulated as it is in the LDC. This area also allows for the future potential of primary office structures, above ground storage tanks, mobile office structures, mobile storage containers, the potential for temporary living quarters, additional accessory uses and structures, substations, and utilities.

Area B – This area is generally intended to provide a 45’ buffer between the refining operations and public space along the north side of E. 56th Avenue. This area allows for petroleum refining and related equipment so long as it does not exceed 15’ in height and all outdoor storage will be regulated as it is in the LDC. This area also allows for mobile storage containers additional accessory uses and structures, substations, and utilities.

Area C – This area is generally intended to provide a 45’ buffer between the refining operations and public space along the south side of E. 56th Avenue. This area does not allow for petroleum refining or related equipment, nor does it allow for outdoor storage. This area does allow for the potential of future primary office structures, mobile office structures, mobile storage containers, additional accessory uses and structures, substations, and utilities.

Area D – This area is generally intended to be the most restrictive of the 5 areas in order to protect Sand Creek, the I-270 corridor, and property to the east. This area does not allow for petroleum refining or related equipment, but it does allow outdoor storage that will be regulated as it is in the LDC. This area also allows for above ground storage tanks, mobile storage containers, additional accessory uses and structures, substations, and utilities.

Area E – This area is generally intended to be the least restrictive of the 5 areas in order encourage the property owner to locate refinery operations in the interior of the site and to provide them with the most flexibility to meet mandated regulations. This area allows for all uses allowed in the PUD and allows for petroleum refining equipment to be a maximum of 300’ in height (the tallest structure currently on site is 280’).

Outside Agency Review:

Staff referred this application to several outside agencies that interact with this facility. All of the responses that were received indicated that the proposed PUD Zone Document would not create conflicts with their regulations.

Coordination of requirements:

While reviewing the proposed PUD Zone Document, DRT wanted to ensure that nothing in the document would supersede any requirement from an outside organization that regulates petroleum refining. In order to ensure this, there is language in the PUD that explicitly requires the property owner to comply with all rules and regulations related to petroleum refining.

Addressing inadvertently omitted items:

In an effort to ensure that any development regulations that may have been inadvertently omitted from the document are still addressed, there is specific language that states that if the PUD does not address a development criterion, the regulation shall be the same as it is in the LDC.

Summary:

In summary, DRT has determined that the requested PUD meets the approval criteria for a PUD Zone Document outlined in the LDC, the proposal meets the Comprehensive Plan goals that are outlined above, and the proposal is consistent with the FLUP. DRT also feels that there are a number of benefits for both the property owner and the City if the PUD is approved. After performing this analysis, DRT is recommending that Planning Commission forward a **favorable** recommendation to City Council.

Criteria Met?	Sec. 21-3251. PUD Zone Documents	Rationale
<input checked="" type="checkbox"/>	The PUD zone document is consistent with all applicable City adopted plans or reflects conditions that have changed since the adoption of such plans	The City’s plan for the subject property and the general area is for heavy industrial uses. The proposed PUD allows for a refinery which is consistent with the City’s plan for this area.
<input type="checkbox"/>	The PUD zone document is consistent with the PUD concept schematic	NA. There was no PUD concept schematic required as part of this application.
<input checked="" type="checkbox"/>	The PUD achieves the purposes set out in section 21-4370 and represents an improvement over what could have been accomplished through straight zoning.	The proposed PUD achieves the purposes identified in Section 21-4370 and is an improvement over what could have been accomplished if the property remained with a straight zoning designation. Given the unique use of the property as a refinery, the standard zone districts impose unrealistic standards. The proposed PUD will outline a more realistic set of standards and create more predictability for the property owner and the City.
<input checked="" type="checkbox"/>	The PUD complies with all applicable city standards;	The proposed PUD meets the applicable City standards and includes language that any item governed by the Land Development Code (LDC) and not addressed by the PUD shall default to the LDC.
<input checked="" type="checkbox"/>	The PUD is integrated and connected with adjacent development	To the extent possible, the property has been integrated with adjacent property by creating a more restrictive set of requirements along property lines. However, this site is unique in the fact that it is to everyone’s benefit to limit connectivity to adjacent property in order to ensure security.
<input checked="" type="checkbox"/>	To the maximum extent feasible, the proposal mitigates any potential significant adverse impacts	The PUD has been created so as to minimize impacts to adjacent property as evidenced by the more restrictive requirements along Brighton Blvd, E. 56 th Avenue, and Sand Creek.
<input checked="" type="checkbox"/>	Sufficient public safety, transportation, and utility facilities and services are available to serve the subject property, while maintaining sufficient levels of service to existing development	The subject property is currently developed and served by necessary utilities. Rezoning the property to a PUD designation will not impact levels of service to any other existing development.

Criteria Met?	Sec. 21-3251. PUD Zone Documents	Rationale
<input type="checkbox"/>	The proposed phasing plan for development of the PUD is rational in terms of available infrastructure, capacity, and financing	NA. There is no phasing plan for this PUD.
<input checked="" type="checkbox"/>	The objectives of the PUD could not be accomplished through height exceptions, variances, or minor modifications.	The primary objective of this PUD is to create a set of development standards for a refinery. This could not be accomplished by the use of traditional tools found in the LDC.

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application **meets** the criteria for a PUD Zone Document set forth in the Land Development Code and recommends that the Planning Commission forward the PUD Zone Document request to the City Council with a **favorable** recommendation.

Planning Commission's Recommended Motion

I move that the City Council enter a finding that the requested PUD Zone Document for the property generally located at **5801 Brighton Blvd** contained in case **Z-897-12** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the PUD Zone Document.

Alternative Motions

To recommend approval subject to condition(s):

I move that the City Council enter a finding that, subject to certain conditions, the requested PUD Zone Document for the property generally located at **5801 Brighton Blvd** contained in case **Z-897-12** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the PUD Zone Document subject to the following conditions:

Insert Condition(s)

To recommend denial:

I move that the City Council enter a finding that the requested PUD Zone Document for the property generally located at **5801 Brighton Blvd** contained in case **Z-897-12** fails to meet the following criteria of the Land Development Code:

List the criteria not met

I further move that, based upon this finding, the City Council deny the PUD Zone Document.