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Washington Supreme Court No. 93334-1
Court of Appeals No. 33083-4-III

JUN 30 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

SPOKANE COUNTY, CITY OF SPOKANE, SPOKANE AIRPORT BOARD,
AND EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD,

Appellants,

v.

CITY OF AIRWAY HEIGHTS AND BRIGITTA ARCHER,

Respondents/Petitioner

**RESPONDENTS CITY OF AIRWAY HEIGHTS AND BRIGITTA
ARCHER'S PETITION FOR REVIEW**

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I. IDENTITY OF PETITIONERS

1. The City of Airway Heights, Washington, 1208 South Lundstrom Street, Airway Heights, Washington 99001, is a non-charter code city operating pursuant to Title 35A RCW ("**Petitioner**" or "**City**"). The names and mailing address of attorneys for the City of Airway Heights are: Stanley M. Schwartz and Nathan G. Smith of Witherspoon Kelley, 422 W. Riverside Avenue, Suite 1100, Spokane, Washington 99201.

2. Brigitta Archer is a resident and property owner within the City at 1615 S. Hazelwood Road, Spokane, Washington 99224. The name and mailing address of the attorney for Brigitta Archer is: Margaret Y. Archer of Gordon Thomas Honeywell, 1201 Pacific Avenue, Suite 2100, Tacoma, Washington 98402.

II. COURT OF APPEALS DECISION

On April 12, 2016, the Court of Appeals, Division III, issued a published decision in *City of Airway Heights, Respondent v. Eastern Washington Growth Management Hearings Board, Defendant, et. al*, Case No. 33083-4-III, which upheld the Eastern Washington Growth Management Hearings Board ("**EWGMHB**") Final Decision and Order of Invalidity. A copy of the Court of Appeals Opinion is attached as Appendix A (the "**Decision**"). On May 31, 2016 the Court of Appeals,

Division III, entered an "Order Denying Motion for Reconsideration."
Appendix A-1.

Attached as Appendix B are excerpts from the record.

III. ISSUES PRESENTED FOR REVIEW

Petitioners submit that the Decision of the Court of Appeals: (1) is in conflict with a decision of the Supreme Court and (2) involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(a) and (4).

1. The Court of Appeals failed to properly grant deference to the City and therefore allowed the EWGMHB to substitute its judgment with regard to the City's enactment of two land use ordinances that potentially allow infill development of multifamily uses. Specifically, the Court of Appeals, instead of giving deference to the City, allowed the EWGMHB to elevate a voluntary land use study and unsubstantiated comment letters above both evidence and federal standards supporting the City's action.

2. For the purpose of defining "incompatibility" under RCW 36.70A.530(3), the Court of Appeals erroneously applied the law by failing to afford appropriate deference to the federal standards which are the substantive basis supporting enactment of the ordinances. The federal standards developed by the Department of Defense ("**DOD**") are used by

the Air Force to identify incompatible land use development around a military airfield. Petitioner's assert the EWGMHB's determination of "incompatibility" under RCW 36.70A.530(3) is a matter of substantial public interest in the State of Washington.

IV. STATEMENT OF THE CASE

The City of Airway Heights enacted ordinances C-797 and C-798 (the "**Challenged Ordinances**"), which potentially allow multi-family development on commercially zoned land. This matter involves 29 acres of property ("**Subject Property**").¹ AR 1351 and AR 1493. Respondents filed an appeal with the EWGMHB alleging that the potential multi-family development on the Subject Property was incompatible, due to noise concerns, with the Spokane International Airport ("SIA") operation and the ability of Fairchild Air Force Base ("**FAFB**") to carry out its current or future missions in violation of RCW 36.70A.530. The decision by the EWGMHB was appealed to Spokane County Superior Court. Following oral argument, Judge Michael Price of the Spokane County Superior Court

¹ Significantly, the area surrounding the Subject Property, which is just south of the heavily trafficked, five-lane State Highway 2, is densely developed. The Property is bounded on two sides by two existing apartment complexes, the Deer Creek and Bently Apartments, that collectively comprise approximately 400 apartment dwellings. Existing development in the area also includes a 10-screen, 33,000 square foot cinema located north of the Deer Creek Apartments but still south of Highway 2. North of Highway 2 is a Walmart. A 3-story, 79-unit La Quinta is also planned for the area. Thus, the potential multi-family residential development on the 29-acre Subject Property would be infill development. Any new residential development would not expand the outer footprint of the existing multi-family development. AR 946-48, 950, 952, 474-75, 1204A.

reversed the EWGMHB's decision and affirmed the City's adoption of the Challenged Ordinances.

Like the trial court, the Court of Appeals reversed two conclusions of the EWGMHB in favor of Airway heights. First, the Challenged Ordinances properly discouraged the siting or expansion of incompatible uses adjacent to SIA under RCW 36.70.547 and second, they did not preclude the siting or expansion of FAFB or SIA in violation of RCW 36.70A.200. *Decision* at 3. However, the Court of Appeals held:

the GMHB did not err in balancing the deference owed to the City's ordinances against the evidentiary weight it gave to the opinions of persons and agencies with expertise and with the non-binding recommendations made in the Fairchild Air Force Base Joint Land Use Study (JLUS). We affirm the conclusion of the GMHB that the ordinances violate the GMA by allowing development that is incompatible with FAFB's ability to carry out its current or future missions in violation of RCW 36.70A.530.

Decision at 3. Following the Court of Appeals Decision, a motion for reconsideration was filed by Petitioner. The motion argued that the court misapprehended the evidence and the federal guidance associated with incompatibility.

V. ARGUMENT

A. A JOINT LAND USE STUDY IS NOT A BINDING PLAN BUT DEVELOPS STRATEGIES TO ACHIEVE LAND USE COMPATIBILITY WITH A MILITARY INSTALLATION.

In 2009, Spokane County received financial support from the Office of Economic Adjustment, Department of Defense to conduct a joint land use study for Fairchild Air Force Base ("**JLUS Study**"). Section 1.9 "JLUS Implementation" states:

Once completed, it is important to note that this JLUS is not an adopted plan. It is a strategy guide that will be used by local jurisdictions, Fairchild AFB, state and federal agencies, and other identified stakeholders in the study area to guide their future compatibility efforts.

AR 424 (Emphasis Added). The JLUS Study was a voluntary process undertaken jointly by Spokane County, City of Spokane, Fairchild Air Force Base, Spokane International Airport, and the City of Airway Heights. By its very terms, it is a planning document, not a regulatory document. Section 3.1 "Methodology and Evaluation" discusses "potential future compatibility factors that could impact lands." AR 462.

This section provides a general technical background on the factors discussed based on available information. The intent is to provide an adequate context for awareness, education, and development of JLUS recommendations. As such, it is not designed or intended to be utilized as an

exhaustive technical evaluation of existing or future conditions within the study area.

AR 462 (Emphasis added).

The JLUS process is controlled by two Department of Defense instructions: (1) Instruction Number 3030.3 "Joint Land Use Study (JLUS) Program" ("**JLUS Instruction**"), and (2) Instruction Number 4165.57 "Air Installation Compatible Use Zones (AICUZ)" ("**AICUZ Instruction**"), (jointly referred to as "**DOD Instructions**"). AR 1092. The AICUZ Instruction contains technical land use compatibility standards based upon proximity to an airfield. AR 1093.

In reliance upon the DOD Instructions, Airway Heights adopted Ordinance C-771 entitled "JLUS Protections for FAFB," which is in full force and not affected by the Decision (the "**JLUS Ordinance**"). Land use permitting under the JLUS Ordinance is governed by standards contained in the AICUZ Instruction. AR 1168. That instruction "promotes long-term compatible land use on and in the vicinity of air installations by [adopting] compatible land use regulations." (Emphasis Added) AR 1170. There was no appeal of the JLUS Ordinance.

After public hearings and comment, the City enacted Ordinances C-797 and C-798 (the "**Challenged Ordinances**"), which incorporate the requirements of the City's JLUS Ordinance. AR 1351, AR 1493. The

Challenged Ordinances potentially allow the development of multi-family housing on the Subject Property pursuant to a Conditional Use Permit ("CUP") process. AR 1359 (Appendix B). AR 1351 and AR 1493. Through a quasi-judicial process a hearing examiner will decide whether a CUP can be issued. *Id.*

B. BACKGROUND ON THE CHALLENGED ORDINANCES.

To address the multi-family housing deficiency existing in the City, the Planning Commission considered a conditional use permit process to allow for residential development in certain commercial and mixed use zones. The minutes reflect the following presentation from the City Planner:

Though the City desires to maximize the housing alternatives for its current and future residents, any proposed multi-family developments in commercial areas will need to be highly regulated and reviewed, and done so in such a way as to ensure there is no conflict with FAFB operations.

AR 1219.

The Subject Property is not contiguous to FAFB or SIA. AR 1689 (Map 2). The Planning Commission also received a memo from the Community Development Director that identified the sound contour documents, the AICUZ land use compatibility chart, the City's evidentiary considerations and information explaining how encroachment

is defined by the Department of Defense under the DOD Instructions.
AR 1053 and AR 1160.

C. THE CHALLENGED ORDINANCES WERE ADOPTED TO ADDRESS A HOUSING DEFICIENCY, YET ENSURE FAFB IS PROTECTED.

The enactment of the Challenged Ordinances took nearly eighteen months with the third and final reading occurring on August 5, 2013 before the City Council. AR 1350 and 1492. The Staff Report states:

Staff is recommending [these ordinances] because the City has a deficiency in alternative housing options, especially multi-family residential.

AR 1369. The City Council record contains the Community Development Staff Report, with the Planning Commission recommendation and attachments that include comments received from FAFB, SIA, the City of Spokane, Spokane County and interested parties.

1. The Challenged Regulations Provide Protections for FAFB and SIA by Requiring Extensive Analysis at the time of a Project Application.

The Challenged Ordinances contain considerable protections for FAFB and SIA. Both of the Challenged Ordinances require: (a) a conditional use permit for multi-family residential (AR 1355) and (b) sound mitigation based upon a site-specific sound study (AR 1356). Both also affirmatively prohibit any residential project within 100 feet of the 70 LdN sound contour identified in the JLUS Ordinance. AR 1499.

Finally, the JLUS Ordinance² "potentially" allows a multi-family development in the 65-69 LdN area when the following requirements are satisfied:

- (1) an evaluation to demonstrate a community need for residential use would not be met if the development were prohibited and there are no viable alternative locations;

² The Court's Decision placed weight upon the Military Influence Areas (MIA) set out in the JLUS Study. A MIA is a "formally designated geographic planning area where military operations may impact local communities" and affect missions. AR 592. Notwithstanding the above, there was disagreement over how the Subject Property should be classified for planning purposes.

In response to the comments on the Challenged Ordinances, the Development Services Director delivered a July 24, 2013 memo to the City Manager, City Council and file. He wrote

Under MIA 3, as defined by DOD, within the 65 LdN contour, residential development should be discouraged. However, if a community has a need for residential uses in the area, such uses can generally be made compatible using appropriate sound mitigation, height limitations, and design.

AR 1653, AR 1195 (AICUZ Instruction, Appendix 3), and AR 1151.

According to DOD recommendations, these properties would be located in MIA 3.... However, during the local JLUS process, the draft [Spokane County] regulations developed recommended consolidating MIAs in 3&4. This extended the land use restrictions recommended under DOD standards for MIA 4 out to the 65 LdN line. Due to how the proposed regulations would negatively affect Airway Heights' development, we did not agree to this recommendation. Instead, we implemented MIAs more closely based on the 1995 FAFB AICUZ sound contours, with the allowed land-use being very close to, but somewhat more restrictive, than DOD recommendations.

AR 1654. In summary, the Development Services Director points out that actual sound testing (in reliance upon the AICUZ Instruction) will be the basis to support the mix of uses, which may include multi-family development under a CUP.

- (2) a noise study demonstrating that 69 LdN is not exceeded over a prescribed period of time;
- (3) outdoor noise abatement of at least 25 dB with additional consideration for peak noise or vibrations;
- (4) density not to exceed between 10 to 20 units per acre;
- (5) residential units to be located on the section of property furthest from the operational flight path or runway center line alignment;
- (6) the owner to sign an aviation easement and a real estate notice with a nuisance covenant waiving liability and damages resulting from noise; and
- (7) a number of development conditions to include comment and recommendations from FAFB that uphold the purpose and intent of Ordinance C-771 and protect FAFB.

AR 1154, 1155 and 1158.

D. THE JLUS STUDY WAS MERELY STRATEGY GUIDE FOR FUTURE COMPATIBILITY EFFORTS; THUS THE EWGHMB RELIANCE UPON ITS CONTENTS IS MISPLACED.

Central to the Court of Appeals' Decision is its conclusion that the DOD Instructions, which the City relied for its planning decision, "focuses on a current Ldn level" rather than potential future missions and

operations. *Decision* at p. 29. The Court's understanding of the DOD Instructions is incorrect.

The Department of Defense, Office of Economic Adjustment is assigned the duty to manage the JLUS program and implement procedures to support "the long-term sustainability and operability of military installations." AR 1093 (emphasis added). The AICUZ Instruction states its purpose.

Promote long-term compatible land use on and in the vicinity of air installations by encouraging State and local governments to adopt enabling legislation and compatible land use regulations into their planning and control processes and by partnering with communities and other eligible entities to protect land through restrictive use and conservation easements.

AR 1170 (emphasis added). Under "Aircraft Noise," DOD states "long-term land use compatibility with noise resulting from the operation of military aircraft should minimize the effects on people, animals (domestic and wild) and structures on or in proximity to air installations." AR 1178 (emphasis added). The AICUZ Instruction contains the following recommendation:

Land use planning involves long-range strategies to influence present and future uses of lands. Frequent AICUZ updates and changes in recommendations can undermine the neighboring communities'

willingness to incorporate DOD Component recommendations into local comprehensive plans or to enact land use controls. AICUZ study recommendations should be based on best available, realistic long-range projections of air installation operations in support of local, state, and regional government land use planning objectives.

AR 1179 (emphasis added). Appendix 3 to Table 2 for the AICUZ Instruction contains the "Recommended Land Use Compatibility In Noise Zones." AR 1191. While residential use is discouraged in Ldn 65-69 and strongly discouraged in Ln 70-74, for compatibility purposes it is not deemed to be incompatible and thus prohibited until a DNL measurement of 75 is obtained. AR 1191-1195. Based upon the AICUZ Instruction, the potentially permitted development of residential uses in the 65 to 69 Ldn sound contours does not create incompatible uses.

The notes for Table 2 recognize that local conditions may require the need for housing in these noise zones and where there is an absence of viable development options with an evaluation conducted locally prior to approval. Such evaluation would demonstrate community need for the residential use. Where the community determines such uses must be allowed, there shall be outdoor and indoor noise reduction. AR 1195.

The Court of Appeals opined that "incompatible development" must be defined more broadly than the installation's current mission; it

must address future military needs. *Decision* at 29. But the Court failed to recognize that, as noted above, the DOD Instruction indicates that the actual noise measurements are, in fact, relevant to promoting "long-term compatible land use on and in the vicinity of air installations." The noise thresholds are based upon accepted practices and health standards in the United States.³

It is in the public interest, not just in the City, but also in those jurisdictions neighboring other military installations, to have predictable and certain land use standards like the DOD Instructions upon which to develop land use regulations as opposed to the *ad hoc* decision making engaged in by the EWGMHB. The Decision allows allegations to trump actual sound measurements.

E. THE COURT OF APPEALS DECISION CONFLICTS WITH THE COURT'S ADOPTED DEFERENTIAL STANDARD TO THE CITY.

The Court of Appeals acknowledged the JLUS Study contained "non-binding recommendations" and that the JLUS is not "an exhaustive technical evaluation of existing or future conditions within the study area." *Decision* at 3 and 10. Yet, the Decision allows the EWGMHB to elevate

³ The AICUZ guidelines "have been established on the basis for studies prepared and sponsored the USAF, U.S. Department of Housing and Urban Development (HUD), U.S. Environmental Protection Agency (USEPA), Federal Aviation Administration (FAA), Federal Housing Authority (FHA), and state and local agencies. The guidelines recommend land uses that are compatible with air field operations while allowing maximum beneficial use of adjacent properties." AR 1059.

the JLUS Study, the Court of Appeal's own decision in *Deer Creek Decelopers, LLC v. Spokane County*, 157 Wn.App. 1, 236 P.3d 906 (2010), and generalized comments from stakeholders above empirical standards used by DOD throughout the United States.

The Decision relies upon: (1) a letter from the FAFB Colonel (*Decision*, at p. 21); (2) a letter from the City of Spokane Planning and Development Department Director; and (3) the 2008 Spokane County Hearing Examiner Decision (regarding a portion of the Subject Property (Deer Creek Apartments)) with the related Washington State Court of Appeals Decision. Airway Heights asserts that the above letters, which are mirrored in the *Deer Creek* Decision, are not substantial evidence.

Colonel Newberry at FAFB recognized the unpredictability of future noise contours, but believed the subject property would be susceptible to aircraft noise into the foreseeable future. AR 652. He indicated that this fact was "highlighted in the 2009 JLUS Study," *Id.* The Colonel's letter recognized that the 1995 AICUZ showed the subject property located in the 65-70 LdN noise zone. In 2007, it was outside the 65 LDN line. AR 652. He concluded:

If AH has no choice other than to include these parcels in the C2 amendment, we request that the City mandate a 30 dB outdoor-to-indoor noise reduction as a condition of approval. Further, we would

ask the developer to provide the City of Airway Heights and FAFB with its plans to reach the 30 dB reduction threshold. This will allow the Air Force to properly comment on the compatibility of the proposed development.

AR 653.⁴ The remaining "evidence" presented through the Colonel's letter consists of the subject property being "susceptible" to "aircraft noise." The City of Spokane Planning and Development Department alleged additional residential housing on the subject property would impact FAFB "for the foreseeable future," and "jeopardize current and future missions/operations...detrimental to the public health, safety, or general welfare." These words and terms did not convey a quantitative or scientific measurement. AR 674; *Decision* at 22.

The JLUS Study⁵ and the imbedded comments, coupled with Colonel Newberry's statement that the subject property is outside 65 LDN line are not "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the Order." *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d

⁴ A similar letter was submitted by Fairchild Air Force Base on April 14, 2008, to Spokane County in connection with the Deer Creek Apartments application. AR 370.

⁵ Airway Heights was not required to, nor did it adopt, the JLUS Study, *carte blanche*. See AR 1141-42. The JLUS Study was not intended to be evidence - it was a planning exercise. Even though the Decision treats the JLUS Study as "evidence," the Court writes "under the JLUS, the property was prohibited from being redesignated to a residential category." *Decision*, at p. 12. Unless this statement simply repeats language from the JLUS, it misconstrues the process that unfolded after completion of the JLUS Study. See AR 681.

38, 46, 959 P.2d 1091 (1998). The unsubstantiated, unquantified and speculative comments certainly were not sufficient for the EWGMHB or the Court to be left with a definite and firm conviction that the City of Airway Heights made a mistake with respect to the Subject Property. *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144, 155, 256 P.3d 1193 (2011).

In *Kittitas County*, the Court reversed the EWGMHB's finding that Kittitas County was noncompliant with the GMA because it diverged from WSDOT's recommendations for land use around general aviation airports. *Id.* at 174. This Court wrote "[t]he Board, however, is supposed to give deference to the County unless the County clearly erred." *Id.* at 175.

Justice Chambers (concurring in part, and dissenting in part) wrote the required deference given local governments under the GMA sets a "high standard before a local decision is overturned." *Id.* at 186. RCW 36.70A.320(3) requires a finding of compliance unless the action is clearly erroneous "in view of the entire record before the Board and in light of the goals and requirements of the GMA." *Id.* Justice Chambers concluded by writing:

Generally speaking, if the local government has made an earnest attempt to comply with the law, has followed the procedures and explained why it did what it did, we should not meddle.

Id. Justice Johnson (concurring in part, and dissenting in part) devoted a considerable portion of his opinion to "deference." Justice Johnson wrote

This burden is intentionally very high: hearings boards (and courts) must apply 'a more deferential standard of review to actions...than the preponderance of the evidence standard.

...

A county's [city's] action is not 'clearly erroneous' merely because an unelected hearings board has a 'firm and definite conviction that a mistake has been committed.' Rather, [a] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.

...

In short, whether an action is 'clearly erroneous' should not turn on a hearings board's member's 'firm and definite convictions,' but whether the hearings board is firmly convinced that an error of law has occurred after full consideration of the law and the evidence.

Id. at 193-195. Here the EWGMHB failed to afford proper deference to the City given the record supporting the need for additional housing and the incompatibility standards set forth in the DOD Instructions. Instead, the Court of Appeals relied upon findings from the EWGMHB that reflected the Board's decision on evidence that it characterized as creating a "high potential for adverse noise and safety impacts" (even though no

such evidence existed with regard to safety) that jeopardized FAFB's long term viability. *Decision* at 24-25. Significantly, the Decision misapprehended the DOD Instructions and did not give appropriate deference to the evidence and extensive process undertaken by Airway Heights before any infill multi-family development would be considered upon application for a conditional use permit.

VI. WHY REVIEW SHOULD BE ACCEPTED

Petitioners request this Court reverse that portion the Decision holding the Challenged Ordinances allow "development that is incompatible with FAFB's ability to carry out its current or future missions." *Decision* at 3. The Court wrote:

We do not believe that adopting a standard that focuses on a current Ldn level is consistent with our Legislature's intent.

Decision at 29 (emphasis added). To support this statement the Court found the EWGMHB both "considered development inconsistent with the JLUS as *evidence* of incompatibility" and "the JLUS participants had expertise in knowing how residential development could adversely impact the current and future operations of FAFB." *Decision* at 30. Instead of relying upon and giving deference to imprecise and speculative information from "stakeholders" (*Decision* at 29), the Court should have

deferred to the objective siting standards for determining incompatible development, which include consideration of future development.

It was reasonable and well within its discretion for the City to rely upon the technical and objective criteria for incompatibility set forth in the DOD Instructions as opposed to "the opinions of stakeholders and communities impacted by FAFB, in addition to the JLUS." *Decision* at 32. Airway Heights' decision to rely on objective standards most certainly was not clearly erroneous.

It is, and has been, a continuing practice of Airway Heights to support the mission of FAFB. The Challenged Ordinances were the product of study and extensive process mindful of noise impacts and mission profiles. This case involving the permissible land use near a military airfield presents a matter of substantial public interest.

VII. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court accept review of the Court of Appeals' decision.

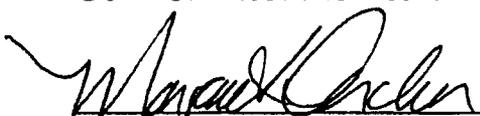
RESPECTFULLY SUBMITTED this 30th day of June, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and complete copy of the foregoing was caused to be served on June 30, 2016, on counsel of record at the addresses and in the manner shown below.

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Spokane, Washington, this 30th day of June, 2016.



Alicia Asplint

APPENDIX A

FILED
April 12, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

CITY OF AIRWAY HEIGHTS,
Respondent,

v.

EASTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD,
Defendant,

SPOKANE COUNTY, CITY OF
SPOKANE, SPOKANE AIRPORT
BOARD,

Appellants,

BRIGITTA ARCHER,

Respondent.

BRIGITTA ARCHER,

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v.

No. 33083-4-III

PUBLISHED OPINION

No. 33083-4-III

City of Airway Heights v. E. Wash. Growth Mgmt. Hr'gs Bd.

EASTERN WASHINGTON GROWTH)
MANAGEMENT HEARINGS BOARD,)

Defendant.)

SPOKANE COUNTY, CITY OF)
SPOKANE, SPOKANE AIRPORT)
BOARD, and CITY OF AIRWAY)
HEIGHTS,)

Appellants.)

LAWRENCE-BERREY, A.C.J. — Incompatible residential and commercial development around a military installation can jeopardize the installation's mission and, in turn, jeopardize the economies of nearby communities. Washington State's Growth Management Act (GMA), chapter 36.70A RCW, addresses this problem by prohibiting "development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements." RCW 36.70A.530(3).

Here, the city of Airway Heights (City) adopted Ordinances Nos. C-797 and C-798 to provide a conditional use process for multi-family residential development in the vicinity of Fairchild Air Force Base (FAFB) and the Spokane International Airport (SIA). The Eastern Washington Growth Management Hearing Board (GMHB or the Board) invalidated the ordinances under RCW 36.70A.530(3), as well as other provisions of the GMA. The Spokane County Superior Court reversed the GMHB.

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We hold that the GMHB did not err in balancing the deference owed to the City's ordinances against the evidentiary weight it gave to the opinions of persons and agencies with expertise and with the nonbinding recommendations made in the Fairchild Air Force Base Joint Land Use Study (JLUS). We affirm the conclusion of the GMHB that the ordinances violate the GMA by allowing development that is incompatible with FAFB's ability to carry out its current or future missions in violation of RCW 36.70A.530. However, we reverse the conclusions of the GMHB that the ordinances (1) fail to discourage siting or expansion of incompatible uses adjacent to the SIA in violation of RCW 36.70.547, and (2) preclude the siting or expansion of FAFB or the SIA in violation of RCW 36.70A.200. Because we affirm one of the three bases on which the GMHB invalidated the challenged ordinances, we affirm the result of GMHB's decision and order invalidating the City's ordinances.

FACTS

1. The Challenged Ordinances

On August 5, 2013, in response to a housing deficiency, the City Council of Airway Heights adopted Ordinance Numbers C-797 and C-798 (the ordinances). These ordinances amended the City's zoning regulations and maps, redesignated approximately 29 acres of commercial property in the vicinity of FAFB and the SIA as multi-family

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residential, and authorized the City's hearing examiner to conditionally approve multi-family residential development. The conditional approval was subject to (1) an evaluation to demonstrate a community need for residential use, (2) a noise study demonstrating that 69 day-night average sound level (Ldn) was not exceeded over a prescribed period of time, (3) outdoor noise abatement of at least 25 decibels (dB) with additional consideration for peak noise or vibrations, (4) density not to exceed 10 to 20 units per acre, (5) residential units to be located furthest from the operational flight path, (6) the owner to sign an aviation easement waiving liability for noise, and (7) development conditions, including consideration of comments from FAFB.

2. Background Prior to the Ordinances

The Deer Creek Apartment development lies within the boundaries of the property involved in this case. The Deer Creek project originally contemplated 280 residential units built in two phases. *Deer Creek Developers, LLC v. Spokane County*, 157 Wn. App. 1, 5, 236 P.3d 906 (2010). Phase I of Deer Creek was permitted due to an error in the County's zoning code that was corrected before the developer applied for Phase II.

In 2008, Deer Creek submitted an application to develop Phase II. Phase II involved 124 multi-family units on about 5 acres. The hearing examiner received opposition to Deer Creek's application from several agencies. The United States

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Department of the Air Force at FAFB opposed construction of the additional apartments based on potential changes in noise contour lines:

Based on the 1995 Fairchild AFB Air Installation Compatible Use Zone (AICUZ) Study, the subject property is located in the 65-70 Ldn Noise Zone. Based on Fairchild's 2007 AICUZ study, the property is now outside the 65 Ldn line. This demonstrates that noise zones expand and contract as the mission changes at Fairchild AFB. Unfortunately, we cannot predict Fairchild's future noise zones; however, we do know that the subject property will be susceptible to aircraft noise for the foreseeable future.

Admin. Record (AR) at 370.

The SIA's concerns went beyond noise abatement, objecting that the project would adversely impact the layout and length of its proposed third runway:

The project currently under consideration is an expansion of a nonconforming use which is located within the airport area of influence and would serve to further jeopardize current and future airport operations. . . . further jeopardize because the existing 120 units have already been allowed to be built and will impact on the proposed runway layout, length, and orientation).

[The development] is within 2500 feet of the end of the proposed runway. The implications for potential challenges and long-term effects are obvious. Therefore, the Spokane Airport Board respectfully requests that the hearing examiner consider the impact to the airport and not allow the expansion or continuation of this or any other nonconforming use in the airport influence area.

AR at 372.

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The Federal Aviation Agency (FAA) considered the proposed apartment complex an incompatible land use because it was “located within the ‘area of influence’ of two major airports, and located in a potential cumulative noise impact area.” AR at 372. It explained that the proposed development could be exposed to significant numbers of aircraft flying at low altitudes, which would subject the area to significant noise impacts. The FAA also expressed concern regarding the proportionately higher percentage of accidents that occur in aircraft traffic pattern areas, considering the volume of aircraft that use the concentrated areas of airport approach areas, together with the complexities of takeoff and landings. It also noted that residents in such areas often experience safety concerns from visual observations of low-flying aircraft operating into and out of the airport. It stated, “it would be disconcerting to many people on the ground in this area . . . due to a perceived hazard of low-flying aircraft.” AR at 374. The FAA emphasized that such visual perceptions, and related complaints, are one of the main reasons that large-scale residential developments are strongly discouraged in airport areas of influence.

The FAA emphasized that safety is its first priority, but that another significant priority is protecting the public investment in airports through compatible land use, planning and zoning. The FAA noted that it had long supported the airport as an important aviation facility and that it had funded much of the development of the airport

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over the years, at a cost exceeding \$94 million. It stated it depends on local authorities to protect the airport from encroachment by incompatible land uses.

The FAA observed that current aircraft operations for the airport and FAFB have been acceptable over the largely vacant land in the area, but that this was being jeopardized by the high density residential development approved south of the site, as well as the proposed multi-family project. It advised that it requires airport owners and the city of Spokane and Spokane County to ensure compatibility between the airport and surrounding land uses. It summarized its concerns: "Permitting high density residential uses weakens existing protection for the airport, the flying public, and the future residents by allowing incompatible development and potential hazards closer to the critical phases of aircraft approach and departure operations." AR at 374.

Greater Spokane, Incorporated, which combines both the Spokane Chamber of Commerce and the Spokane Economic Development Council, also opposed the development. It noted that the SIA and FAFB are critical assets for the economic growth of our region, that FAFB is the largest employer in the region and has an economic impact in the community approaching \$1 billion. It maintained that the SIA may be the single most important asset for continued economic growth in the region. It continued:

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We have seen too many examples of where the Air Force has curtailed flying operations at other bases simply due to volume of noise complaints from the community. For that reason, encroachment of residential development around flying operations is viewed by base closure and realignment commissions as a principal factor when considering closure of a facility.

We believe that allowing this incompatible use to proceed will create a precedent that will significantly complicate future actions to prevent encroachment. Fairchild Air Force Base and Spokane International Airport are simply too important to allow them to be "boxed in."

AR at 376.

A hearing examiner denied the application for the residential apartment project, concluding that the development, even as conditioned with sound attenuation, "would weaken existing protection for the airport and Fairchild AFB, the flying public and future residents, by allowing incompatible development and potential hazards closer to the critical phases of aircraft approach and departure operations; and would jeopardize the future viability of such facilities." AR at 332.

Deer Creek appealed the hearing examiner's denial of the conditional use permit.

The superior court affirmed the decision of the hearing examiner. *Deer Creek*, 157 Wn.

App. at 6. This court affirmed the superior court, stating:

The unchallenged facts establish that the Deer Creek site will be subject to airport noise for the foreseeable future and that the noise impact zones for FAFB expand and contract as the mission of FAFB changes. Findings of fact also establish that a multifamily development on the Deer

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Creek site would adversely impact the layout, length, and orientation of a proposed runway for SIA and will jeopardize current and future SIA operations.

Id. at 17.

3. *The 2009 Fairchild Air Force Base Joint Land Use Study (JLUS)*

While the Deer Creek case was making its way through the courts, entities including Airway Heights, FAFB, the SIA, and the City and County of Spokane participated in the JLUS. The study was a voluntary collaborative planning effort involving “local communities, federal officials, residents, business owners, and the military to identify compatible land uses and growth management guidelines near active military installations.” AR at 378. Its purpose was to provide a mechanism for FAFB and local governments to work as a team to prevent incompatible land uses. Its goals included: (1) managing development in the vicinity of FAFB that would interfere with the continued operations of FAFB, (2) maintaining the economic vitality of the community, (3) ensuring the ability of FAFB to achieve its mission, and (4) preserving the ability of FAFB to expand or adapt its missions to changing conditions. It stated: “[t]he goal of the Fairchild JLUS is to protect the viability of the current and future missions at Fairchild AFB while at the same time accommodating growth, sustaining the economic health of the region, and protecting the public health and safety.” AR at 417.

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The JLUS stated that urban development in the vicinity of military installations can negatively impact military activities and readiness and that “[t]his threat to military readiness activities is currently one of the military’s greatest concerns.” AR at 416. It emphasized that its purpose was to be a planning guide, not a regulatory document:

This section provides a general technical background on the factors discussed based on available information. The intent is to provide an adequate context for awareness, education, and development of JLUS recommendations. As such, it is not designed or intended to be utilized as an exhaustive technical evaluation of existing or future conditions within the study area.

AR at 462.

The JLUS identified the Deer Creek development as particularly concerning, designating high density residential housing a critical threat to FAFB’s mission, stating “[d]evelopment within Fairchild’s critical operations area will limit the ability of the installation to adapt to new missions, to support new/different aircraft, and could jeopardize its long-term viability.” AR at 474.

The JLUS noted that even though the Deer Creek development was currently outside the 65 Ldn noise contour, safety, noise, and light pollution remained concerns.

Emphasizing that aircraft noise is a primary concern in compatibility planning, the JLUS devoted a substantial portion of its evaluation to the noise

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impacts of military airfields. It utilized a technical noise study to assess current and future conditions, evaluated four future mission scenarios, and assumed a third SIA runway oriented parallel to the FAFB runway. The results of these scenarios were combined with 20-year forecast modeling results for the SIA to provide an overall perspective on the effect of all aircraft operations within the region.

The study also relied on the 2007 Fairchild Air Installation Compatible Use Zone (AICUZ) study, which is a Department of Defense (DOD) planning program that was developed in response to incompatible urban development and land use conflicts around military airfields. The AICUZ provided detailed noise modeling of current aircraft operations at the installation. However, the JLUS cautioned against undue reliance on the AICUZ noise contours because AICUZ contours are based only on current conditions and do not account for changes in installation operations.

The JLUS also established four categories of military influence areas (MIA), which it defined as “designated geographic planning area[s] where military operations may impact local communities, and conversely, where local activities may affect the military’s ability to carry out its mission.” AR at 592. The four MIAs were designated in part to establish compatibility requirements within the

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designated MIAs. MIAs 3 and 4 are at issue in this case. MIA 3 is described as an “area that is defined by a ¼ mile area around the 65 Ldn contour for the potential mission scenario, which is based on a mix of next generation air refueling aircraft and B-52 aircraft.” AR at 601. Strategies applied to MIA 3 focus on noise attenuation. MIA 4 designates an area of greater concern. MIA 4 is defined as “having a potential for noise and safety impacts to which land use controls are appropriate.” AR at 595. The JLUS provided that within MIA 4, “[l]and currently designated for non-residential use shall not be redesignated to a residential use category.” AR at 641. A JLUS map shows that the property is within MIA 4. Prior to Airway Heights’ annexation of the property and adoption of the ordinances, the property was designated for commercial uses. Therefore, under the JLUS, the property was prohibited from being redesignated to a residential category.

4. Annexation of the Property and Interlocal Agreement

After the hearing examiner denied Deer Creek’s conditional use permit, the City moved forward to annex the property. These efforts prompted negotiations between Airway Heights, Spokane County, and the city of Spokane. During this process, the parties entered into an interlocal annexation agreement to ensure protection of FAFB and

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the SIA. In the December 3, 2009 annexation agreement, the parties agreed that the SIA and FAFB are essential public facilities and that the JLUS provided a sound tool for determining whether development was compatible with FAFB and the SIA. The agreement provided that the parties should discourage development that is incompatible with FAFB's operational needs and ability to carry out future missions.

The agreement defined "incompatible development" as "*permitted land uses that are inconsistent with the Fairchild Air Force Base Joint Land Use Study ("JLUS"), [Washington State Department of Transportation (WSDOT)] Aviation Division Regulations, FAA Regulations, state statutes or regulations.*" AR at 352 (emphasis added). The City's annexation of the property occurred on January 1, 2012.

The city of Spokane, Spokane County, Airway Heights, Medical Lake and FAFB subsequently formed a partnership to draft policies and regulations to implement the strategies recommended in the JLUS. The parties formed a coordinating committee and established a technical assistance group. These groups were responsible for reviewing draft comprehensive plan amendments and development and code regulations to ensure compliance with the JLUS. With this interim process in place, the coordinating committee proceeded to evaluate the means through which jurisdictions could implement the JLUS recommendations.

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After annexation of the property, Airway Heights began considering amendments to its mixed use regulations to allow development of Phase II of the Deer Creek apartments as well as high density multi-family residential housing on all of the property. During December 2011, due to concerns that the proposed regulations would threaten FAFB operations and conflict with the regulations being developed to implement the JLUS, Airway Heights implemented a moratorium on applications for conditionally approved residential units on commercially zoned properties.

In March 2012, the City's planning commission began considering a conditional use permit process to allow for residential development in certain commercial zones. Derrick Braaten, the City's planner, explained that Airway Heights Municipal Code (AHMC) 17.37 needed to be updated due to it being too broad and lacking in design standards such as sound attenuation. He stated there was a severe deficiency in multi-family housing in the area and that the amendments allowed for expansion of potential housing options, particularly multi-family developments. He stated that any proposed multi-family developments in commercial areas would be highly regulated and would require sound attenuation in the 65-69 Ldn sound contours.

In response, the city of Spokane advised Mr. Braaten that it opposed Airway Heights' unilateral proposal to allow new residential development within MIA 4, stating

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such development would impair FAFB's ability to carry out its mission requirements and would jeopardize FAFB's competitiveness in future base closure rounds. It noted that the JLUS and state and federal laws discourage locating new residential development of any kind in areas of high noise impact. It warned that "[a]llowing new residential uses, even as part of a mixed use development, in the 65 Ldn noise contour for Fairchild and MIA 4, as identified by JLUS, is not appropriate and will give false expectations if the mixed-use overlay zone covers areas within the 65 Ldn noise contour." AR at 691.

Spokane County also objected to the proposed amendments. The county commissioners found the amendments in violation of the JLUS, which had recommended against expanding residential uses in the MIA 4, and the implementation policies developed by the JLUS steering committee at its March 8, 2012 meeting. In a letter to Mr. Braaten, they stated: "The draft policies and regulations recognized by the JLUS Implementation Steering Committee combined MIA 3 and MIA 4 into MIA 3/4 in the draft Fairchild Air Force Base Overlay Zone As a part of the regional collaborative process Mayor Patrick Rushing and you were in attendance at the meeting at the point that specific recommendation was both debated and agreed upon in what is now referred to as the Draft Document." AR at 698. In response to Mr. Braaten's argument that the AICUZ standards provide adequate protections, the commissioners argued that the

standards provide only minimal protections for FAFB's national security mission:

The adoption of substantive protections in JLUS Overlay Zoning Regulations by all relevant jurisdictions is of equal or perhaps greater importance in securing the siting for the KC 135 replacement tanker and averting a closure during the upcoming 2013 and 2015 BRAC [Base Realignment and Closure Commission] processes. Clearly, allowing for more intense and specifically residential development within 65 Ldn contour and underneath identified training flight patterns for FAFB is inconsistent with the region's commitment to protecting FAFB from closure.

AR at 699.

5. County and Municipality Implementation of the JLUS

Meanwhile, Spokane County initiated an amendment to its zoning code to implement the JLUS in the county. At the public hearing, Airway Heights opposed a proposal to combine MIA 3 and 4, arguing that both the DOD AICUZ and the JLUS only required noise abatement in the MIA 3, not the broader restrictions associated with MIA 4. Mr. Braaten disagreed with the land use restrictions in the 65 Ldn contours, pointing out that the DOD AICUZ and the JLUS state that prohibitive land use restrictions should not occur until the 70 Ldn. He argued that residential development within the 65 Ldn could be compatible with appropriate sound mitigation. He argued that extending MIA 4 to MIA 3 is arbitrary and unfairly burdens landowners with unnecessary restrictions that offer little benefit to FAFB because the area is outside of any actual encroachment area.

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Spokane County's resolution ultimately prohibited new residential zones in the MIA 3/4, providing: "Urban residential uses are acceptable in MIA 3/4 provided that the underlying zone adopted prior to adoption date of this chapter is a residential zone."

AR at 794.

In a substantially similar regulation, the city of Spokane added a chapter to its municipal code to implement the JLUS. Its ordinance stated: "It is the purpose of this chapter to prevent incompatible land uses in the vicinity of Fairchild Air Force Base (Fairchild AFB) consistent with the recommendations of the Fairchild AFB 2009 Joint Land Use Study, Air Installation Compatible Use Zone Study (AICUZ)." AR at 726. The ordinance recognized that FAFB's missions "may be modified in the future to include more substantial aircraft operations involving more intrusive aircraft" and stated that the regulations were implemented to protect FAFB's expansion of its military missions by restricting incompatible land uses. AR at 726.

Like Spokane County's ordinance, the city of Spokane's ordinance combined MIAs 3 and 4, stating "MIA 3/4 is the primary land use impact area whereby land uses and development densities have the potential to adversely impact Fairchild AFB." AR at 730. It defined incompatible land use as "[u]ses that put people in harm's way, increase the risk or severity of an aircraft accident, endanger public infrastructure, or reduce the

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long-term functionality and economic viability of the region's civil and military aviation facilities." AR at 730. It prohibited new residential zones in the MIA 3/4.¹

Due to the disagreement between the local governments regarding implementation of the JLUS, Airway Heights, the city of Spokane, and Spokane County entered into a "MEMORANDUM OF UNDERSTANDING [MOU] REGARDING IMPLEMENTATION OF THE JOINT LAND USE STUDY FOR FAIRCHILD AIR FORCE BASE (JLUS)." AR at 1121. The MOU, effective August 2, 2012, noted that the parties had previously agreed to a definition of incompatible as "permitted land uses that are inconsistent with JLUS, WSDOT Aviation Division Regulations, FAA Regulations, state statutes or regulations." AR at 1121. It provided for a period of 90 days for the parties to reach an agreement regarding future residential development in Airway Heights.

Five months later, with the approval of the JLUS coordinating committee and the Spokane County commissioners, Airway Heights adopted JLUS Ordinance C-771, "JLUS Protections for FAFB." AR at 1142. Land use under this ordinance is governed by standards set forth in the 1995 AICUZ. Similar to the JLUS, it discouraged residential

¹ This background is provided only to show the context of the dispute. Because the property is subject to the more stringent MIA 4 limitations, the fact that the city of Spokane and Spokane County determined that MIA 3 should be subject to the more

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development in the 65-69 Ldn and generally prohibited it in areas exceeding 70 Ldn. The ordinance generally prohibited new or expanded residential development in MIA 3/4, but permitted proposed multi-family or mixed use development through a conditional use permit, subject to the provisions of the underlying zone. *Significantly, nothing in the MOU altered that portion of the JLUS that prohibited the City from redesignating the commercial property involved in this case to a residential category.*

In July 2013, the City passed a resolution regarding proposed modifications to its land use regulations. The resolution noted that the JLUS MOU group had reached consensus concerning “the proposed JLUS Ordinance of the City (AHMC Chapter 17.16) which adopts the 2009 JLUS Study, the amended MIA 3/4 designation and the Spokane County Regulations set forth in County Resolution 12-344 to the extent they are not inconsistent with the City JLUS Ordinance.” AR at 1640. The resolution noted that Airway Heights’ JLUS ordinance, C-771, incorporated DOD instructions regarding land uses that are compatible with FAFB operations and allowed conditional mixed use developments with multi-family dwellings in C-2 (commercial zones). The City moved forward with its proposed amendments to AHMC 17.11 and 17.37. It received significant opposition to the proposed changes, particularly regarding the potential residential

stringent limitations of MIA 4 is of no consequence to our decision.

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development of the property at issue here.

In May 2013, the SIA advised the City that it was in the process of completing an update to the airport master plan and that the location of a future parallel runway was only an approximation. It stated that the C-2 area located in the vicinity of Deer Heights Road may present an incompatible land use related to the future parallel runway. It stated:

“Adopting zoning that permits residential use within close proximity to the Airport may ultimately create situations requiring preventive or remedial mitigation actions to ensure that the ability of the Airport to develop and operate without limitations is not hindered.”

AR at 667.

The SIA noted that its board adopted the findings and recommendations of the JLUS on March 21, 2012. It emphasized that “[a] key component of the staff recommendation and Board approval of the JLUS relates to the measure calling for no new residential development within 65 [Ldn] contour or higher.” AR at 667. It therefore opposed Airway Heights’ proposals as inconsistent with the JLUS.

The SIA recognized the ordinances provided for noise attenuation to achieve compatibility in the 65 Ldn to 70 Ldn contour, but emphasized that sound attenuation is typically installed as a remedial mitigation to achieve some improved livability for persons located in established residential dwellings and is not generally recognized as an

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enabling mechanism to allow for encroachment of incompatible use in areas of 65 Ldn and higher noise exposure. It stated, “[s]ound insulation will not resolve complaints about other overflight impacts such as landing lights, vibration, dust, fumes and interference with electronic devices, etc. and will obviously not permit the enjoyment of outdoor activities in these areas by the residents.” AR at 667. It warned that implementation of the proposed land use changes would set a precedent to allow incompatible uses in commercial zones and could negatively impact the SIA in the future.

FAFB also voiced its opposition. In a letter to Mr. Braaten, Colonel Brian Newberry emphasized that it is difficult to predict future noise contours. He compared noise zones in the 1995 AICUZ with those in the 2007 study, pointing out that the highlighted parcel on the map in the 1995 FAFB AICUZ is located in the 65-70 Ldn noise zone, but that the 2007 study located the parcel outside the 65 Ldn contour line. Despite the unpredictability of future noise contours, the colonel was certain that the parcel “will be susceptible to aircraft noise into the foreseeable future, from both FAFB and Spokane International Airport.” AR at 652. Referencing the 2009 JLUS, he pointed out that the subject property is within MIA 3/4 and that FAFB was concerned about increasing residential density in an area so close to where military jet aircraft fly instrument approaches to the runway. He noted:

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Noise will be a factor as both airports operate 24 hours a day. While sound mitigation techniques can be used during construction, we strongly do not recommend increasing residential development in that area. Safety is also a factor worth considering and the close proximity to the approaches of the two runways would increase the risk to the residents in the event of a catastrophic aircraft accident.

AR at 653.

The aviation division of the WSDOT also opposed the amendments, noting that the Deer Creek site was close to the SIA's planned parallel runway. In a letter to Mr. Braaten, it summarized its concerns, noting that "[r]esidential development on the Deer Creek site will be impacted from a variety of aviation activities. Such activities may include, but are not limited to, noise, light, vibration, odors, hours of operation, low overhead flights and other associated activities." AR at 657.

Spokane's planning and development department also opposed the proposed ordinances, stating "[t]he proposal appears to be an effort to pave the way for additional high density residential housing in an area that will be subject to impacts from both Fairchild Air Force Base and Spokane International Airport for the foreseeable future, will jeopardize current and future missions/operations of both facilities, and will be detrimental to the public health, safety, or general welfare." AR at 674. The department cautioned: "Allowing new residential uses even as part of a mixed use development, in the LdN 65 noise contour for Fairchild Air Force Base (FAFB) and the Military Influence

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Area (MIA) 4, identified by the 2009 Joint Land Use Study (JLUS), is not appropriate and will give false expectations if the mixed-use overlay zone covers areas within the LdN 65 noise contour.” AR at 680.

Despite this opposition, the City adopted Ordinances C-797 and C-798, which, as detailed above, incorporate Airway Heights’ JLUS (Ordinance C-771) and potentially allow the development of multi-family housing on the subject properties pursuant to a conditional use process. Ultimately, the City dismissed the concerns of Fairchild’s base commander, aviation experts, and the City and County of Spokane, stating that their concerns appeared to be based on their JLUS standards, not the Airway Heights’ JLUS.

Spokane County, the city of Spokane, and the SIA Board petitioned for review to the GMHB.

6. GMHB Decision

In a 37-page ruling, the GMHB invalidated the challenged ordinances as not complying with the GMA. In its decision, the GMHB gave “significant weight” to comments from FAFB, the SIA, and the FAA. Clerk’s Papers (CP) at 82. The Board explained that these agencies had “specialized knowledge and expertise relating to the residential land use/military operations compatibility issues.” CP at 82. In addition, the Board gave weight to the 2008 findings of the hearing examiner, as upheld by this court

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in *Deer Creek*. The Board explained its reason for giving weight to the 2008 findings was because “the 2008 denial pertained to a portion of the subject Property.” CP at 82.

In addition, the GMHB gave weight to the JLUS, because “Airway Heights [had] agreed . . . that ‘incompatible development’ mean[t] permitted land uses that are inconsistent with the JLUS.” CP at 82.

The Board entered the following findings of fact:

1. Ordinance Nos. C-797 and C-798 modified the land use designations and development regulations affecting approximately 29-30 acres of land within the City of Airway Heights. . . .
2. The Airway Heights C-2 zone is a land use classification that allows for general commercial uses, as a conditional use, including *inter alia* Multi-Family Residential as part of an approved mixed-use development plan
3. The Multi-Family Residential development authorized by Ordinance Nos. C-797 and C-798 allows an increase in the number and density of residential uses in the vicinity of Fairchild Air Force Base and near Spokane International Airport.
4. An increase in the number and density of residential uses in the vicinity of Fairchild Air Force Base and near Spokane International Airport has a high potential for adverse noise and safety impacts.
5. High density residential development would be incompatible with aircraft approach and departure operations and would jeopardize the future viability of Fairchild Air Force Base and Spokane International Airport.

6. The property affected by Ordinance Nos. C-797 and C-798 is located within Fairchild Air Force Base's critical operations area designated Military Influence Area 4.
7. The Multi-Family Residential development authorized by Ordinance Nos. C-797 and C-798 will affect current Air Force operations and will limit the ability of Fairchild Air Force Base to adapt to new missions, support new/different aircraft, and could jeopardize the Base's long-term viability.
8. The Multi-Family Residential development authorized by Ordinance Nos. C-797 and C-798 will limit the ability of Spokane International Airport to construct and operate a future parallel runway.
9. The Multi-Family Residential development authorized by Ordinance Nos. C-797 and C-798 is incompatible with current and future operations of Fairchild Air Force Base and Spokane International Airport.
10. Fairchild Air Force Base and Spokane International Airport are Essential Public Facilities.

CP at 94-95. Based on these findings, the Board was left with a firm and definite conviction that a mistake had been made, and that the challenged ordinances were clearly erroneous in light of the goals and requirements of the GMA in that the challenged ordinances improperly (1) authorized development in the vicinity of FAFB that was incompatible with FAFB's ability to carry out its current mission requirements or to undertake new missions, (2) failed to discourage the siting of incompatible uses adjacent to the SIA, and (3) precluded the siting of essential public facilities. Further, the Board

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invalidated the ordinances, finding that the continued validity of the ordinances would substantially interfere with the fulfillment of the GMA's goals.

The City appealed the Board's decision to Spokane County Superior Court. That court reversed the Board's decision and affirmed the City's adoption of the challenged ordinances. Spokane County, the city of Spokane, and the SIA Board appeal to this court.

ANALYSIS

A. *Incompatibility with FAFB's Mission Requirements*

The first question before us is whether the GMHB erred in concluding that the challenged ordinances violate the GMA as being incompatible with FAFB's ability to carry out its mission requirements or to undertake new missions.

Standard of Review

Comprehensive plans and development regulations under the GMA are presumed valid on adoption. RCW 36.70A.320(1). The board shall find GMA compliance unless it determines that the local plan or regulation is clearly erroneous in view of the entire record before it and in light of the goals and requirements of the GMA. RCW 36.70A.320(3). To find a city's actions "clearly erroneous," the board must have a "firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). A board's order that fails to

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apply this deferential standard of review is not entitled to deference from this court.

Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hr 'gs Bd., 154 Wn.2d 224, 238, 110 P.3d 1132 (2005). This “clear error” standard reflects the legislature’s intent that the board “grant deference to counties and cities in how they plan for growth, *consistent with the requirements and goals of this chapter.*” RCW 36.70A.3201 (emphasis added). In effecting this balance, the legislature intended for “local planning to take place within a framework of state goals and requirements, [but] the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county’s or city’s future rests with that community.” *Id.*

Courts give substantial weight to a board’s interpretation of the GMA. *Lewis County v. W. Wash. Growth Mgmt. Hr 'gs Bd.*, 157 Wn.2d 488, 498, 139 P.3d 1096 (2006). “The burden of demonstrating that the Board erroneously interpreted or applied the law, or that the Board’s order is not supported by substantial evidence, remains on the party asserting the error.” *King County v. Cent. Puget Sound Growth Mgmt. Hr 'gs Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000).

The Administrative Procedures Act (APA), chapter 34.05 RCW, governs judicial review of challenges to decisions by a board. The APA requires us to review the record created before the board, not the record before the superior court. *Lewis County*, 157

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Wn.2d at 497. We review legal conclusions de novo. *Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008). In reviewing claims that the order is not supported by substantial evidence under RCW 34.05.570(3)(e), we determine whether there is “a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.” *Callegod v. Wash. State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510 (1997).

B. *Development Incompatible with a Military Installation's Mission*

RCW 36.70A.530 provides:

(1) Military installations are of particular importance to the economic health of the state of Washington and it is a priority of the state to protect the land surrounding our military installations from incompatible development.

.....

(3) A comprehensive plan . . . [or] a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A city or county may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

In conjunction with RCW 36.70A.530, the legislature included its finding:

“The United States military is a vital component of the Washington state economy. The protection of military installations from incompatible development of land is essential to the health of Washington's economy and quality of life. *Incompatible development of land close to a military installation reduces the ability of the military to complete its mission or to undertake new missions, and increases its cost of operating.* The

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department of defense evaluates continued utilization of military installations based upon their operating costs, their ability to carry out missions, and their ability to undertake new missions.”

RCW 36.70A.530 (note) (emphasis added).

1. *Adopting the proper legal standard*

The City urges this court to adopt an objective test, based on the DOD and FAA standards for determining the meaning of “incompatible development.” It argues that various standards relied on in the JLUS would allow multi-family development in areas between 65 and 69 Ldn, provided that appropriate noise reduction measures are taken. We do not believe that adopting a standard that focuses on a current Ldn level is consistent with our legislature’s intent.

Our legislature’s 2004 finding establishes that “incompatible development” must be defined more broadly than a military installation’s current mission, it must also account for the installation’s ability to undertake new missions. Indeed, an installation’s ability to meet both current *and future* military needs is a significant factor in determining whether to close or to continue operating a military installation.

The City also argues that the GMHB erred when it adopted the JLUS’s definition of “incompatible” as development that is inconsistent with the JLUS. The City argues that the court, not the JLUS participants, must define legal standards. We reject these

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arguments because the GMHB did not adopt the JLUS's definition. Although the GMHB considered development inconsistent with the JLUS as *evidence* of incompatibility, it did so because the JLUS participants had expertise in knowing how residential development could adversely impact the current and future operations of FAFB.

In its decision, the GMHB defined "incompatible development" as "development that is incompatible with the military installation's ability to carry out its mission requirements or to undertake new missions." CP at 72. Because we give substantial weight to the Board's interpretation of the GMA, and because the Board's definition is consistent with our legislature's focus on current *and future* mission needs, we adopt the Board's definition. We hold that, for purposes of RCW 36.70A.530, "incompatible development" means development that is incompatible with a military installation's ability to carry out its current or future missions.

Moreover, because this definition is factually intensive, we agree with the Board's decision to give weight to knowledgeable persons with expertise and to collaborative agreements involving such entities, such as the JLUS. The DOD-funded JLUS was a collaborative planning effort involving local stakeholders, including the city of Airway Heights. Its participants included experts in various policy and technical capacities. Its technical advisory group consisted of county and city planners, military planners,

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technical specialists, and state agency and tribal representatives. It based its noise recommendations on the AICUZ study and a technical Air Force NOISEMAP computer model, which is approved by the Environmental Protection Agency. The study assessed four future mission scenarios with the 20-year operations forecast of the SIA. Based on this technical information, the JLUS developed noise contours and standards to guide future land use decisions.

2. *Appropriate deference to the City's ordinances*

The City argues that the GMHB, by giving weight to these experts and the JLUS, failed to give it the deference required under the GMA. We disagree. Encouraging collaboration between communities, a military installation, and other knowledgeable participants is consistent with the goals stated in the GMA. We agree with the City that one important goal is to give cities and counties a broad range of discretion “in how they plan for growth, *consistent with the requirements and the goals of [the GMA].*”

RCW 36.70A.3201.

Another important goal, however, is to protect the economic health of the state of Washington and local communities impacted by military installations.

RCW 36.70A.530(1). This latter goal is best realized by giving due weight to the opinions of stakeholders and those with expertise, such as the JLUS participants. Here,

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the GMHB properly applied a clearly erroneous standard when reviewing the challenged ordinances. The GMHB also properly gave due weight to the opinions of stakeholders and communities impacted by FAFB, in addition to the JLUS. We conclude that the GMHB properly achieved both GMA goals as outlined above.

3. *Evidentiary sufficiency that the ordinances violate RCW 36.70A.530*

The City argues that there is insufficient evidence that its challenged ordinances are incompatible with the FAFB's ability to carry out its current or future missions. In support of its argument, it asserts that the challenged ordinances are consistent with various federal standards, and the conditional use permitting process assures that the proper balance will be achieved between the City's needs and FAFB's current and future mission requirements. We reject the City's argument for three reasons.

First, as the Board observed:

The conditional use permit calls for current noise level studies, with sound insulation required at certain noise thresholds. By focusing on noise contours determined at the time of project application, the Ordinances fail to make allowances for future mission changes or the use of different aircraft at FAFB.

CP at 78.

Second, the ordinances violate the JLUS by allowing once commercial property in an MIA 4 zone to be reclassified multi-family residential. This violation of the JLUS, as

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mentioned before, is evidence that the challenged ordinances are incompatible with FAFB's ability to carry out its current or future missions.

Third, numerous persons and agencies with expertise weighed in against the challenged ordinances and provided reasons supporting their conclusions why potential multi-family residential development in the MIA 4 zone was incompatible with FAFB's ability to carry out its current or future missions.

Where a party challenges the sufficiency of the evidence, we examine whether there is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises. *Miller v. City of Tacoma*, 138 Wn.2d 318, 323, 979 P.2d 429 (1999) (quoting *Robinson v. Safeway Stores, Inc.*, 113 Wn.2d 154, 157, 776 P.2d 676 (1989)). For the reasons explained above, we conclude that there is sufficient evidence for the Board to be left with a firm and definite conviction that a mistake had been made, and that the challenged ordinances were clearly erroneous in light of the goals and requirements of the GMA.

C. *Discouraging the Siting of Incompatible Land Uses Adjacent to the SIA*

The GMA subjects local government land use planning affecting general aviation airports to RCW 36.70.547, which states that a city "shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such

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general aviation airport.” The Board found that, because numerous local aviation experts and agencies opposed the proposed development as incompatible, the ordinances violated RCW 36.70.547. The Board also considered the 2008 hearing officer’s findings in the *Deer Creek* dispute.

The City asserts that insufficient evidence supports the Board’s findings and conclusion that the challenged ordinances violate RCW 36.70.547. The City argues that the challenged ordinances actually discourage residential uses that may be incompatible with the SIA because the conditional use requirements make residential construction difficult. Spokane County, the city of Spokane, and the SIA Board respond that the challenged ordinances and maps, by redesignating commercial property multi-family residential, actually encourage incompatible residential development.

In Kittitas County v. Eastern Washington Growth Management Hearings Board, 172 Wn.2d 144, 175, 256 P.3d 1193 (2011), the court emphasized the deference that the board must grant cities and counties when reviewing local plans and regulations under RCW 36.70.547. There, the court framed the issue as, “whether the County’s failure to prohibit residential uses and higher-than-recommended densities by the Washington State Department of Transportation (WSDOT) violates the GMA.” *Id.* at 174. There, the board found that, because the county’s regulations diverged from WSDOT’s

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recommendations for land near airports, the county's challenged regulation violated the GMA. *Id.* In reversing the board, the *Kittitas County* court stated:

The Board gave substantial weight to WSDOT's recommendations. The Board, however, is supposed to give deference to the County unless the County clearly erred. The statutory scheme requires only that counties "discourage" incompatible uses. Discouragement is not the same as prohibition. The County clearly did not follow all of WSDOT's recommendations. While this may be imprudent, the statutory scheme does not suggest that counties *must* follow the advice of WSDOT. Considering the loose statutory language and the requirement of boards to defer to counties' planning choices, the record before the Board does not establish firmly and definitely that the County erred.

Id. at 174-75 (citations omitted).

In reviewing the evidence before the Board, we have three concerns. First, the comments relied on by the Board from the FAA, WSDOT, and Greater Spokane Incorporated relate to their concerns about how the challenged ordinances would impact both FAFB and the SIA. Because RCW 36.70.547 requires us to focus on how the challenged ordinances will impact the SIA, the broad comments from these three entities do not provide the clear evidence needed, given the deference the GMA requires the Board to give to the City's choices. Second, some of the agency comments focus on the City's noncompliance with the JLUS. We note that the JLUS was largely focused on the current and future needs of FAFB, not the SIA. Third, the 2008 *Deer Creek* findings of the hearing officer were based on evidence that might have changed in the five or more

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years leading up to the Board's decision under review.

Because of these concerns, we focus on the SIA's most recent comments opposing the challenged ordinances. In a May 2013 letter to Mr. Braaten, the SIA wrote:

2. Adopting zoning that permits residential use within close proximity to the Airport may ultimately create situations requiring preventive or remedial mitigation actions to ensure that the ability of the Airport to develop and operate without limitations is not hindered. . . .
3. . . . The area of C-2 that is located in the vicinity of Deer Heights Road is cause for concern that this *may* present an incompatible land use related to the future parallel runway. . . .

AR at 667 (emphasis added). Although the SIA objected to the challenged ordinances, the first objection was that preventative or remedial mitigation might be necessary.

Preventative or remedial mitigation has been incorporated into the City's challenged ordinances as part of the conditional use process. The second objection was directed to the property at issue, but was equivocal whether development on the property would be incompatible with the future parallel runway. Consistent with the *Kittitas County* case, we conclude, "Considering the loose statutory language and the requirement of boards to defer to the [City's] planning choices, the record before the Board does not establish firmly and definitely that the [City] erred." *Kittitas County*, 172 Wn.2d at 175.

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D. *Precluding the Siting or Expansion of FAFB or the SIA*

RCW 36.70A.200(5) states that “[n]o local comprehensive plan or development regulation may preclude the siting of essential public facilities.” RCW 36.70A.200(5) applies to expansions of essential public facilities. *City of Des Moines v. Puget Sound Reg'l Council*, 108 Wn. App. 836, 844-45, 988 P.2d 27 (1999).

The parties stipulated that both FAFB and the SIA are essential public facilities within the meaning of the GMA:

The parties acknowledge and agree that [FAFB] and Spokane International Airport (“SIA”) are two of the region’s most essential public facilities and that the parties should cooperate to discourage development that is incompatible with either facilities’ operational needs and/or its ability to carry out its current and/or future missions

AR at 1121.

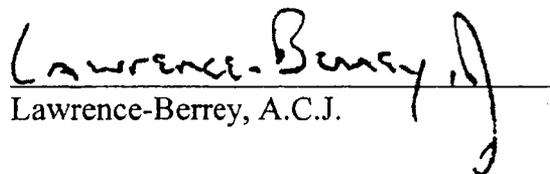
The City argues that the Board erred in concluding that the challenged ordinances preclude the siting or expansion of either FAFB or the SIA. In our analysis above, we held that there was sufficient evidence for the Board to find that the challenged ordinances allowed incompatible development with respect to FAFB’s ability to carry out its current and future missions. But this finding does not necessarily establish a violation of RCW 36.70A.200(5) that requires that the plan or regulation “preclude” an essential public function. The word “preclude” means to “render impossible or impracticable.”

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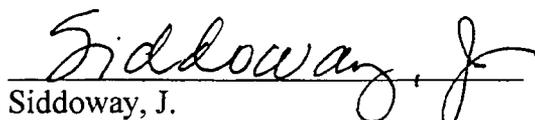
City of Airway Heights v. E. Wash. Growth Mgmt. Hr'gs Bd.

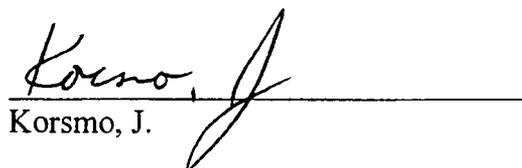
See id. at 847. Applying this standard, there is little or no evidence that the challenged ordinances would render impossible or impracticable current or contemplated operations of either FAFB or the SIA. Considering the requirement that the Board must defer to the City's choices, the record before the Board does not establish firmly and definitely that the City erred in enacting the challenged ordinances.

Affirmed in part; reversed in part.


Lawrence-Berrey, A.C.J.

WE CONCUR:


Siddoway, J.


Korsmo, J.

APPENDIX A-1

FILED
May 31, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

CITY OF AIRWAY HEIGHTS,)
)
 Respondent,)
)
 v.)
)
 EASTERN WASHINGTON GROWTH)
 MANAGEMENT HEARINGS BOARD,)
)
 Defendant,)
)
 SPOKANE COUNTY, CITY OF SPOKANE,)
 SPOKANE AIRPORT BOARD,)
)
 Appellants,)
)
 BRIGITTA ARCHER,)
)
 Respondent.)
 _____)
 BRIGITTA ARCHER,)
)
 Respondent,)
)
 v.)
)
 EASTERN WASHINGTON GROWTH)
 MANAGEMENT HEARINGS BOARD,)
)
 Defendant.)
)
 SPOKANE COUNTY, CITY OF SPOKANE,)
 SPOKANE AIRPORT BOARD, and CITY OF)
 AIRWAY HEIGHTS,)
)
 Appellants.)

No. 33083-4-III

ORDER DENYING
MOTION FOR
RECONSIDERATION

No. 33083-4-III

City of Airway Heights v. E. Wash. Growth Mgmt. Hr'gs Bd.

The court has considered the respondents', city of Airway Heights' and Brigitta Archer's, motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's decision of April 12, 2016, is hereby denied.

PANEL: Judges Lawrence-Berrey, Korsmo and Siddoway

FOR THE COURT:



GEORGE FEARING
Chief Judge

APPENDIX B

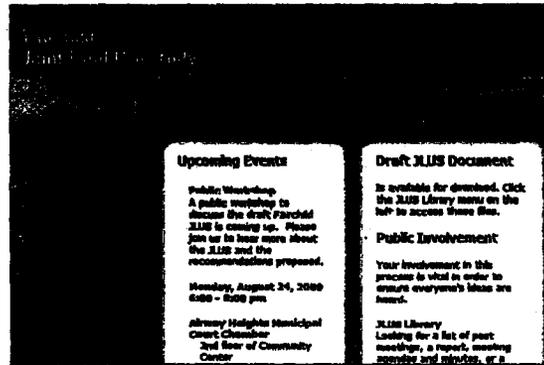


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Public Outreach Materials

Early in the JLUS process, a Fact Sheet was developed describing the JLUS program, objectives, methods for the public to provide input into the process, the Fairchild JLUS proposed study area, results of a noise study, study area profile and trends analysis, and an initial assessment of the existing plans and programs applicable to this JLUS. This Fact Sheet was made available at all meetings for all interested members of the public.

Augmenting the Fact Sheet, a project website was developed and maintained that provided stakeholders, the public, and media representatives with access to project information. This website was maintained for the entire project to ensure information was easily accessible. Information contained on the website included: program points of contact, schedules, documents, maps, public meeting information, downloadable comment forms, and other links and contacts facilitating public feedback.



www.landusecompatibility.com/fairchild

In addition, extensive information on the project was maintained on the Spokane County website. The final Joint Land Use Study may be viewed at the following address:

www.spokanecounty.org/bp/content.aspx?c=2298

1.9 JLUS IMPLEMENTATION

Once completed, it is important to note that this JLUS is not an adopted plan. It is a strategy guide that will be used by local jurisdictions, Fairchild AFB, state and federal agencies, and other identified stakeholders in the study area to guide their future compatibility efforts. For instance, local jurisdictions will use the strategies in this JLUS to guide future general plan updates and land development code decisions, as well as assist in the review of development proposals. Fairchild AFB will use the JLUS to guide their interaction with local jurisdictions on future projects, as well as manage internal planning processes with a compatibility based approach. It is through the future actions of the stakeholders involved that the JLUS strategies will become a reality.

The key to implementation of the strategies presented in this JLUS is the establishment of the JLUS Coordinating Committee that oversees the implementation of the JLUS after it is complete. Through this committee, local jurisdictions, Fairchild AFB, and other interested parties will be able to work together to establish procedures, recommend or refine specific actions for member agencies, and make adjustments to strategies over time to ensure the JLUS remains relevant to the planning issues of the area.

3.1 METHODOLOGY AND EVALUATION

The purpose of this section is to detail the genesis of developing the compatibility factors associated with the Fairchild JLUS. The JLUS evaluation approach consisted of a comprehensive and inclusive discovery process identifying the key stakeholder factors which could directly or indirectly affect the compatibility strategies proposed in Section 5. During the preparation of the Fairchild JLUS, the public, the Joint Policy Committee (JPSC), and the Technical Working Group (TWG) assisted in working through all 24 factors to identify, describe and prioritize the extent of existing and potential future compatibility factors that could impact lands within or near the study area.

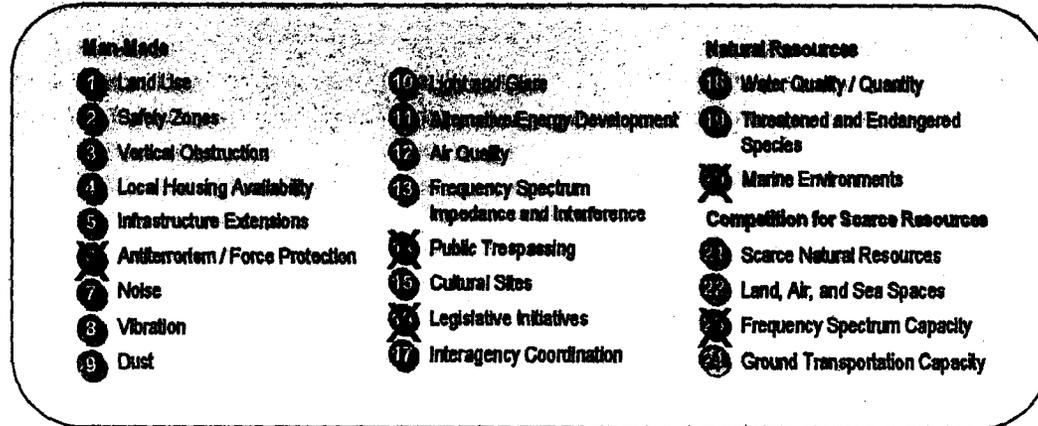
At the initial committee workshops and public meetings, these groups were asked to identify the location and type of compatibility factors they thought existed today or could occur in the future. Other factors were also added by the consulting team based on their evaluation of available information and relevant experience on similar projects.

When reviewing this information, it is important to note the following:

- This section provides a general technical background on the factors discussed based on available information. The intent is to provide an adequate context for awareness, education, and development of JLUS recommendations. As such, it is not designed or intended to be utilized as an exhaustive technical evaluation of existing or future conditions within the study area.
- Of the 24 standard compatibility factors, five were determined not to be a factor for this area: 6, Antiterrorism/Force Protection; 14, Public Trespassing; 16, Legislative Initiatives; 20, Marine Environments; and 23, Competition for Frequency Spectrum Capacity.

JLUS Compatibility Factors

Factors that were found to not apply to the Fairchild JLUS are crossed out on the chart to the right.



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- The compatibility factors identified were consolidated into groups of similar factors. For example, a number of development project locations were identified under Compatibility Factor 1, Land Use. These items were further grouped into a single factor called "Urban Growth Potential." These grouped items (shown in Table 3-1) were then reviewed and evaluated by the JLUS committees.

Three criteria were utilized to evaluate the identified factors: current impact, factor location, and potential impact. Utilizing a scale ranging from "4" (most critical) to "3" (least critical), the JLUS committees scored each factor group.

The criteria utilized for this assessment included the following:

- **Current Impact.** Each factor was rated based on its current impact to compatibility of either the installation or a local jurisdiction. Factors posing the most extensive operational constraints or community concerns were identified as the highest priority (1). Factors resulting in a moderate operational impacts or community concerns were identified as important (2). Factors that present very little impact or do not currently impact the installation or local jurisdictions were identified as the lowest priority (3).
- **Location.** This criterion measures the proximity of each factor in relation to activities occurring on the installation. Factors occurring near the installation are often more critical than those occurring remotely or in areas more distant from operational activities. Factors that were located inside the JLUS study area and were presently occurring were considered significant (1). Factors located inside the JLUS study area with the potential to occur, or located outside the JLUS study area and presently occurring, were rated important (2). Factors located outside the

JLUS study area with minimal or no potential to occur were considered very low priority (3).

- **Potential Impact.** Although a factor may not present a current threat to the installation or the community, it may possess the ability to become a factor. Should conditions change, adjacent or proximate development increase, or other factors become apparent, new conflicts with existing or future missions and operational activities at Fairchild AFB could arise. Factors were rated based on their future potential using the same criteria as established for current impact.

The three criteria presented above were averaged to determine the overall threat level for each factor. Factors ranking "4" are considered the most critical (designated in red), "2" are moderately critical (designated in yellow), and "3" are least critical (designated in green). A critical factor was defined as one where there was potential for impacts on current missions and where existing tools are not adequate to address the factor identified. Additional compatibility factors identified by the consulting team were not scored and have an "N/R" (no rating) for each criterion.

Table 3-1 presents a summary of the factors discussed in this section. For this summary, the factors have been presented from most critical to those found to not have a high potential for impacting Fairchild AFB operations. Each factor is identified alpha-numerically in Table 3-1 and on the factors maps later in this section (i.e., 1A, 2C, etc.). The number corresponds to the compatibility factor as shown in the JLUS Compatibility Factors graphic on the previous page while the letters are used to differentiate individual factors. For example, for Factor #5; Infrastructure Extensions, there are seven items or locations noted. These are referred to as 5A, 5B, 5C, 5D, 5E, 5F and 5G.

Each factor (issue) is identified using a number (the factor number, such as 5 for Infrastructure Extensions) and a letter (A, B, C, etc.) to keep track of the individual issues identified.

3. Compatibility

Urban Growth (Existing and Proposed Development)

Many of the factors related to land use compatibility raised by the public, Joint Land Use Policy Steering Committee, and Technical Advisory Group were associated with existing or proposed development plans located near the installation (• Factors 1A, 1C, 1E, 1F, 1Q, 1R). The following is a list of developments specifically mentioned:

- **Blue Grouse Estates** – Southeast of the I-90 and Geiger Boulevard Interchange, this single-family development is proposed to include 207 lots.
- **Aspen Park** – A 555-unit residential development located south of Spokane International Airport (SIA) and Interstate 90 and west of Spotted Road.
- **Maple Terrace** – Located east of S. Thomas Mallen Road and north of W. Hallet, this development will consist of 88 single-family residential units.
- **Deer Creek Apartments** – Apartment complex located one half mile south of SR 2 on Flight Drive.

As discussed in Section 2, a significant amount of land on the eastern side of Fairchild AFB remains undeveloped and the West Plains is seen by many as the next natural location for development due to the affordability of land and growing traffic congestion north of Spokane that makes new projects less desirable for residential development. The Liberty Lake area is becoming more expensive, and opposition to new developments occurs more frequently in the South Hill area.

The desirability and potential future development of the West Plains creates a substantial threat to compatibility if not carefully planned and coordinated.

Land uses may be considered incompatible with military installations and their operations based on many factors. Among the most common factors causing incompatibility with military airfields and operations areas are the high levels of noise created by aircraft, limits on the heights of structures near the installation, as well as off-installation light pollution that negatively impacts the use of night vision devices (NVD) for military air and ground training. The development of land uses incompatible with an installation's military mission threatens that installation's continued existence.

Complicating land use planning within the West Plains region is the number of entities responsible for land use management. Fairchild AFB is surrounded by lands administered by the City of Medical Lake, City of Airway Heights, Spokane County, and two Native American tribal groups. Additionally, the City of Spokane has co-management responsibility together with Spokane County for properties within the joint planning area (JPA) consisting of the eastern one-third of the JLUS study area. Figure 3-2 provides a generalized look at existing land uses in the area and Figure 3-3 presents the current zoning designations for land in and adjacent to the study area.

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Policy Implications

One of the largest challenges to land use compatibility is the recent revision to the Spokane County Zoning Code expanding the uses permitted in the Light Industrial zone. Approved on May 25, 2005 (BoCC Resolution 2005-0579), the amendment allowed more commercial and residential development options within the light industrial zone in the West Plains geographical area. The amendment increased the number of permitted uses to include all of those uses that are currently allowed in the Regional Commercial zone, with the exception of adult retail and adult entertainment establishments. As a result, the amendment allowed a full range of commercial uses as well as single family, two-family, and multi-family residential uses.

The 2005 amendment dramatically encouraged increased residential development on land zoned Light Industrial within the West Plains area. One large subdivision (over 200 lots) was approved in a Spokane International Airport Accident-Potential Zone (APZ). This generated substantial concern for the long-term protection of Fairchild AFB and SIA by the Federal Aviation Administration (FAA), the Aviation Division of the Washington State Department of Transportation (WSDOT), and numerous local persons and organizations. Although a moratorium was adopted in October 2, 2006 (BoCC Resolution 2006-0838) to limit development within these critical areas and an amendment increasing restrictions on residential uses within APZ 'B of the Airport Overlay Zone (AOZ) (Chapter 14.702) was adopted on January 22, 2008 (BoCC Resolution 2008-0065), this situation illustrates the impacts associated with zoning decisions when additional protections for the areas around Fairchild AFB are not in place.

One particular development of concern approved prior to the moratorium is the Deer Creek Apartment complex (Factor 1A) located south of US Highway 2 to the east of Airway Heights. This high density residential development is located in the 65-70 Ldn noise contour as identified in the 1995 Fairchild Air Installation Compatible Use Zone (AICUZ) study. Although presently located outside the 65 Ldn noise contour as identified in Fairchild's 2007 AICUZ, the changing nature of noise contours resulting from installation operations becomes apparent in the differences between the two studies. Noise contours expand and contract over time as missions and operations at the installation change. It is reasonable to expect that this property will be subjected to aircraft noise in the future. Development within Fairchild's critical operations area will limit the ability of the installation to adapt to new missions, to support new / different aircraft, and could jeopardize its long-term viability.

Although outside the current 65 Ldn noise contour, safety, noise, and light pollution considerations are still a concern for Fairchild AFB concerning this project and development of sensitive land uses in similar areas. The developer of the Deer Creek Apartments recently sought approval for the construction of a second phase of residential development as an expansion of the original approval. Occurring after the zoning code amendment limited residential uses within the Light Industrial zone, approval of the expansion of the original development would have meant expanding this use. Fairchild AFB, SIA, FAA, and WSDOT continued to cite concerns with the proposed second phase. These concerns included its location within the "area of influence" for Fairchild AFB and Spokane International Airport (an area defined in Spokane County's Comprehensive Plan as "properties near public airports which are subjected to aircraft noise of 65 decibels or higher day-night average

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sound level"), cumulative noise impacts from multiple air facilities, incompatibilities with a proposed third runway at Spokane International Airport, and safety impacts including the proportionately higher percentage of accidents that occur in aircraft traffic patterns within the areas of influence. These entities advised that the permitting of high density residential uses, or concentrations of residential uses, within proximity to airports weakens the ability of the facility to protect public safety by allowing incompatible development and hazardous situations within critical phases of aircraft approach and departure operations.

Based on these considerations, the Spokane County Hearing Examiner denied the apartment expansion request. Although this additional development was denied, there continues to be considerable development interest within this portion of the study area. Other developments approved in this vicinity include a 10-screen, 33,000-square foot cinema to be located north of the Deer Creek Apartments. There is also a planned three-story, 79-unit La Quinta Inn and Suites, which would be located on the east side of Deer Creek Road south of US Highway 2. The growth occurring within the area will continue to create compatibility concerns for Fairchild AFB unless a coordinated planning approach is taken.

Recent annexation proposals for the West Plains will, if approved, increase land controlled by Airway Heights and the City of Spokane into the study area (see Figure 3-4). The City of Spokane will commence its annexation process for a 10-square mile portion of the West Plains area, including the Spokane International Airport, in 2009. The City of Airway Heights will seek to annex one square half mile, including the Wal-Mart on Hayford Road. Currently, this area is home to approximately 1,500 residents and has substantial interest among developers for commercial and residential development. Final decisions on annexation approval rest

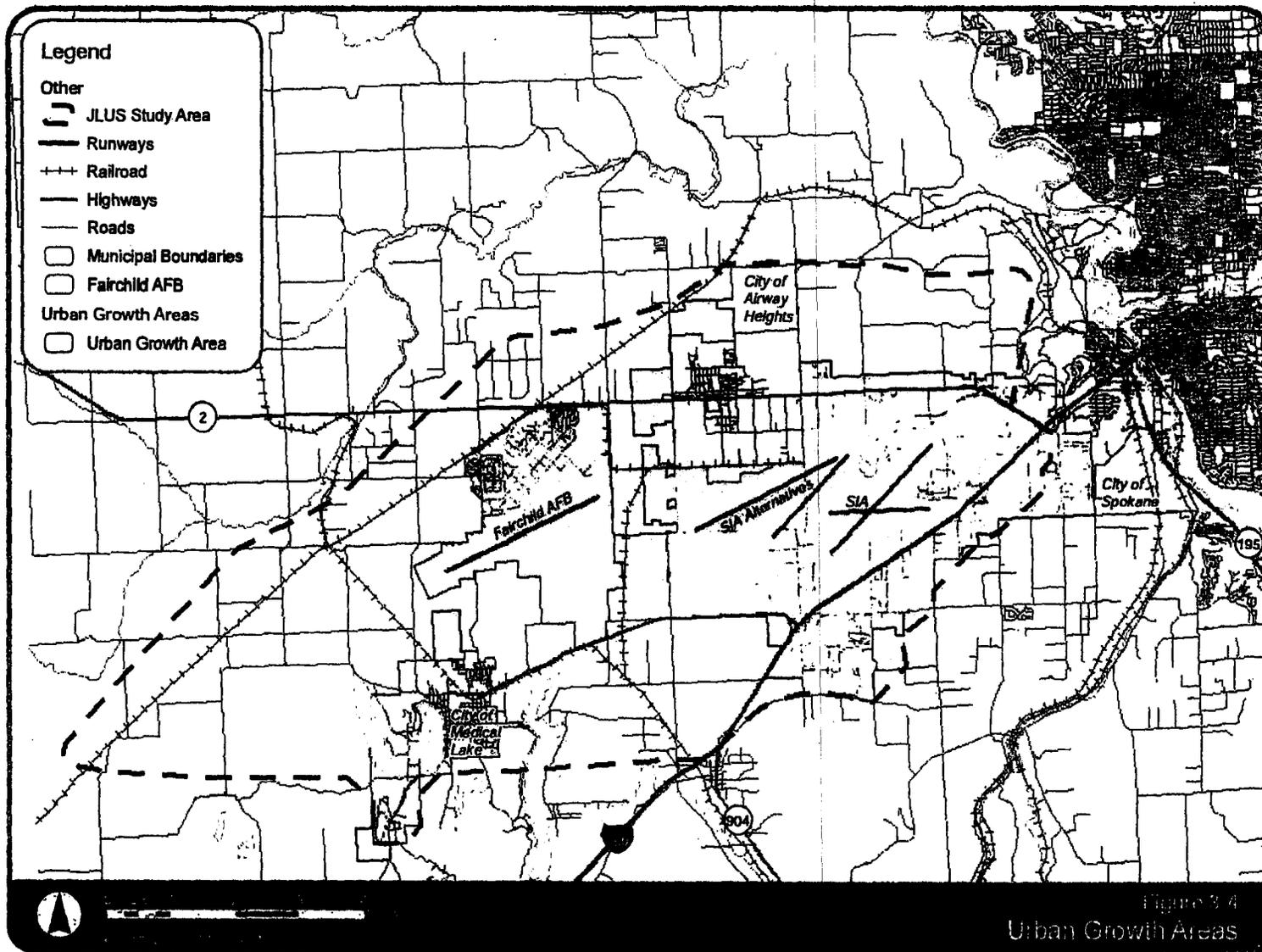
September 2009

with the Washington State Boundary Review Board of Spokane County. Annexation creates changing compatibility factors as currently, each jurisdiction has a slightly different set of regulatory tools for the treatment of compatibility factors.

Geiger Spur

As discussed previously in Section 2, Spokane County, in cooperation with the Spokane Economic Development Council (EDC), conducted a study in 2005 to determine the viability of relocating the portion of the Geiger Spur rail line (● Factor 1B) from within Fairchild AFB to a location outside the base. With the transfer of the rail spur ownership from Burlington Northern-Santa Fe (BNSF) to Spokane County, the Air Force required the County to relocate the spur line outside the base by September 30, 2009.

In addition to the construction of the new spur line, the planning of the Geiger Transload and Logistics Facility is also underway. The Transload Facility will use cranes and other equipment to transfer freight between rail cars and trucks. Although the Transload Facility will be an important economic development anchor increasing Spokane's identity as a major international freight center, the presence of a facility of this nature directly to the east of Fairchild AFB presents potential compatibility factors, most notably with vertical obstructions and light pollution. Additionally, the existence of the newly constructed spur rail line running near the east boundary of Fairchild AFB will very likely attract further economic developments, specifically industrial and commercial uses.



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7 *Noise Factors*

Definition:

Defining noise from a technical perspective, sound is mechanical energy transmitted by pressure waves in a compressible medium such as air. More simply stated, sound is what we hear. As sounds reach unwanted levels, this is referred to as noise.

The factors identified for this compatibility factor are listed on Table 3-11 and further described in the following discussion.

Table 3-11. Noise Factors

Compatibility Factor	Map ID	Current Impact	Location	Potential Impact
Aircraft Noise: noise from aircraft operations impacting existing and proposed development	7A, 7C, 7D, 7F, 7G, 7H, 7I, 1M, 4A	■	■	■
Expanding / shrinking Fairchild AFB noise contours	7B, 7E	■	■	■

Notes: ■ Most Critical ■ Moderately Critical ■ Least Critical N/R = No Rating

Understanding Noise

Due to the technical nature of this resource topic and its importance to the JLUS process, this section provides a discussion of the characteristics of sound and the modeling process used to evaluate noise impacts.

The following key terms are used to describe noise.

- **Ambient Noise.** The total noise associated with an existing environment and usually comprising sounds from many sources, both near and far.

- **Attenuation.** Reduction in the level of sound resulting from absorption by the surrounding topography, the atmosphere, distance from the source, barriers, construction techniques and materials, and other factors.
- **A-weighted decibel (dBA).** A unit of measurement for noise having a logarithmic scale and measured using the A-weighted sensory network on a noise-measuring device. An increase or decrease of 10 decibels corresponds to a tenfold increase or decrease in sound energy. A doubling or halving of sound energy corresponds to a 3-dBA increase or decrease.

000516

- **Noise Contours.** Connecting points of equal noise exposure. Typically expressed in 5 dBA increments (60, 65, 70, 75, etc.).
- **Sensitive Receptors.** Sensitive receptors are defined as locations and uses typically more sensitive to noise, including residential areas, hospitals, convalescent homes and facilities, schools, and other similar land uses.

Characteristics of Sound

Sound is characterized by oscillation of sound waves (frequency), the speed of propagation, and the pressure level or energy content (amplitude). The sound pressure level has become the most common descriptor used to characterize the loudness of an ambient sound level. The decibel (dB) scale is used to quantify sound intensity. Because sound pressure can vary by over one trillion times within the range of human hearing, a logarithmic loudness scale (i.e., dB scale) is used to present sound intensity levels in a convenient format.

Since the human ear is not equally sensitive to all frequencies within the entire spectrum, noise measurements are weighted more heavily within those frequencies of maximum human sensitivity in a process called "A-weighting" written as dBA. The human ear can detect changes in sound levels of approximately 3 dBA under normal conditions. Changes of 1 to 3 dBA are typically noticeable under controlled conditions, while changes of less than 1 dBA are only discernable under controlled, extremely quiet conditions. A change of 5 dBA is typically noticeable to the general public in an outdoor environment. Figure 3-19 summarizes typical A-weighted sound levels for a range of indoor and outdoor activities.

Environmental noise fluctuates over time. While some noise fluctuations are minor, others can be substantial. These fluctuations include regular and random patterns, how fast the noise fluctuates, and the amount of variation. When describing noise impacts, it is common to look at the average noise over an average day.

Characteristics of Noise Modeling

The Air Force adopted the NOISEMAP computer model to analyze and describe noise impacts created by aircraft operations. NOISEMAP is one of two Environmental Protection Agency (EPA) approved models. The other is the Integrated Noise Model (INM), which is used by the FAA for civilian airports.

In 1974, EPA designated the noise descriptor Ldn, or Day-Night Average Sound Level (DNL), as the standard measurement for noise impacts. Ldn is an average sound level exposure, measured in decibels, over a 24-hour period (see the definition earlier in this section for details). On a national level, Ldn measurements are projected down to 65 decibels.

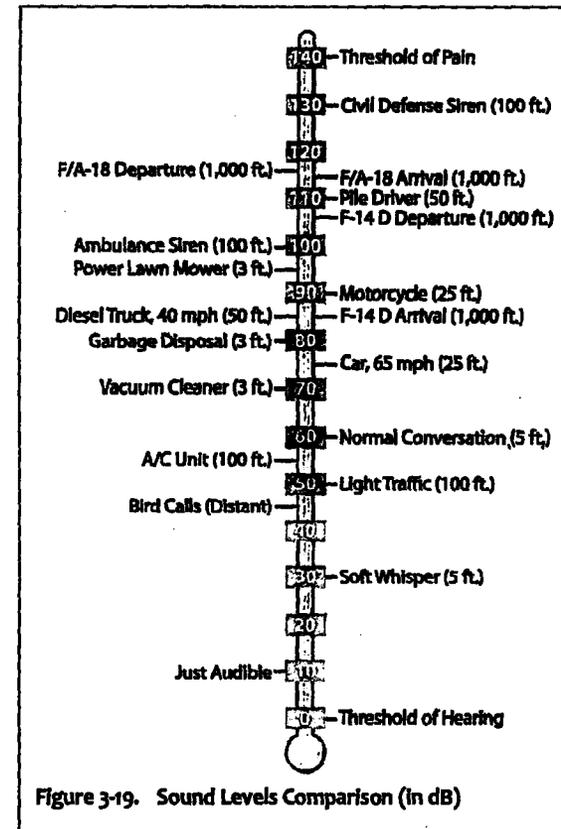


Figure 3-19. Sound Levels Comparison (in dB)

Aircraft Noise

For noise sources attributable to Fairchild AFB, aircraft noise is the primary concern relative to compatibility planning. Over the years, several studies have been developed regarding noise levels associated with aircraft operations at Fairchild AFB. The analysis of airborne noise varies based on the type of aircraft modeled, flight operations, training activities, flight frequency, and other aircraft using the airspace.

As described in Section 4, Fairchild AFB published an updated AICUZ study in October 2007, which revised the previous AICUZ study from 1995. One major difference between the 1995 and 2007 AICUZ studies is the identified noise zones. The 2007 update and subsequent noise zone changes were the result of:

- Changes in flight operations and the addition, elimination, or alteration of flight tracks for mission and training purposes;
- Post September 11, 2001, aircraft operations tempo supporting wartime mission and homeland security requirements;
- Technical improvements to NOISEMAP, a computer program for modeling noise levels that determines noise zones (NZs) based on aircraft activity; and
- Changes in aircraft type, such as the replacement by the Washington Air National Guard of the KC-135E aircraft with the KC-135R, and based aircraft composition.

The 2007 Fairchild AICUZ provided detailed noise modeling of current aircraft operations at the installation. Aircraft operations at Fairchild AFB have the most noticeable noise effect in the surrounding area to residential and commercial

uses. Additionally, noise generated at the Fairchild explosives ordnance range can have limited impacts to uses off of the installation.

The Fairchild AICUZ looks at noise for a typical or average day over a given year. On any given day, noise levels on a specific property will be higher or lower depending on a number of factors, including the number of flights, aircraft mix, the actual flight tracks taken, flight elevations, and so forth. Other changes at the base could result in changes to the noise contours. As such, the noise contours should be used as guidance in making future land use decisions, not absolute constraints.

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The AICUZ noise contours show areas where noise compatibility factors are likely to occur with more sensitive land uses. Outside of these contours are additional areas where overflight will occur and new development will notice noise from flight operation. The overall shape and size of the study area reflects locations that experience periodic low level overflight, and therefore, may be exposed to occasional noise.

Many of the compatibility factors related to aircraft noise stem from existing or proposed residential developments within the study area. According to the 2007 AICUZ, residential uses are not allowed within areas 65 dB or higher.

Expanding/Shrinking Noise Contours

Due to changes discussed earlier, the 2007 AICUZ noise contours are significantly smaller than those presented in the 1995 AICUZ (see Figure 3-20). Differences in assumptions based on current mission factors, changes in aircraft type, and technical characteristics of the model have profound implications to the resulting noise contours. Much emphasis is placed on the delineation of these contours and land use policies or decisions are often based on the assumptions presented by these contours. AICUZ studies represent current conditions, should conditions change, a new AICUZ would have to be prepared. As a result, specific land use decisions should not be based solely on AICUZ boundaries.

As a component of this JLUS, a study was conducted to assess potential noise related to four future mission scenarios. These scenarios assume the replacement of Fairchild's KC-135 tanker aircraft with next generation tanker aircraft based on civilian passenger airframes. In all scenarios the new aircraft are larger than the KC-135 aircraft currently

operated. Transient operations for each scenario remained the same as in the AICUZ study.

For each scenario, the operations at Fairchild AFB were combined with the 20-year operations forecast for SIA to provide an overall perspective on the effect of all aircraft operations within the region. For the purposes of this analysis, the scenarios assumed operations at a new third runway at SIA. For modeling purposes, the SIA alternative runway assumed was the runway closest to Fairchild AFB, thus yielding a worst-case assessment for noise.

Characteristics of the four scenarios are as follows:

- Scenario 1 – 48 based KC-767A Aircraft
- Scenario 2 – 48 based A330 aircraft
- Scenario 3 – 32 based KC-767A aircraft and 16 B-52 aircraft
- Scenario 4 – 32 based A330 aircraft and 16 B-52 aircraft

The results of each of the scenarios were combined with the 20-year forecast for SIA to provide an overall perspective on the effect of all aircraft operations within the region. For the purposes of this analysis, the scenarios assumed operations at a new third runway at SIA. For modeling purposes, the SIA alternative runway assumed was the runway closest to Fairchild AFB, thus yielding a worst-case assessment for noise.

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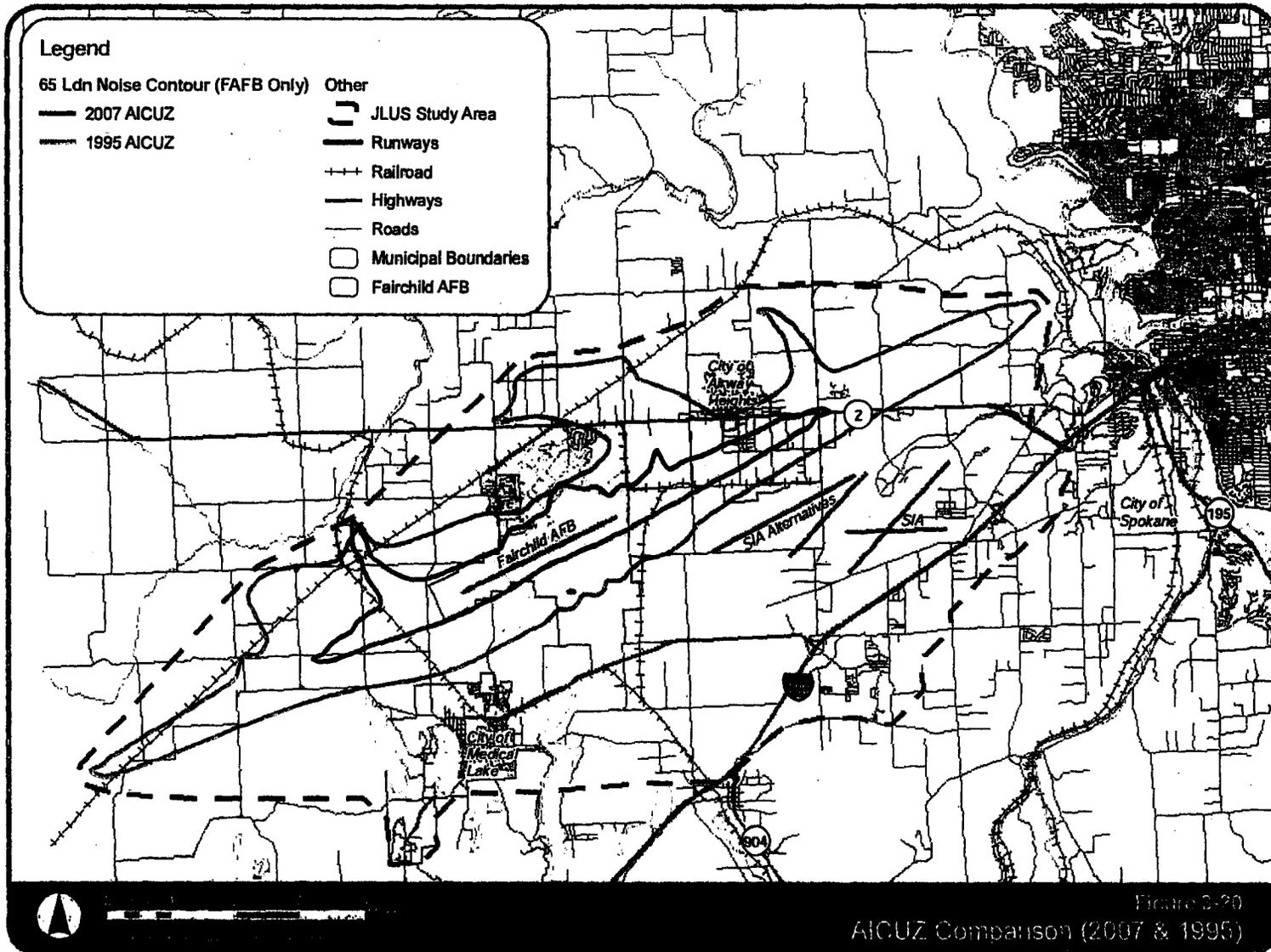


Figure 3-20
AICUZ Comparison (2007 & 1995)

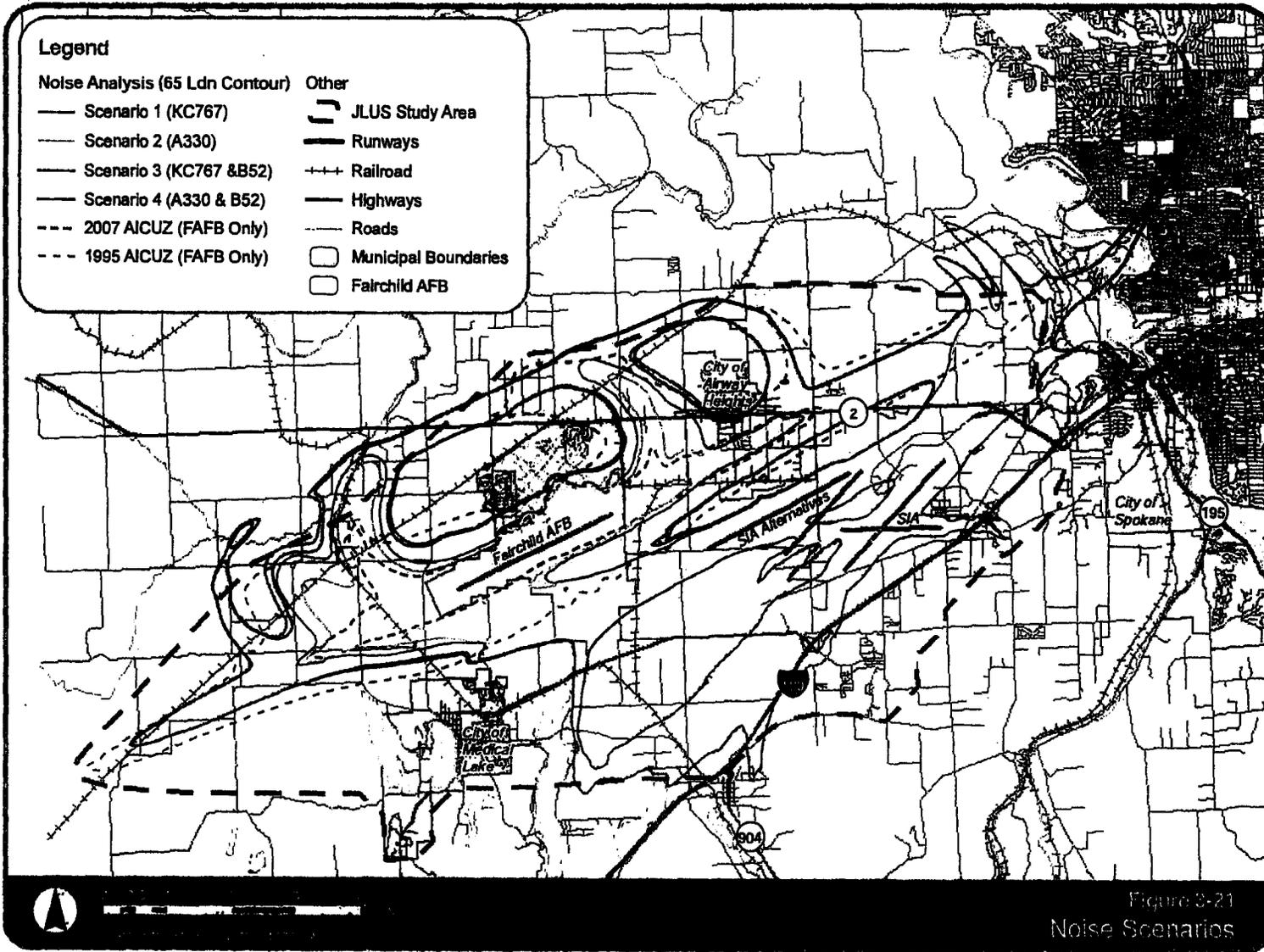
3. Compatibility

The noise modeling indicated that the scenarios including the KC-767 (Scenarios 1 and 3) would have a slightly larger noise signature than those including the A330 aircraft. To ensure Fairchild's ability potential future aircraft and missions were properly reflected in this study, the JPSC decided to use Scenario 3 as the basis for JLUS strategies development.

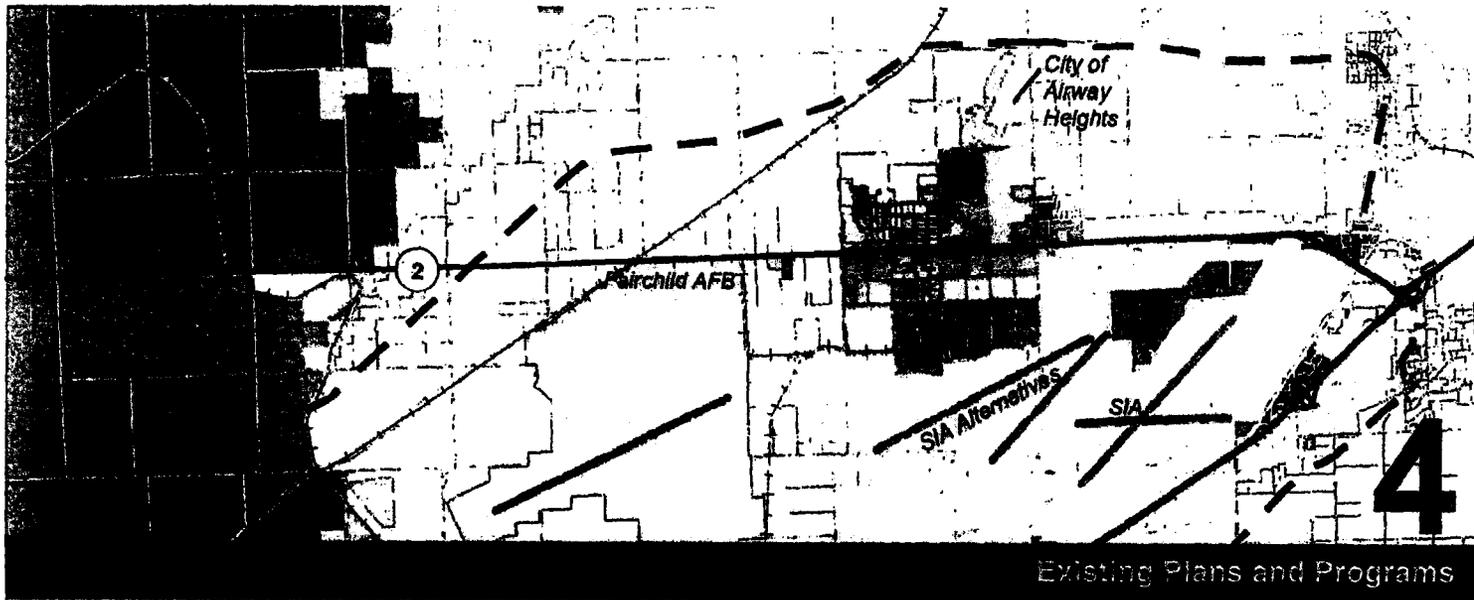
The results of this analysis, presented in Figure 3-21, portray the area covered within the 65 dB noise contour or higher from each of the four scenarios. The close proximity of Fairchild AFB and SIA presents unique challenges to noise management within the region. As a shared airspace, the impact of one facility compounds the noise exhibited by the other. As previously discussed, the area potentially included within a 65 dB noise from one or both installations is significant and covers much of the West Plains area within the JLUS study area. Only the central part of the City of Airway Heights is outside of the 65 dB noise contour. Almost the entire extent of US Highway 2 from I-90 to the Fairchild main entry gate lies within an area of noise concern.

Schools are sensitive noise receptors, and as such, siting of schools outside of high noise areas is important. Figure 3-22 depicts school locations within the JLUS study area.

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This section provides an overview of the primary plans and programs that are currently used or applied in evaluating and addressing compatibility issues in the study area. Section 4.1 provides an overview of Fairchild Air Force Base (AFB) and the plans and programs used by the base to direct their planning efforts.

Section 4.2 highlights plans and programs currently used by local jurisdictions and agencies to address compatibility issues, including an overview of each jurisdiction's general plan and regulatory tools (i.e., tools codified through a formal action such as a zoning ordinance, subdivision ordinance, building code).

Section 4.3, describes legislation and other regulations that directly apply to compatibility planning.

In addition to individual plans and programs, the jurisdictions in the West Plans area also work together on collaborative planning efforts. Section 4.4 describes these efforts.

The final section, Section 4.5, provides an overview of other resources that can be consulted concerning compatibility planning.

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4.1 FAIRCHILD AFB PLANS

Air Installation Compatible Use Zone Study (AICUZ)

The Noise Control Act of 1972 found that noise not adequately controlled has the potential of endangering the health and welfare of people. It states that all Americans are entitled to an environment free from noise that can jeopardize their general health and quality of life. Along with state and local governments, actions from the Federal government were needed to ensure that the objectives of the Act were met. Concurrently, military installations were experiencing the impacts related to urban development moving closer to the installation and commenting on noise from flight operations. In 1973, the Department of Defense (DOD) responded by establishing the AICUZ program.

The AICUZ program seeks to develop a cooperative relationship between communities and military installations and provides land use compatibility guidelines designed to protect public health and safety, as well as maintain military readiness. As designed, the AICUZ study evaluates three components: noise, vertical obstructions, and accident potential zones.

The 2007 Fairchild AFB AICUZ study served to update and revise the noise and accident potential information from 1995. Differences between the 1995 AICUZ Study and the 2007 AICUZ Study are attributed to the following:

- Changes in flight operations and the addition, elimination, or alteration of flight tracks for mission and training purposes;

- Post September 11, 2001, aircraft operations tempo supporting wartime mission and homeland security requirements;
- Technical improvements to NOISEMAP, a computer program for modeling noise levels that determines noise zones (NZs) based on aircraft activity; and
- Changes in aircraft type, such as the replacement by the Washington Air National Guard (WAANG) of the KC-135E aircraft with the KC-135R, and based aircraft composition.

Mitigating noise and potential accident injury is a major component of compatibility planning. These two issues will be addressed in length in this Joint Land Use Study (JLUS), as well as other issues pertaining to compatibility.

Noise Zone Profile

Noise is the cornerstone of the AICUZ study. The noise generated by military aircraft operations and the effects of that noise on local communities are presented numerous ways in the study (i.e., written text, graphically, etc.). To fully appreciate the findings and recommendations presented in the AICUZ study, it is beneficial for the reader to have an understanding of how military aircraft noise is measured, evaluated, and graphically illustrated. Information on these characteristics can be found in Section 3 under Compatibility Factor #7, Noise. The noise zone profile will serve as a technical tool to address noise as a compatibility factor.

Vertical Obstructions

Vertical obstructions are evaluated based on Federal Aviation Administration (FAA) Regulation Part 77, Subpart C. This regulation looks at the height of vertical structures or natural features in relation to their distance from the ends of the runway. Using a distance formula from this regulation, local jurisdictions can easily assess the height restrictions near airfields. Additional information on Part 77 can be found in Section 3 under Compatibility Factor 3, Vertical Obstruction, or on the Federal Aviation Administration Internet site at <http://www.faa.gov/>.

Accident Potential Zones

As part of the AICUZ program and to aid in land use planning surrounding military bases, the DOD established Accident Potential Zones or APZs. These are defined as Clear Zones (CZ), Accident Potential Zone I (APZ I), and Accident Potential Zone II (APZ II). These are determined based on a statistical analysis of all DOD aircraft accidents. APZs follow departure, arrival, and pattern flight tracks and are based upon analysis of historical data. The Clear Zone is a square area that extends directly beyond the end of the runway and outward along the extended runway center line for a distance of 3,000 feet. The CZ for the Fairchild AFB runway is 3,000 feet wide by 3,000 feet long. Required for all active runways, above ground structures are generally not permitted in these areas and are optimally undeveloped. For this reason, acquiring sufficient real property interest in land within the CZ is critical to ensure incompatible development does not occur.

At Fairchild AFB, APZ I onset begins at the end of the CZ and extends out 5,000 feet. APZ II extends from the end of APZ I and stretches out an additional 7,000 feet. Both APZ I and APZ II are 3,000 feet wide. While aircraft accident potential in APZs I and II does not warrant acquisition by

the USAF, land use planning and controls are strongly encouraged for the protection of the public. Within APZ I and II a variety of land uses are compatible; however uses sensitive to noise, such as hospitals and schools, and people intensive uses such as high density residential should be restricted due to the greater potential for safety incidents in these areas. The current AICUZ safety zones and noise contours for Fairchild AFB are depicted on Figure 4-1.

Each AICUZ Study contains general land use guidelines related to safety and noise associated with aircraft operations. The Fairchild AICUZ Study lists the USAF-recommended land use compatibility guidelines in relation to noise zones and APZs. The information presented in the table is essentially the same as the information published in the June 1980 publication by the Federal Interagency Committee on Urban Noise (FICUN) entitled *Guidelines for Considering Noise in Land Use Planning Control* (FICUN 1980) and in the *Standard Land Use Coding Manual* (USURA 1965) published by the US Urban Renewal Administration (USURA).

Bird/Wildlife Aircraft Strike Hazard Plan

A Bird/Wildlife Aircraft Strike Hazard (BASH) plan is designed to control birds, alert aircrew and operations personnel, and provide increased levels of flight safety, especially during the critical phases of flight, take-off, and landing operations. Specifically the plan is designed to:

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Refer to Table 5-2 for strategies related to establishing Military Influence Areas.

5.2 STRATEGIES

Military Influence Area

A Military Influence Area (MIA) is a formally designated geographic planning area where military operations may impact local communities, and conversely, where local activities may affect the military's ability to carry out its mission. In other JLUS documents, terms such as Region of Military Influence (RMI), Military Influence Planning District (MIPD), Military Influence Overlay District (MIOD), Military Influence Disclosure District (MIDD), Airfield Influence Planning District (AIPD), and Areas of Critical State Concern (ACSC) have also been used to describe similar areas.

For the Fairchild JLUS, four MIAs have been designated to accomplish the following purposes.

- Protect public health, safety, and welfare.
Promote an orderly transition between community and military land uses so that land uses remain compatible.
Maintain operational capabilities of military Installations and areas.
Promote the awareness of the size and scope of military operations and training areas, in addition to the actual installation (i.e., critical air and sea space) that are critical to maintaining the military's mission.
Establish compatibility requirements within the designated MIAs, such as requirements for sound

attenuation, real estate disclosure, and aviation easements.

The MIAs are used to define where the other strategies in the Fairchild JLUS are to be applied. This technique ensures the strategies are applied to the appropriate areas, and that locations that do not raise a specific compatibility issue are not adversely impacted by regulations that are not appropriate for their location or circumstance.

The four MIAs defined under Strategy 1 for the Fairchild JLUS are defined as follows.

- MIA 1 (Regional / Non-Geographic). Strategies designated as part of MIA 1 fall into two types. The first type involves strategies that apply to Spokane County as a whole. These often reflect issues that can vary in geographic scope depending on the situation. For instance, changes in the use of airspace or flight operations at any airport in Spokane County could adversely impact operations at Fairchild AFB, and therefore are addressed in Strategy 34.

The second type contains strategies that do not apply to a specific geographic area, but are instead procedures or processes. An example of this is Strategy 29, which discusses the creation of a JLUS Coordinating Committee that will oversee implementation of this JLUS.

The MIAs for this JLUS are hierarchical in design. MIA 1 includes the areas defined for MIAs 2, 3, and 4. As such, there are no gaps in coverage with MIA 1.

- **MIA 2 (Coordination and Collaboration).** Spokane County currently uses a 30,000-foot (about a 5.7-mile) radius drawn from the Fairchild AFB runway to define an area requiring notification of property owners (currently through an avigation easement) of the location and operations occurring at Fairchild. In this JLUS, this area was used to define an area where strategies are focused on continuing this notification effort, and expanding it to cover other effected jurisdictions. Building on this concept of coordination, this MIA also applies strategies dealing with interagency coordination.

Other strategies within this MIA include controls of night lighting and reducing the potential for bird strikes on aircraft.

- **MIA 3 (Noise Impact Area).** As a component of this JLUS, a noise study was conducted to assess potential noise related to four future mission scenarios. These scenarios assume the replacement of Fairchild's current KC-135 tanker aircraft with next generation tanker aircraft based on civilian passenger airframes. In all scenarios the new aircraft are larger than the KC-135 aircraft currently operated. The results of each of the scenarios were combined with the 20-year forecast for SIA to provide an overall perspective on the effect of all aircraft operations within the region.

The scenario that combined the use of 32 KC-767A aircraft and 16 B-52 aircraft was selected for use in the JLUS. MIA 3 was defined by taking the modeled results for a new 65 Ldn noise contour and generalizing this area. The contour was

generalized to reflect the fact that noise contours are annual averages of operations and associated noise levels, and will vary on any given day. Based on JLUS committee comments, the far eastern tail of the noise contour was removed based on the contours narrow footprint on the eastern side and the fact that land in this area was primarily developed. Figure 3-21 shows the contours for each of the scenarios evaluated.

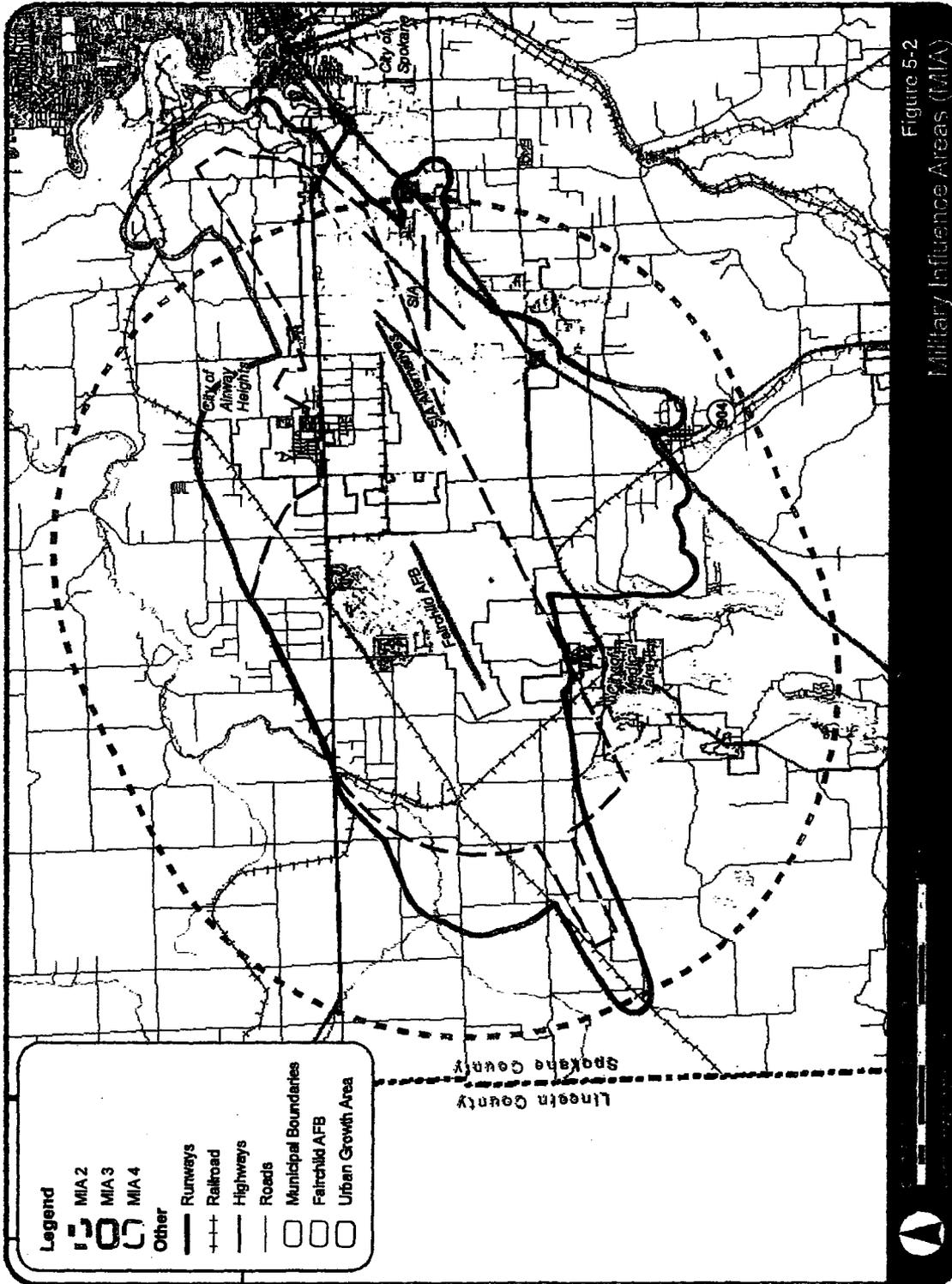
Strategies applied to MIA 3 focus on noise attenuation and a higher level of notification (required provision of an avigation easement) of the noise and safety hazard issues in this area due to flight operations from Fairchild AFB.

- **MIA 4 (Land Use Overlay).** MIA 4 is the only MIA that contains strategies that restrict land uses that can be utilized near Fairchild AFB. The shape of this MIA was based on a number of inputs that encompass the areas of primary aircraft overflight (closed pattern flight) and areas potentially exposed to noise levels of 70 Ldn and above.

On Tables 5-3 thru 5-18, the MIA marked is the overall area that the strategy applies. If MIA 2 is marked, this strategy will apply to all areas within that polygon, including the areas within MIAs 3 and 4. Similarly, a strategy marked as applying to the area within MIA 3 also includes the area within MIA 4.

Land use restrictions associated with strategies in MIA 4 do not apply to land on Fairchild AFB. The Air Force has separate guidance on the placement of land uses on an installation.

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Comprehensive Plans (Counties / Cities)

A comprehensive plan is designed to serve as the jurisdiction's "construction" or "blueprint" for future decisions concerning land use, infrastructure, public services, and resource conservation. Typically, there are three defining features of a comprehensive plan:

- A. **General.** A comprehensive plan provides the general guidance that will be used to direct future land use and resource decisions.
- B. **Comprehensive.** A comprehensive plan covers a wide range of social, economic, infrastructure, and natural resource factors. These include topics such as land use, housing, circulation, utilities, public services, recreation, agriculture, economic development and many other topics.
- C. **Long-range.** Comprehensive plans provide guidance on reaching a future envisioned 20 or more years in the future.

Within the State of Washington, the Growth Management Act (GMA) establishes the primacy of the comprehensive plan. The comprehensive plan is the cornerstone for any planning process and serves as the foundation of the local land use planning. Development regulations (zoning, subdivision, and other controls) must be consistent with comprehensive plans. In addition, state agencies are required to comply with comprehensive plans and development regulations of jurisdictions planning under the GMA.

According to the GMA, local comprehensive plans are to include chapters on the following topics: land use, utilities, housing, transportation, capital facilities, and shorelines.

Counties must also include a chapter on rural planning. Cities and counties fully planning under the GMA are to renew their comprehensive plans and ordinances at least every seven years and ensure compliance with state legislation.

By including Fairchild AFB and other US Air Force stakeholders in the JLUS process, the jurisdictions participating in this JLUS are complying with the State Growth Management Act, RCW 36.70A.530, which requires that counties and cities with federal military installations consult with commanders of those installations when amending comprehensive plans and development regulations.

Current Status

Comprehensive plans, and the Washington Growth Management Act, provide guidance on some compatibility issues. One of the primary tools available within the GMA to regulate growth and promote compatibility planning is the establishment of urban growth areas (UGAs). As required under the GMA, the jurisdictions in the study area have worked together to develop countywide planning policies (CWPPs) to ensure a coordinated and regional approach to planning. For compatibility planning, the key policy in the CWPP is Policy 11.

- **Policy 11, Policy Topic 2, Joint Planning within Urban Growth Areas (UGAs).** Where applicable, comprehensive plans should contain land use policies which provide protection for the continued viability of Fairchild Air Force Base, Spokane International Airport, Felts Field, Deer Park Airport and other publicly owned airports within Spokane County.

In Spokane County, the comprehensive plan provides broad guidance to develop regulations to protect Fairchild AFB. Like the Zoning Code, would recommend the addition of Fairchild AFB to some policies that simply use the term "airport", which could be misconstrued by the public as to intent.

Policy T.31.4 includes the statement "...Coordinate the protection of Fairchild AFB by developing regulations that utilize Department of Defense AICUZ land use criteria for encouraging compatible land uses adjacent to military airports." As discussed under the section on AICUZ, it is recommended that the County change its Zoning Code to modify its AOZs to add a new definition for Fairchild AFB that uses the DOD Accident Potential Zones.

The City of Airway Heights Comprehensive Plan provides broad policy support for compatibility with Fairchild AFB. One implementation program discusses noise dampening mitigation measures. This program is recommended for modifications to reflect the change shown under Strategy 10.

The City of Medical Lake's comprehensive plan recognizes the city's strong link with Fairchild AFB, specifically noting proper land uses in areas in proximity to the base. The plan creates an Air Base Noise Overlay (ABN) that identifies areas with the potential to encroach into areas within the 65 (dB) Day-Night Average Sound Level (DNL). The plan recommends the creation of a zoning overlay to implement design standards to mitigate noise impacts. Medical Lake also identifies Fairchild AFB as a major commercial center, complimenting the city's central business district.

For the City of Spokane, potential annexation into the UGA will bring the city limits closer to Fairchild AFB. Accordingly, some changes to their Comprehensive Plan are required to reflect compatibility issues.

Table 5-3. Comprehensive Plan Strategies

[Redacted Header]													
2	<p>Compatibility Policy Set The goals and policies contained on the following pages are proposed for inclusion into each jurisdiction's comprehensive plan. These changes provide a complete policy package for compatibility planning and provide a policy basis for many of the other strategies contained in this JLUS.</p>	■			■	■	■	■					■
	<p>Policy Statement on Sound Attenuation To provide a policy basis for sound attenuation requirements, jurisdictions should add a policy or implementing program to require sound attenuation mitigation measures to all remodeled or new sensitive land uses within the 65 Ldn contour for the potential mission scenario based on a mix of next generation air refueling aircraft and B-52 aircraft, as shown on Figure 5-2. The modification shown below for Airway Heights is an appropriate basis for other jurisdictions.</p>		■		■	■	■	■					■
3	<p>For Airway Heights Comprehensive Plan, provide the following modifications to an existing program:</p> <ul style="list-style-type: none"> ■ Implementing Program: Require sound attenuation mitigation measures to all remodeled or new sensitive land uses (residential, schools, hospitals, convalescent homes, public assembly facilities, libraries, and churches) within the 65 Ldn contour for the potential mission scenario based on a mix of next generation air refueling aircraft and B-52 aircraft, as shown on Figure [TBD]. (Figure number will be determined when plan is updated). 												
	<p>Incorporating Military Housing Needs in Local Comprehensive Plans When a jurisdiction updates its chapter on housing in its comprehensive plan, the chapter should include a discussion of military housing needs and programs to address housing needs.</p>	■			■	■	■	■	○				
4	<p>As part of this effort, Fairchild AFB will provide jurisdictions with current information on housing demands; amount of housing provided by the installation; generalized income, by rank, of personnel living off-base; and current distribution data on off-base personnel by zip code.</p>												
Notes:		■ marks the geographic area to which this strategy applies	■ denotes the responsible agency / organization (implements)	○ denotes a partner agency / organization (provides support)	■ when the strategy should be complete								

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Proposed Policy Framework (see Strategy 2)

General

Goal	To ensure that future land uses are compatible with the continued operation of Fairchild AFB and avoid risk to life, property and the well-being of City residents from hazards associated with aircraft operations.
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Policy: Role of Fairchild AFB

Continue to support the role of Fairchild AFB as a significant contributor to the economic base of the community.

Policy: Development Constraints

The [County / City] shall not allow development in areas where the risks to potential health and safety cannot be mitigated to an acceptable level.

Policy: Local Supplies and Services

The [County/City] will work with Fairchild AFB to enhance the use local contractors and services, and to purchase material, equipment, and supplies from in-city sources. The City should identify and support development of businesses and suppliers to the military and their contractors that are compatible with Fairchild AFB.

Military Compatibility

Goal	To enhance land use compatibility between Fairchild AFB and property in the surrounding area and to protect public health and safety.
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Policy: Military Influence Area (MIA) Overlay

The [County / City] will define and maintain a set of Military Influence Areas (MIA) as an overlay on the General Plan Land Use Diagram and Zoning map. The MIA will be defined based on noise and safety guidance from the current AICUZ study as well as other compatibility factors evaluated in the Fairchild JLUS program.

The MIA is designated to accomplish the following purposes.

- Protect public health, safety, and welfare.
- Promote an orderly transition between community and military land uses so that land uses remain compatible.
- Maintain operational capabilities of military installations and areas.
- Promote the awareness of the size and scope of military operations and training areas, in addition to the actual installation (i.e., critical air and sea space) that are critical to maintaining the military's mission.

- Establish compatibility requirements within the designated MIAs, such as requirements for sound attenuation, real estate disclosure, and aviation easements.

The MIA shall, at a minimum, reflect the current mission 65 CNEL contour, but may be expanded to address additional issues relative to safety, overflight, light and glare, vertical hazard potential, and other related compatibility issues as identified in the Fairchild JLUS or follow on assessments. MIA shall be defined as follows:

- **MIA 1 (Regional / Non-Geographic).** Reflects strategies that are general in nature, and may not have a geographic extent. This MIA covers strategies that deal with establishment of common plans and programs dealing with compatibility. This MIA also covers regional strategies that apply to Spokane County as a whole.
- **MIA 2 (Coordination and Collaboration).** Areas inside the 30,000 foot conical area surrounding the Fairchild AFB runway. This MIA covers coordination on planning activities in the region relative to compatibility planning.
- **MIA 3 (Noise Impact Area).** Is a generalized area that is defined by a ¼ miles area around the 65 LDN contour for the potential mission scenario, which is based on a mix of next generation air refueling aircraft and B-52 aircraft.
- **MIA 4 (Land Use Overlay).** Includes areas defined as having a high potential for noise and safety impacts to which land use controls are appropriate. Within MIA 4, intensification of land use designations over currently adopted designations (Comprehensive Plan amendments

and zone changes) shall not occur without site specific studies defining the appropriateness of the change in relation to the protection of operations at Fairchild AFB.

Unless already permitted as part of an existing development, subdivision or development approval, only land use designations consistent with the potential mission noise contours shall be used on the jurisdiction's Land Use Diagram, with an intensity of use consistent with zoning code requirements specified in the Fairchild JLUS.

JLUS Strategies: 25 and 26

Communications / Coordination

Goal	To provide opportunities for the [County/City], Fairchild AFB, residents, industry, and agencies to collaboratively participate in all phases of the GMA planning process or development review.
-------------	--

Policy: Coordinate with on JLUS Implementation

The [County/City] shall coordinate closely with jurisdictions, agencies, organizations, and Native American tribal governments in and near the JLUS Study Area to ensure their policies and regulations are consistent with the City's General Plan, the Fairchild AFB AICUZ, and the Fairchild JLUS.

JLUS Strategy: 29





DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 92D AIR REFUELING WING (AMC)
FAIRCHILD AIR FORCE BASE WASHINGTON

Colonel Brian M. Newberry
Commander
1 E. Bong St., Ste 206
Fairchild AFB WA 99011

Mr. Derrick Braaten
City Planner, City of Airway Heights
1208 S. Lundstrom St.
Airway Heights WA 99001

Subject: Airway Heights C-2 Amendment

Dear Mr. Braaten

Thank you for the opportunity to comment on the SEPA DNS Determination regarding Airway Heights' C-2 amendment.

Based on the 1995 Fairchild AFB (FAFB) Air Installation Compatible Use Zone (AICUZ) Study, the highlighted parcel on the attached C-2 map is located in the 65-70 Ldn Noise Zone. Based on our 2007 AICUZ study, the property is now outside of the 65 Ldn contour line. This change demonstrates that noise zones expand and contract as missions change. Unfortunately, we cannot predict future noise zones; however, we do know that the highlighted parcel will be susceptible to aircraft noise into the foreseeable future, from both FAFB and Spokane International Airport. This fact was highlighted in the 2009 Joint Land Use Study (JLUS). As the JLUS Implementation Steering Committee collaborated with Airway Heights in the development of the C-2 map, these parcels were identified as potentially incompatible for high-density residential development. Fairchild AFB concurs with the JLUS Implementation Steering Committee's agreement entered into with Airway Heights and Spokane County that the other C-2 multi-use residential development areas (indicated in green on the attached map) are compatible. However, we renew our concerns originally expressed in 2008 regarding the 25302.xxxx series of parcels identified in the C-2 amendment and recommend they be removed from consideration for multi-family residential development. The highlighted area is within Military Influence Area 3/4 of the JLUS and we are concerned about increasing the residential density in an area so close to where our military jet aircraft fly instrument approaches to our runway. The centerline of Fairchild's Runway 23 extends out to about 14 nautical miles from the base crossing overhead the intersection of Hayford Road and Route 2. The parcels to the east of Hayford and south of Route 2 are very close to that area.

We are also concerned with the location of the 25302.xxxx series parcels and the future development of the new Spokane International Airport (SIA) Runway 21R as depicted in their draft Master Plan. Those parcels will be located between two major airport runways (Fairchild

EXHIBIT 10

and SLA) with substantial jet aircraft operations. Noise will be a factor as both airports operate 24 hours a day. While sound mitigation techniques can be used during construction, we strongly do not recommend increasing residential development in that area. Safety is also a factor worth considering and the close proximity to the approaches of the two runways would increase the risk to the residents in the event of a catastrophic aircraft accident.

If Airway Heights has no choice other than to include these parcels in the C-2 amendment, we request the City mandate a 30 dB outdoor-to-indoor noise reduction as a condition of approval. Further we would ask the developer to provide the City of Airway Heights and Fairchild AFB with its plans to reach the 30 dB reduction threshold. This will allow the Air Force to properly comment on the compatibility of the proposed development. In addition, we recommend the developer be required to incorporate exterior sound absorbing materials and techniques as described in the USDOT/FAA publication called "Sound Insulation of Residences Exposed to Aircraft Operations" to reduce exterior noise exposure. The website to review this document is <http://www.wylelabs.com>.

Thank you again for the opportunity to comment on the SEPA DNS Determination. If you have any questions or need additional information, please contact Mr. Roger Grimes, Base Community Planner, at 247-3937 or Mr. Jeffrey Johnson, Director, Fairchild AFB Encroachment Management Team and 92d Mission Support Group Deputy at 247-1470.

Sincerely



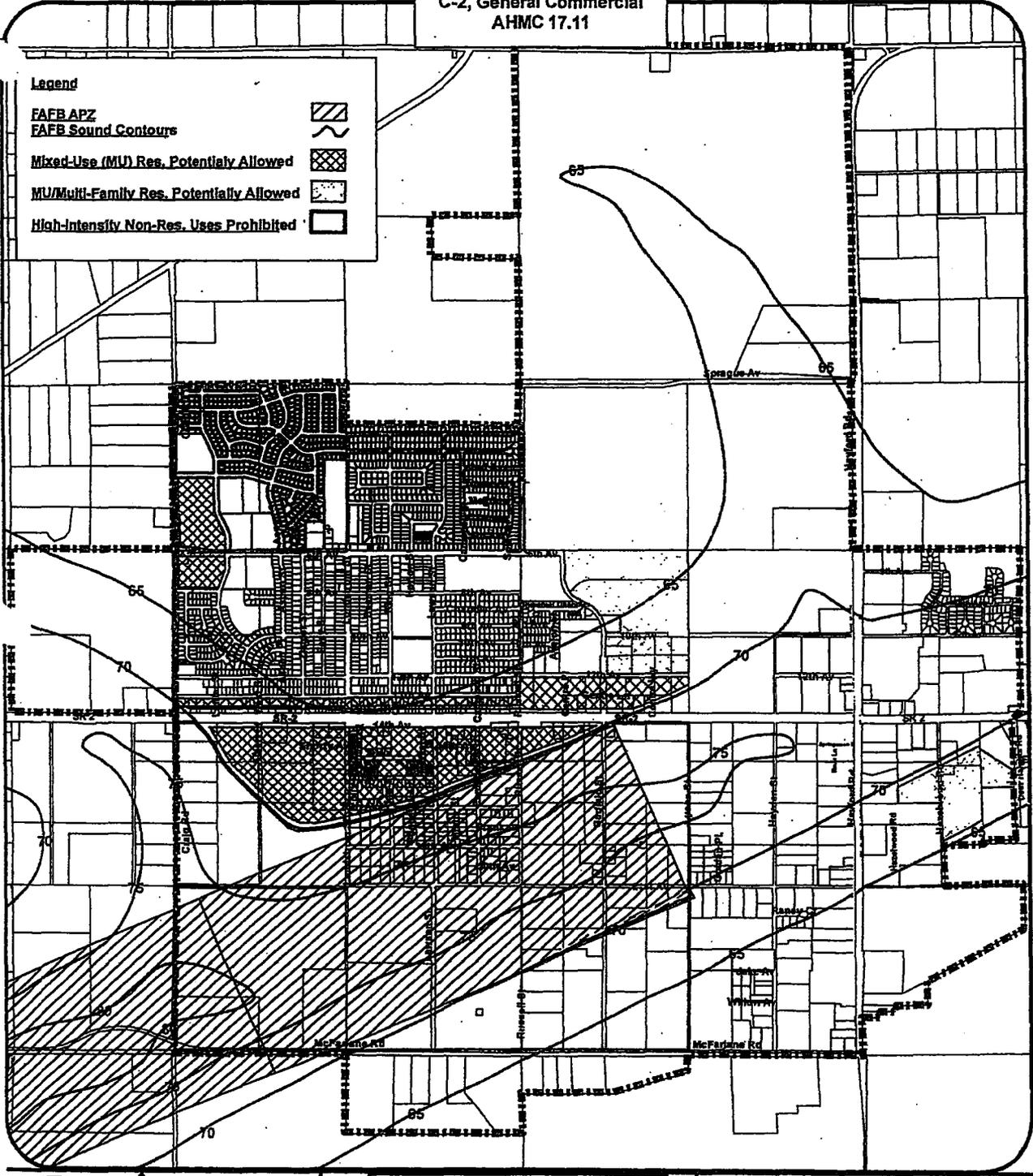
BRIAN M. NEWBERRY
Colonel, USAF
Commander

Atch: C-2 Map with highlighted parcel

Appendix A
 C-2, General Commercial
 AHMC 17.11

Legend

- FAFB APZ 
- FAFB Sound Contours 
- Mixed-Use (MU) Res. Potentially Allowed 
- MU/Multi-Family Res. Potentially Allowed 
- High-Intensity Non-Res. Uses Prohibited 



Source: AH GIS
 October, 2012

City of Airway Heights
 Commercial Zoned Properties
 Potentially Available for CUP MF
 Residential Development

Information displayed on this map was compiled from various sources and may not have been verified and should not be used to determine actual boundaries. This information should be used for planning purposes only





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Spokaneplanning.org

July 25, 2013

Council Members
City of Airway Heights

Re: Mixed-Use Development Overlay Ordinance, AHMC 17.37 and changes to the
General Commercial Zone (C-2), AHMC 17.11

Dear City Council Members,

As was expressed to staff and the Plan Commission the City of Spokane is very concerned by Airway Heights' proposed Mixed-Use Development Overlay Ordinance, AHMC 17.37 and changes to the General Commercial Zone (C-2), AHMC 17.11 (the "Proposal").

The Proposal appears to be an effort to pave the way for additional high density residential housing in an area that will be subject to impacts from both Fairchild Air Force Base and Spokane International Airport for the foreseeable future, will jeopardize current and future missions/operations of both facilities, and will be detrimental to the public health, safety, or general welfare.

Indeed, less than five years ago, the Spokane County Hearing Examiner denied a proposal for additional high density housing in this same area for these very reasons:

As indicated by the FAA, Spokane International Airport, WSDOT-Aviation, the City of Spokane, and Greater Spokane Incorporated; and by the Board of County Commissioners in its recent amendment to the LI zone; the approval of high density residential development on the site would weaken existing protection for the airport and Fairchild AFB, the flying public and future residents, by allowing incompatible development and potential hazards closer to the critical phases of aircraft approach and departure operations; and would jeopardize the future viability of such facilities. . . . The application, even as conditioned, is generally not compatible with other permitted uses in the area, and will be materially detrimental to the public welfare; and should be denied

Spokane County Hearing Examiner, Findings of Fact, Conclusions of Law, and Decision, File No. CUW-01-08, p. 25. The applicant appealed the Hearing Examiner's decision and the decision was ultimately affirmed by two Washington courts:

The unchallenged facts establish that the Deer Creek site will be subject to airport noise for the foreseeable future and the noise impact zones for FAFB to expand and contract as the mission of FAFB changes. Findings

EXHIBIT 16

of fact also establish that a multifamily development on the Deer Creek site would adversely impact the layout, length, and orientation of a proposed runway for SIA and will jeopardize current and future SIA operations.

The Federal Aviation Association (FAA) expressed concern that the proposed development would be located within the " 'area of influence' " of two major airports, and in a potential cumulative noise impact area for both airports. The FAA was also concerned about the volume of aircraft approaching SIA or FAFB that would fly over high-density residential development at low altitudes subjecting the residents to considerable single event noise impacts. According to the FAA, "permitting high density residential uses, or high concentrations of residential use, within the vicinity of the airport weakens the existing protection for the airport, the flying public and future residents; by allowing incompatible development and potential hazards closer to the critical phases of aircraft approach and departure operations." The FAA also contended that these actions "would violate written assurances and contractual commitments given by the City and County ... to the federal government to protect the airport ... [and] could jeopardize the receipt of future federal grants."

Based on the unchallenged findings, there are sufficient facts to support the hearing examiner's conclusion that the conditional use would be detrimental to the public health, safety, or general welfare.

Deer Creek Developers, LLC v. Spokane County, 157 Wn. App. 1, 236 P.3d 906, rev. denied 170 Wn.2d 1021 (2011).

More recently, Fairchild has renewed its concerns and objections (previously expressed in 2008) to Airway Heights' proposal to allow additional high density residential housing at the end of its runway.

[W]e renew our concerns originally expressed in 2008 regarding the 25302.xxxx series of parcels identified in the C-2 amendment and recommend they be removed from consideration for multi-family residential development.

See July 3 e-mail from Jeffrey R. Johnson, Director, Fairchild AFB Encroachment Management Team, with attached letter from Brian M. Newberry, Base Commander.

Despite previous Hearing Examiner and Washington Court decisions recognizing the significant harmful environmental impacts of additional high density residential development in this area, and despite the renewed concerns expressed by Fairchild's Base Commander and the Airport Director at Spokane International Airport, the Proposal and related SEPA checklist fails to acknowledge the probable significant adverse environmental impacts associated with this proposal. At a minimum, the Proposal

warrants a determination of significance and an environmental impact statement that explores alternatives to allowing the type of development that has already been recognized as detrimental to the public health, safety, and general welfare.

On a general level, the Proposal and the latest related revised SEPA documents still do not satisfy SEPA's requirement for rigorous review environmental impacts at the earliest possible point in the planning and decision-making process. Many of the responses to the questions on the SEPA checklist state, "Any mitigation for this type of activity will be determined at the time of specific application." The cumulative impacts of this proposal cannot be considered if all the environmental review is being deferred to the time of development application. The number of residential units that this proposal could result in has not been identified and the resulting impacts on traffic, schools and other public services and facilities that have not been addressed.

On a more specific level, however, and as suggested above, the Proposal and related SEPA documents fail to address the Proposal's probable significant adverse impacts to Fairchild Air Force Base and Spokane International Airport (SIA), two of the region's most significant essential public facilities. For this reason, we believe the Proposal is procedurally and substantively flawed.

Airway Heights' proposal runs contrary to the requirement for intergovernmental cooperation regarding the protection of essential public facilities, ignores the needs of both installations, and jeopardizes the region's long-term investment in both facilities. Since the mid 1990's Airway Heights was committed to not allowing additional residential uses South of Highway 2 as it was recognized that it would be detrimental to the long term operation of Fairchild.

Washington law acknowledges that cities are not regional decision-making bodies and are not free to make unilateral decisions that place the future of a region's essential public facilities in jeopardy, particularly so with respect to airports and military installations. The legislature has recognized that military installations such as Fairchild are of particular importance to the State's economic health and has made it a priority to protect the land surrounding the State's military installations from incompatible development.

Pursuant to RCW 36.70A.530(3), a comprehensive plan, amendment to a plan, a development regulation or amendment to a development regulation, *should not* allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements.

State law (RCW 36.70.547) also mandates that cities discourage the siting of incompatible uses adjacent to general aviation airports through their comprehensive plan and development regulations.

RCW 36.70A.530(3). Washington law also prohibits the adoption of a comprehensive plan or development regulation that precludes expansion of an essential public facility. RCW 36.70A.200(5); *City of Des Moines v. Puget Sound Regional Council*, 98 Wn. App.

23, 988 P.2d 27 (1999) and *Concerned Citizens Against Runaway Expansion, et al. v. City of Anacortes* 01-2-0019 WWGMHB (Final Decision and Order, December 12, 2001), both of which interpret RCW 36.70A.200(5) to apply to expansions of essential public facilities.

[A] local government plan may not . . . effectively preclude the siting or expansion of an [essential public facility], including its necessary support activities.

Port of Seattle v. City of Des Moines 97-3-0014 (CPSGMHB Final Decision and Order, August 13, 1997). Washington law also requires intergovernmental collaboration regarding the protection of essential public facilities. See e.g., *Central Puget Sound Regional Transit Authority v. City of Tukwila*, Case No. 99-3-0003 (CPSGMHB Final Decision and Order).

Along these lines, the Proposal violates Airway Heights' previous commitment to the City and County of Spokane, as set forth in that certain Interlocal Agreement Regarding Annexations of Portions of the West Plains Urban Growth Area between the City of Spokane, the City of Airway Heights, and Spokane County, dated December 3, 2009 ("2009 Interlocal Agreement"), wherein the parties agreed as follows:

Spokane, Airway Heights and the County acknowledge and agree that the Spokane International Airport and Fairchild Air Force Base are two of the region's most essential public facilities and that the parties should discourage development adjacent to either facility that is incompatible with the facilities' operational needs and/or its ability to carry out its current and/or future missions ("incompatible development"). *The term "incompatible development" means permitted land uses that are inconsistent with the Fairchild Air Force Base Joint Land Use Study ("JLUS"), WSDOT Aviation Division Regulations, FAA Regulations, state statutes or regulations.*

Strategy 49 of the Joint Land Use Study (see page 5-59) recommends against expanding residential uses in the MIA 4. Many of the proposed overlay locations are within the 2009 MIA 4.

"Land Uses Allowed in MIA 4

Within MIA 4, land use designations (comprehensive plan or zoning code) in place as of May 2009 should be reviewed using the following criteria prior to any designation change:

- Land currently designated for non-residential use shall not be redesignated to a residential use category. It may be redesignated to another non-residential use category (except for mixed use) as long as conditions of approval restrict the intensity of development allowed (see Strategy 50).

- Land currently designated for a residential use shall not be modified to another residential designation that allows a higher density of use than allowed in the current designation.
- Existing approved subdivisions or other residential developments within MIA 4 shall not be amended or otherwise modified to increase the number or intensity of residential units previously approved.
- All uses in MIA 4 shall be required to do an acoustical study and provide appropriate noise attenuation. (See also Strategy 20)
- No new residential development shall be approved within the 70 LDN (or higher) noise contours for the potential mission scenario, as updated.”

One location south of Highway 2 between Hayford Road and Deer Heights Road that is proposed to be included overlay is within the Washington Department of Transportation (WSDOT) recommended Traffic Airport Compatibility Zone for the proposed third runway for Spokane International Airport. Because of the existing rural and industrial character of the area surrounding the airport, the City of Spokane after an extensive process that included working with SIA, WSDOT aviation, FAFB, and surrounding jurisdictions prohibits land use and zoning changes that increase residential uses in Airport Compatibility Zones (ACZ) 1 through 5 as that would negatively impact the airport. Spokane County is presently adopting a final version of essentially the same standards and the City of Spokane requests that the City of Airways do the same. This will minimize future conflicts between residents and airport operations and maximize the potential of our public investment in this facility.

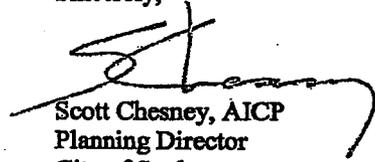
This same location south of Highway 2 between Hayford Road and Deer Heights Road is designated as “Properties Under Study by SIA” on a map that is an appendix to Airway Heights Municipal Code Chapter 17.16 that was adopted in late 2012. Spokane International Airport has not issued any documentation indicating that the development of residential uses in this location has been studied and found to be compatible.

As indicated above, however, a hearing examiner’s decision and a recent published court of appeals decision both hold that additional multi-family housing in this location is incompatible with the needs of both Fairchild and SIA and would be detrimental to the public health, safety, or general welfare. Other than Airway Heights’ annexation of the area in question, the facts have not changed since these decisions. The facts have not changed since the Air Force’s April 14, 2008 letter opposing expansion of Deer Creek. Indeed, the Air Force has renewed those same concerns in connection with Airway Heights’ proposal. The FAA’s concerns remain valid and the City and County’s obligations to the FAA remain the same. With this in mind, we respectfully ask you to take this area out of the Proposal.

It is important that the long term and cumulative impacts of these proposals are thoughtfully considered. All the effort of other jurisdictions to protect these facilities will be in vain if one jurisdiction fails to do so in violation of State law which requires intergovernmental collaboration regarding the protection of essential public facilities.

Thank you for the opportunity to comment. Please include these comments in the record of both proposals. The Cities of Spokane and Airway Heights will continue to work closely to shape the future of the West Plains.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Chesney", written over the typed name.

Scott Chesney, AICP
Planning Director
City of Spokane



Memorandum



From: Derrick Braaten, Development Services Director
To: City Manager, City Council, File
CC:
Date: 7/24/2013
RE: ZCA 2013-01 & ZCA 2013-02 Comment Summary & Responses

The City has received various comments regarding the proposed amendments to AHMC 17.11 & 17.37. Most have been focused on the amendments to 17.11, which proposes to designate certain C-2 properties as potentially allowed to develop multi-family projects. The properties of concern appear to be those located in the East Annexation area. These three properties comprise an area of approximately 30 acres, located to the south, and parallel to, the FAFB flight path. They are also located to the north, and parallel to, the proposed future 3rd runway alignment for SIA. Basically, they are located between the FAFB operational flight-path and the proposed 3rd runway alignment for SIA.

They are surrounded by existing multi-family residential developments or intervening structures on three sides. Staff considers these properties to be "infill" due to the surrounding structures and uses. They lie within the City's adopted 65 LdN contours, but outside of the actual contours produced by current FAFB operations. Also, their proximity to Highway 2 creates ambient sound that helps obscure operational flight noise.

Spokane International Airport Master Plan

Various statements have been made regarding what the City agreed to during the Joint Land-Use Study (JLUS) process regarding the properties in the East Annexation Area. It has been repeatedly stated that Airway Heights agreed to wait to take final action on these proposals "until the SIA Master Plan is completed". This is inaccurate.

As our JLUS process wrapped up, and just before adoption in December, 2012, SIA and the City of Spokane requested that the City designate these properties as "under study by SIA" until the SIA Master Plan was completed. SIA stated that they projected the plan would be submitted to the FAA by March 31, 2013. The City recognized that these types of projects often take longer than expected, so agreed to not take final action, through Ordinance C-759, before May 15, 2013. The City requested that it be provided with any science that it was not aware of that would indicate these properties should not be used as is being proposed. It also asked that it be permitted to see the draft documents as they develop in order to ensure compatibility with their plan.

However, that request was denied and Staff could only review documents as they were released to the public. Therefore, Staff used modeling from the 2009 3rd Runway Alignment Study, a 2011 map developed by the City of Spokane, and other available documents to ensure the proposals do no conflict with DOD or FAA recommendations. As the draft documents have been released from the SIA Master Plan, they have not shown any indication that what is being proposed would conflict with the transport elements of the draft plan. However,

City of Airway Heights
Planning Department

July 24, 2013.

increased residents in that area could have a detrimental affect on recruiting aviation industries in the area between the 3rd runway alignment and the City's SE border, especially if the proposed industrial uses would generate noise, such as engines revving, etc. Final FAA approval of the draft plan can take up to 2-years, though that is not likely.

Compatibility With JLUS:

The City of Spokane and Spokane County have both commented that they do not believe allowing any new residential in the East Annexation area would be appropriate. Their comments indicate they believe that allowing any new residential in the area to be in conflict with the adopted JLUS standards. These comments appear to be based on their adopted JLUS regulations, not ours. To help clarify how these concerns have been addressed, a brief explanation of AICUZ and JLUS standards is necessary, and will help clarify how Staff developed its recommendations based on these standards.

First of all, these properties lie outside the area covered by the Department of Defense (DOD) Air Installation Compatible Use Zones (AICUZ) standards for FAFB. AICUZ standards are developed by the DOD aviation facility to protect current operations. The AICUZ consist of the Clear Zone (CZ), Accident Potential Zones (APZ) 1 & 2, and modeled sound contours produced by the facility's current mission profile. The CZ and APZs are geometrically determined based on the size of the facility's runway. Absent a local JLUS process, these standards determine whether something would be considered an encroachment concern. Those standards are then forwarded on to affected jurisdictions, with a recommendation that they be adopted. Airway Heights has been operating under the FAFB AICUZ standards since they were established in 1995 and adopted them as code (AHMC 17.16) in 2008. AICUZ standards are a DOD exercise regarding the current operations of the facility, but they do not look at potential future mission impacts. That is done through a JLUS local process.

A JLUS is a DOD guided process, with a local community, or communities, acting as the lead. An appropriate JLUS process includes all affected communities and stakeholders. It establishes standards geared towards protecting not only the current mission profile of a DOD aviation facility, but also considers likely future mission profiles. Draft standards are developed and then forwarded on to the affected communities for review, local modification to meet specific community needs, and implementation. Ultimately, the desire is for all affected jurisdictions to adopt the same regulations and standards.

However, DOD recognizes, and expects, that each jurisdiction's specific impact from the facility will be different, as each jurisdiction is located in a different aspect of the overall impact area. There is no legal requirement under law that affected jurisdictions adopt, or even participate in, a JLUS process. Also, not only can jurisdictions choose not to participate, they can adopt regulations that are more, or less, stringent than those recommended through the JLUS process or suggested by DOD.

JLUS standards include the CZ and the APZs, but also subdivide land-use compatibility zones into Military Influence Areas, or MIAs. Under DOD recommendations, a JLUS should consist of four MIAs. MIA 1 represents the entirety of Spokane County. MIA 2 covers an area extending 5-miles from the runway alignment and any land-use activities within this area require coordination between the affected jurisdiction and the aviation facility. MIA 3 covers an area extending 1/4-mile beyond the 65 LdN sound contours and represents an area considered a "noise impact area". MIA 4 is the only MIA that should include land-use restrictions, and represents the area covering direct operational flight paths (closed pattern flight) and sound contours exceeding 70 LdN.

Under MIA 3, as defined by DOD, within the 65 LdN contour, residential development should be discouraged. However, if a community has a need for residential uses in the area, such uses can generally be made compatible using appropriate sound mitigation, height limitations, and design. Residential development is *strongly discouraged* within sound contours 70 LdN or higher, or the operational flight path of the facility, which also defines, under DOD recommendations, MIA 4.

July 24, 2013

According to DOD recommendations, these properties would be located in MIA 3. As noted earlier, under DOD standards, most residential can be made compatible in 65 LdN contours, but requires sound mitigation, notification that there are operational over-flights, and that there will likely be noise generated by such activity. However, during the local JLUS process, the draft regulations developed recommended consolidating MIAs 3&4. This extended the land-use restrictions recommended under DOD standards for MIA 4 out to the 65 LdN line. Due to how the proposed regulations would negatively affect Airway Heights' development, we did not agree to this recommendation. Instead, we implemented MIAs more closely based on the 1995 FAFB AICUZ sound contours, with the allowed land-uses being very close to, but somewhat more restrictive, than DOD recommendations.

The version of JLUS adopted by the City of Spokane and Spokane County state that residential density would not increase in areas that lie within the 65 LdN, or higher, contours. Our version also states there will not be any increase in residential density beyond that in place at the time of adoption of our JLUS. However, though very similar, our JLUS standards do not match with theirs, and the status of the properties in the area of concern has not been finalized under our JLUS. Throughout the JLUS process, these properties have always been proposed by Airway Heights to be included for limited, multi-family residential use. This is due to the existing structures and the fact they lie outside of the actual sound contours above 65 LdN from either FAFB or SIA's current, or likely future, operations.

Though located in the City's adopted 65-69 LdN sound contour for FAFB, they lie well outside the current, and likely future, actual sound profile. The City's adopted sound contours are 2.5 times the actual noise profile from FAFB operations. They may be even adequate to handle F-35 fighter jets. This was done to ensure an adequate buffer was provided for current and likely future FAFB mission profiles. Also, any proposed residential uses would go through a conditional use process, perform sound studies, provide notification the property may experience noise disturbances from aviation activities, provide an aviation easement for the property, adhere to height limitations, and other conditions. Residential building on these sites would likely have a cost increase of at least 10% to 20% over similar builds located outside the 65 LdN lines.

Hearing Examiner's Decision

Another issue often mentioned in their comments is the Hearing Examiner's 2007 decision regarding the expansion of Deer Creek Apartments, and the results of subsequent appeals of that decision. One property owner sought to develop a new multi-family project on the 5-acre site between the theatre and the existing Deer Creek apartments. The proposed expansion was denied, and the denial was upheld on appeals. However, when using a decision of this nature as a basis for a reason to not allow others to develop, one needs to look at the questions being asked, and whether it applies to the current situation.

The Hearing Examiner was asked whether expanding a non-conforming use was appropriate. It is pretty well understood that except for very rare circumstances, the answer is no. Non-conforming uses are not to be expanded. Upon appeal of a Hearing Examiner decision, the record is closed *and no new information, even if it would clearly change the rulings, is permitted to be included in reviewing the decision.* Therefore, any new information, science, or best practices would not be considered. Only those items originally reviewed by the Hearing Examiner are considered, and whether the Examiner's decision was appropriate *based on the information in the record.* Not necessarily reality or new information.

Initially, Spokane County allowed multi-family in light-industrial zones. After Deer Creek and the first phase of the Bentley Apartments was built, but before the developers tried to expand, the County placed a moratorium on multi-family in light industrial zones. Bentley Apts. was permitted to expand their use due to when they vested the property and the fact they had already been approved for the expansion before the moratorium. Deer Creek had not. After implementation of the moratorium, both properties were designated as non-conforming uses. However, the existing multi-family developments are not non-conforming uses in Airway Heights. Also, the

July 24, 2013

second phase of Deer Heights should be considered a new project, not an expansion of an existing non-conforming use.

Since that initial decision, things on the ground are different, and there is new information that could not be considered at that time. The 2003 Airport Master Plan that was used as a metric showing why these properties would be a concern is currently being updated, and any existing aviation overlays for that facility will need to be updated to reflect the new data. Based on the draft Master Plan documents available, and modeling shown on maps developed by the City of Spokane, these properties lie outside the 65 LdN contours of SIA and the actual sound contours of FAFB's current, and likely future, operations. The alignment of the 3rd runway had not been established in 2007. According to the draft Master Plan documents, these properties are located in the FAA's designated "Zone 6, Traffic Pattern Zone". According to the FAA, and as shown in the 2013 SIA Master Plan, it is recommended that "most residential and non-residential uses" be allowed in the Traffic Pattern Zone. (2013 SIA Master Plan, pg:7-6)

Aviation Community's Comments

Spokane International Airport, WSDOT Aviation, and FAFB all submitted comments. The basics of their position is that they would prefer no residential be permitted on the East Annexation properties. However, if the City determines it is necessary to permit residential uses on those properties, then they request that such uses only be permitted as part of a complementing mixed-use development.

One of their prime concerns regarding the East Annexation properties is that they lie between two runway alignments. Because planes do not fly "on a wire" and move through a 3-dimensional space, there is concern there could be an accident. Staff does not dispute there could be an accident. However, due to the intervening structures that already exist, it is less likely that these vacant sites would be struck. Building residential on these sites would in no way increase the likelihood of an airplane crash. In fact, based on actual events, it is more likely that a tornado will strike the area rather than a plane would crash.

The last crash incident occurred at FAFB in 1994 during an air show practice. The last incident over the City was in 1958, when two B-52s collided over Airway Heights. Thirteen crewmen were killed, three survived, and there were no casualties on the ground. All these incidents involved B-52s, which are no longer based at FAFB. Crashes locally involving KC-135s are as follows:

- In 1962, a KC-135 was on approach to Fairchild from Ellsworth Air Force Base in Rapid City, SD when it crashed into a ravine on Mount Kit Carson 32 kilometers northeast of Fairchild. 44 people were killed in that crash.
- In 1967, a KC-135, flying from Hickam Air Force Base in Hawaii to Fairchild, crashed into Shadow Mountain while on descent into Spokane. 9 people were killed in that crash.
- In 1987 a KC-135 crashed at Fairchild Air Force while rehearsing maneuvers for an air show. The crash was later determined to be the result of the tanker hitting the wake turbulence of a B-52 ahead of it, causing the aircraft to roll 90 degrees, and was flying too low and slow for the air crew to recover. Six airmen in the KC-135 and a spectator on the ground were killed in the crash.

As can be seen above, the only crash incidents since 1958 have occurred during air show practice over the base itself, or well outside the West Plains. However, if a catastrophic event did occur, increased density could make such an event worse due to the increased numbers of people in the area. Since 1957, seven tornadoes have hit the general area, ranging in intensity from F0-F2. There have also been at least three incidents since 2000 where weather conditions were such that cyclonic weather phenomenon occurred, but did not quite reach the status of an official tornado.

Secondarily, they are concerned about noise. However, they acknowledge that if the City deems it necessary to allow residential on these sites, the proposed design requirements would help mitigate noise. Also, they view the

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review process being implemented for any proposed residential uses in the area in question as a positive. That said, they cannot declare support for the amendment as proposed, as they still have the concerns indicated above, and would prefer no new residential uses in the area. In addition to the proposed design requirements and the review process, if the City deems it necessary to allow residential use in the area, they would feel more comfortable if the City only permitted new residential as part of a complementary mixed-use development. A complementary mixed-use development would consist of a compatible mix of residential, retail, entertainment venues, and/or offices, that through design, layout, and uses complement one another, as well as create ambient noise that helps drown out aviation noise. Also, mixed-uses would reduce the residential density to some degree, as some of the space will be taken up with non-residential uses.

Landowner Comments

Two East Annexation Area landowners provided comments. They indicate they have been negatively impacted by the County allowing the existing multi-family projects, as potential commercial developers are concerned that if they build a commercial use that could disturb residents, due to noise, dust or whatever, they will get sued. So, they will not buy the properties. Also, they claim that because they do not have Highway 2 frontage, commercial developers have little interest in the properties. This is also their main concern with only allowing residential as part of a mixed-use development. They strongly support the proposal as submitted.

Staff Comments

Staff believes that though not necessarily easy, mixed-use could be done in this area. However, it would likely need to be a group effort involving multiple landowners and sites. As indicated earlier, Staff views these sites as being infill. If these properties were not surrounded by existing structures already, or the vacant properties were surrounding existing structures, Staff would not consider these properties infill. Also, though the C-2 amendment seeks to allow building heights up to 60', any of these properties would not be permitted to exceed the height of the existing surrounding structures.

There is a difference in how multi-family and single-family developments are built and how renters relate to noise disturbances compared to homeowners. First of all, multi-family developments are built to commercial standards that are much sturdier than most single-family homes. This sturdier construction makes for less noise and vibration. Also, interior units, those between other units, are more protected from noise because of the surrounding units.

If a renter does not like their experience in a rental unit, they do not renew the lease and move out. Apartment dwellers do not generally have the same expectation of quiet that a single-family dweller does. They also do not generally have an expectation of the quiet enjoyment of their yards, because they do not usually have yards. Single-family dwellers do have this expectation, and usually have a mortgage as well that makes it difficult to just move out. That is one reason why only multi-family is being proposed.

Third, the City currently has a deficiency in available apartments. Average multi-family occupancy rates in Airway Heights runs between 95%-99%. The Office of Financial Management (OFM) states the state average is closer to 89%. The average rent for new market-rate apartments in Airway Heights is \$800-\$1,200 per month, likely due, in part, to the fact that there is limited competition. Because of this, there are residents living in the APZs because they cannot afford to live anywhere else. However, we have no place for them to go. We have received reports that Wal-Mart and Northern Quest Casino employees are living 3 to 4 people to a unit to afford rents in Cedar Summit and Deer Creek. One hope is that an increased number of multi-family units may lower these rates.

Though not likely to create an increased crash risk, increasing the residential density in this area may have a detrimental effect on recruiting aviation industries to the area between the 3rd runway alignment and the City's SE border, as proposed in the SIA Master Plan. This could especially be the case if the proposed industry produces a lot of noise, such as from revving plane engines. However, it is not appropriate for the City to choose to limit one

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set of landowners use rights in order to promote another's, especially if it lies within another jurisdiction, and there is no guarantee the development will ever occur. As with any developer, if there is something preventing the proposal from going forth, then the developer needs to address it. If they need to buy out a surrounding landowner, then that is what they need to do. This would be the case regardless of whether it is vacant property or not.

Finally, multiple studies have shown that baby-boomers are downsizing, and Generation Y is not very interested in buying a home. In 2012, the president of the American Planning Association (APA) stated that "communities that do not allow multi-family and other higher density residential development types are telling retirees and young professionals that they are not welcome." They seek a walkable, "urban experience", where they can easily commute to work, entertainment, stores, etc. This is one step, of many, to prepare the City for this new paradigm.





Department of Defense

INSTRUCTION

NUMBER 3030.3

July 13, 2004

USD(AT&L)

SUBJECT: Joint Land Use Study (JLUS) Program

- References:** (a) Section 2391(b)(1) of title 10, United States Code, "Adjustment and Diversification Assistance"
(b) Executive Order 12788, "Defense Economic Adjustment Programs," January 15, 1992
(c) DoD Directive 3030.1, "Office of Economic Adjustment (OEA)," November 28, 2000
(d) DoD Instruction 4165.57, "Air Installations Compatible Use Zones (AICUZ)," November 8, 1977
(e) through (j), see enclosure 1

1. PURPOSE

This Instruction implements policies, assigns responsibilities, and prescribes procedures for executing the Joint Land Use Study (JLUS) Program as administered by the Department of Defense, Office of Economic Adjustment (OEA), under the authority of references (a), (b), and (c).

2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

It is DoD policy to work toward achieving compatibility between military installations and neighboring civilian communities by a joint compatible land use planning and control process conducted by the local community in cooperation with the local military installation.

5. RESPONSIBILITIES

5.1. The Director, OEA, shall:

5.1.1. Provide policy guidance in establishing and implementing the JLUS Program.

5.1.2. Act on behalf of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) and the Deputy Under Secretary of Defense for Installations and Environment (DUSD(I&E)), on all JLUS Program activities.

5.1.3. Serve as the principal staff advisor to the USD(AT&L) and the DUSD(I&E) on the JLUS Program and land use planning matters related to references (a), (b), and (c).

5.1.4. Develop a standard nomination protocol to identify military installations eligible for the JLUS Program in consultation with the Military Departments.

5.1.5. Organize, direct, and manage the JLUS Program and implement procedures aimed at raising State and local government awareness and interest in supporting the long-term sustainability and operability of military installations.

5.1.6. Encourage State and local jurisdictions to implement measures that prevent the introduction of incompatible civilian development that may negatively impact on the military installations mission, or negatively impact available resources such as air, land, water, and the electromagnetic spectrum in the vicinity of a military installation.

5.1.7. Establish, support, and chair a Land Use Inter-Service Working Group (IWG) on civilian community encroachment, consisting of representatives from the Office of the Secretary of Defense and the Military Departments. The IWG shall coordinate JLUS activity with the Services Air Installations Compatible Use Zones (AICUZ) Program in accordance with DoD Instruction 4165.57 (reference (d)), the Navy and Marine Corps Range Air Installations Compatible Use Zones (RAICUZ) Program in accordance with OPNAVINST/MCO 3550.1 (reference (e)), the Army Operational Noise Management Plan (ONMP), and the Range Management Plan (RMP); and, promote

consistent, ongoing encroachment prevention and outreach programs across the Military Departments.

5.1.8. Coordinate the JLUS Program with other DoD outreach and community involvement activities, and the Sustainable Ranges Initiative process in accordance with DoD Directive 3200.15 (reference (f)).

5.1.9. Ensure civilian actions taken under agreements to limit encroachment and other constraints on military testing and operations in accordance with Section 2684a of title 10 U.S.C. (reference (g)) are coordinated with JLUS recommendations, where applicable.

5.1.10. Conduct research in land use planning techniques and development practices to establish practical civilian applications that shall result in reduced encroachment, protection of air, land, water, and spectrum resources, and achieve compatible land use in the vicinity of installations.

5.1.11. Monitor, review, and evaluate the effectiveness of the JLUS Program and related procedures in coordination with the DoD Components.

5.2. The Secretaries of the Military Departments shall:

5.2.1. Establish policies and procedures to identify eligible military installations for JLUS projects by conducting annual reviews of installations where incompatible civilian development is likely to impair a military installations operational capability.

5.2.2. Assist, support, and participate with the IWG.

5.2.3. Establish procedures and policies to educate major commands and installation commanders on the utility and effectiveness of the JLUS Program in support of the AICUZ, RAICUZ, ONMP, RMP, military installations, ranges, and operating areas (OPAREAs) sustainability, and Defense missions.

5.2.4. Assist the Director, OEA, in evaluating the effectiveness of the JLUS Program.

6. PROCEDURES

6.1. The Director, OEA, shall:

6.1.1. Request annual JLUS nominations from the Military Departments.

6.1.2. Evaluate all JLUS nominations in cooperation with the IWG, relevant major command, and installation levels to ensure suitability and usefulness of the JLUS for a nominated military installation.

6.1.3. Work with appropriate State or local governments, major commands, and installations to identify an able and eligible State or local JLUS sponsor and jointly develop a scope of work to conduct and close a JLUS.

6.1.4. Facilitate and support State or local government encroachment-prevention efforts to prepare legislation, local development plans, JLUS, and local regulations and codes that ensure that civilian development is compatible with the training, testing, and operational missions of military installations by providing:

6.1.4.1. Technical assistance, as needed, in the preparing and executing of plans and regulations using the JLUS Program authority; and

6.1.4.2. Community planning assistance, as needed, in the preparation and execution of plans and regulations using the JLUS Program authority.

6.1.5. Support the Military Departments in educating major commands and installation commanders on the impacts of incompatible civilian development on the long-term operational utility of the military installations and the effectiveness of the JLUS Program.

6.1.6. Apprise the Military Departments on the status of the JLUS Program.

6.2. The Military Departments shall:

6.2.1. Nominate to the Director, OEA, military installations adversely affected by or having the potential to be adversely affected by incompatible civilian land use development.

6.2.2. Nominations shall be accompanied by the following supporting information:

6.2.2.1. A description of the nature and extent of the incompatible civilian development, or the potential for such incompatible community development.

6.2.2.2. A statement of the installations leadership commitment to support a JLUS.

6.2.2.3. A current or in-process AICUZ study, RAICUZ study, ONMP study, or RMP, if available, and other documented encroachment caused by incompatible civilian development.

6.2.2.4. Points of contact at the major command and nominated installation(s).

6.2.2.5. A statement of the reasonable expectation that the affected local government will likely participate in a JLUS.

6.2.3. Establish procedures for on-going support of JLUS implementation recommendations.

6.2.4. Identify a staff representative to serve as a member on the IWG representing Headquarters AICUZ, RAICUZ, and ONMP programs, and the OPAREA Sustainment Program.

6.2.5. Consider the JLUS Program in the preparation of installation RMP and Integrated Natural Resources Management Plans in accordance with DoD Directive 4700.4 (reference (h)), as applicable in support of actions taken under reference (g) and Section 2694a of title 10, U.S.C. (reference (i)).

6.2.6. Ensure military actions taken under agreements to limit encroachment and other constraints on military testing and operations (reference (g)) are coordinated with JLUS recommendations, where applicable.

7. EFFECTIVE DATE

This Instruction is effective immediately.


Michael W. Wynne
Acting Under Secretary of Defense
(Acquisition, Technology and Logistics)

Enclosures - 2

- E1. References, continued
- E2. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

- (e) OPNAVINST/MCO 3550.1, "Range Air Installations Compatible Use Zones Program (RAICUZ)," August 7, 1998
- (f) DoD Directive 3200.15, "Sustainment of Ranges and Operating Areas (OPAREAs)," January 10, 2003
- (g) Section 2684a of title 10, United States Code, "Agreements to Limit Encroachment and Other Constraints on Military Testing and Operations"
- (h) DoD Directive 4700.4, "Natural Resources Management Program," January 24, 1989
- (i) Section 2694a of title 10, United States Code, "Conveyance of Surplus Real Property for Natural Resource Conservation"
- (j) Section 2687(e)(1) of title 10, United States Code, "Base Closures and Realignments"

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Incompatible Civilian Development. Land use activity and civilian development activity that adversely affects the utility or training and readiness missions of a military installation. These effects include air, land, water, electromagnetic spectrum intrusion, and intrusive urban lighting.

E2.1.2. Joint Land Use Study (JLUS). Analytical planning study of civilian development patterns and land use activities in the vicinity of a military installation that result in recommendations for instituting compatible civilian land use activities and development patterns that protect and preserve the utility and the operational effectiveness of military installations.

E2.1.3. Military Installation. See Section 2687(e)(1) of title 10, U.S.C. (reference (j)).



**CITY OF AIRWAY HEIGHTS
SPOKANE COUNTY, WASHINGTON**

ORDINANCE C- 771

AN ORDINANCE OF THE CITY OF AIRWAY HEIGHTS, WASHINGTON REPEALING CHAPTER 17.16 OF THE AIRWAY HEIGHTS MUNICIPAL CODE ENTITLED "AIR INSTALLATION COMPATIBLE USE ZONE (AICUZ) OVERLAY", AND ADOPTING A NEW CHAPTER 17.16 ENTITLED "JLUS PROTECTIONS FOR FAFB" AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, pursuant to the provisions of RCW Chapter 36.70, the Council has adopted Airway Heights Municipal Code, Title 17, Zoning, which regulate the use of land; and

WHEREAS, the City of Airway Heights has reviewed its existing Municipal Code governing land use and determined that modifications to Title 17, Zoning, is warranted; and

WHEREAS, it is the intent of the City Council to ensure development of fair and reasonable regulations that promote the public interest and protect private property rights; and

WHEREAS, the City land use regulations are intended to make Airway Heights a better place to live, work, and play.

NOW THEREFORE, the City of Airway Heights City Council ordains as follows:

Section 1. Repeal. There is hereby repealed in its entirety from Airway Heights Municipal Code, Chapter 17.16, entitled "Air Installation Compatible Use Zone AICUZ."

Section 2. Added. A new Chapter 17.16, entitled "JLUS Protections for Fairchild Air Force Base", consisting of 13 sections is hereby added to the Airway Heights Municipal Code.

Section 3. Added Section. 17.16.010 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.010 Purpose and Intent

The purpose and intent of this chapter prepared under the 2009 Joint Land-Use Study (JLUS) for Fairchild Air Force Base (FAFB) is to reduce the potential for military aviation hazards, prevent incompatible uses, optimize the potential mission profile, and protect the health and safety of persons within the military influence area. The City Council finds:

- A. Aviation hazards endanger the lives and property of persons in the vicinity of Fairchild Air Force Base (FAFB).
- B. Aviation obstruction hazards reduce the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to impair the viability of a military aviation facility and the related public investment.
- C. The creation or establishment of an aviation hazard, or development considered an incompatible encroachment, is a health and safety issue and detrimental to the region's economy and continued operations of FAFB.

These regulations are necessary to effectively implement RCW 36.70A.530 which encourages compatible land uses in the vicinity of Fairchild AFB.

Section 4. Added Section. 17.16.020 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.020 Applicability

In order to carry out the purpose and intent of JLUS, the following development standards shall apply to the described conical areas, approach areas, accident potential zones (APZs), and noise impact areas indicated on the official Airway Heights Zoning Map. This chapter applies to properties under the influence of FAFB. It provides additional land-use standards or limitations on development than those that are found in the underlying zones and other applicable sections of the Airway Heights Development Code, and specifically AHMC Title 17. The Airport Overlay Zone 17.15 applies to properties located under the influence of Spokane International Airport.

Section 5. Added Section. 17.16.030 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.030 Adoption of Spokane County JLUS Regulations, FAFB Overlay Zone, by reference
Pursuant to RCW 35A.13.180 the City adopts by reference, the Spokane County JLUS Regulations, known as "FAFB Overlay Zone" (FAFBOZ) as adopted by the Spokane County Board of County Commissioners under Resolution 12-0344. A copy of Resolution 12-0344 is attached hereto as Attachment "A" and incorporated by reference. In the event that AHMC 17.16 conflicts with the Spokane County FAFBOZ, then within the municipal boundaries of Airway Heights the applicable standards, requirements and conditions shall be as provided in this chapter. All changes to this chapter or the overlay map entitled "Commercial Zoned Properties Potentially Eligible for CUP MF or MU Development" shall be brought to the JLUS Coordinating Committee for review and comment. **NOTICE:** Attachment "A" is a part of AHMC 17.16 and should be read as part of and in conjunction with AHMC 17.16.

Section 6. Added Section. 17.16.040 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.040 Airspace and Land Use Safety Areas

The following air space and land use safety areas are established.

- A. Primary Surface:** This surface defines the limits of the obstruction clearance requirements in the immediate vicinity of the FAFB runway. The primary surface comprises surfaces of the runway, runway shoulders, and lateral safety zones and extends 200 feet beyond the runway end. The width of the primary surface for the FAFB runway is 2,000 feet, or 1,000 feet on each side of the runway centerline.
- B. Approach-Departure Clearance Surface:** An extension of the primary surface at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway, at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the Primary Surface. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.
- C. Transitional Surfaces:** These surfaces connect the primary surface, clear zone surfaces, and approach-departure clearance surfaces to the outer horizontal surface, conical surface, other horizontal surface, or

other transitional Surfaces. The slope of the transitional surface is 7:1 outward and upward at right angles to the runway centerline. To determine the elevation for the beginning of the transitional surface slope at any point along the lateral boundary of the primary surface, including the clear zone, draw a line from this point to the runway centerline. This line will be at right angles to the runway axis. The elevation at the runway centerline is the elevation for the beginning of the 7:1 slope. This surface extends to a height of 150 feet, 2,050 feet from the runway centerline.

- D. Inner Horizontal Surface:** This surface is a plane oval in shape at a height of 150 feet above the established airfield elevation. The surface begins 2,050 feet beyond the runway centerline and the end of this surface is constructed by scribing an arc with a radius of 7,500 feet above the centerline at the end of the runway and interconnecting these arcs with tangents.
- E. Conical Surface:** This is an inclined surface 150 feet above the established airfield elevation, extending outward and upward from the outer periphery of the inner horizontal surface (7,500 feet from runway centerline) for a horizontal distance of 7,000 feet to a height of 500 feet above the established airfield elevation. The slope of the conical surface is 20:1. This slope ends 14,500 feet from runway centerline.
- F. Outer Horizontal Surface:** This surface is a plane located 500 feet above the established airfield elevation. It extends for a horizontal distance of 30,000 feet from the outer periphery of the conical surface. The outermost part of this surface is 44,500 feet from runway centerline.
- G. Clear Zone:** The Clear Zone at each end of the Fairchild AFB runway is 3,000 feet wide (1,500 feet wide on each side of the runway centerline) by 3,000 feet long. Accident potential on or adjacent to the runway or within the clear zone is so high that the necessary land use restrictions would prohibit reasonable economic use of land. Proposed uses in the Clear Zone shall be in accordance with the Land Use Requirements in 17.16.120, Table 1.
- H. Accident Potential Zone (APZ) I:** APZ I is 3,000 feet wide (1,500 feet wide on each side of the runway centerline) by 5,000 feet long extending to 8,000 feet from the runway threshold. Proposed uses in APZ I shall be in accordance with the Land Use Requirements in 17.16.120, Table 1.
- I. Accident Potential Zone (APZ) II:** APZ II is 3,000 feet wide (1,500 feet wide on each side of the runway centerline) by 7,000 feet long extending to 15,000 feet from the runway threshold. Proposed uses in APZ II shall be in accordance with the Land Use Requirements contained in 17.16.120, Table 1.
- J. "Military Impact Area(s)" (MIA(s))** refer to an area that is impacted by military aviation activities, specifically that area under the operational influence of FAFB. There are three (3) MIAs.
1. "MIA 1" is a non-geometrically defined area covering the entirety of Spokane County.
 2. "MIA 2" is a geometrically defined overlay covering all properties within an approximate five-mile radius from the aviation facility's runway. There is a requirement that as part of any land transactions for properties in this overlay, including sales and leases, real-estate notices shall be provided, notifying property users that the properties may be impacted by aviation over-flight activities. Development in this overlay shall be submitted to FAFB for review and comment.
 3. "MIA 3/4" is an overlay covering a planning area based on the 1995 FAFB AICUZ sound contours and recommendations from the 2009 JLUS Report. Development in this overlay shall be submitted to FAFB for review and comment.
 - a. The 65 LdN FAFB sound contour, representing the outer bounds of MIA 3/4, is based upon 2009 JLUS Report, Appendix L, Figure 4. Within the municipal boundaries of Airway Heights, the 65 LdN sound contour is based on the 1995 FAFB AICUZ sound contours.
 - b. MIA 3/4 also serves as a noise impact and land-use restriction area. Residential development is discouraged in the 65-69 LdN and generally prohibited in areas exceeding 70 LdN. No new residential zones or expansion of existing zones that allow for residential uses shall be approved within MIA 3/4 after the adoption of this chapter, except as set forth herein. See 17.16.140. The City's adopted 65 LdN sound contour is shown on the most current City of Airway Heights official Zoning Map.
 - c. The 70 LdN or higher sound contour represents the area within MIA 3/4 where residential uses are generally prohibited. See 17.16.140A. To ensure compatibility between non-residential land-uses and FAFB mission activities, uses are restricted or conditional. The City's adopted 70 LdN sound contour is based on the 1995 FAFB AICUZ, and is shown on the most current City of Airway Heights official Zoning Map.

Section 7. Added Section. 17.16.050 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.050 General Use Restrictions

- A. No use shall be made of any land in the Airspace and Land Use Safety Areas defined herein under any of the following circumstances:
1. The use creates or causes interference with the operations of military communications or electronic facilities.
 2. The use makes it difficult for pilots to distinguish between airport lights and other lights.
 3. The use results in glare which impairs pilot vision.
 4. The use impairs pilot visibility in the vicinity of the Fairchild AFB.
 5. The use endangers the landing, taking off, or maneuvering of aircraft.
 6. The use creates a wildlife attractant that, in the opinion of the Fairchild AFB, could interfere with military operations.
 7. The use would create a fire accelerant or secondary explosion resulting from an aircraft crash in an accident potential zone.
 8. Permitted uses shall not create large areas of standing water which would be attractive to bird life or other wildlife which would conflict with Base operations.
 9. Any use which otherwise endangers incoming or outgoing aircraft or the maneuvering of aircraft in the vicinity of the Base
- B. Stormwater facilities located within MIA 3/4 shall be designed in compliance with the Washington State Department of Transportation Aviation Stormwater Design Manual – Best Management Practices.
- C. New buildings and structures located on vacant parcels created before the effective date of these regulations shall be situated on the side of the parcel farthest from the Fairchild AFB runway centerline and extended runway centerline, provided that the placement is consistent with the setback requirements of the underlying zone.

Section 8. Added Section. 17.16.060 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.060 Height Restrictions

Structures or vegetation may not be constructed, altered, maintained, or allowed to grow in any air space area as described so as to project above the applicable surface, as described in 17.16.040, subsections A-F above. The following items are exempt from this provision.

- A. Any structure or object that would be shielded by existing permanent structures or by natural terrain or topographic features of equal or greater height.
- B. Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device, of a type approved by the Federal Aviation Administration, or an appropriate military service at military airports, with a fixed location and height.
- C. Structures necessary and incidental to military aviation operations.
- D. Where an area is covered by more than one height limitation, the more restrictive limitation shall prevail. No structure shall be erected so high as to increase the Federal Aviation Administration landing and/or approach and/or departure minimums for aircraft using the runway of FAFB, unless the Installation Commander approves of such action.

Section 9. Added Section. 17.16.070 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.070 Administrative Height Exception

- A. The Planning Director may, as part of a development permit application process, administratively grant height exceptions after a review of the proposal and issuance of written findings that the proposed development meets the following criteria:
1. The applicant has complied with the Federal Aviation Administration Form 7460-1 review process (Notice of Proposed Construction or Alteration) and provided documentation from FAA that this review process is complete and that FAA has no objections to the proposed development.
 2. Fairchild Air Force Base has indicated in writing that the improvement will not adversely affect current or future military operations.
- B. Further, the development shall meet at least one of the following criteria:
1. The improvement would be shielded by an adjacent or nearby existing permanent structure or natural terrain feature of equal or greater height compared to the proposed structure.
 2. The improvement is an air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device, of a type approved by the Federal Aviation Administration.
 3. The proposal is a military service and support improvement, with a fixed location and height which are necessary and incidental to base operations as certified in writing by Fairchild Air Force Base.
- C. The Director may require an applicant to provide such technical documentation and illustrations necessary to demonstrate that the proposed development will not threaten or reduce military aircraft safety.

Section 10. Added Section. 17.16.080 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.080 Approach-Departure Clearance Surface Restrictions

Building permits will not be issued until the final site development plans have been approved. Such approval may include requirements to mitigate impacts of the project and to ensure that the standards of the zone are upheld.

Section 11. Added Section. 17.16.090 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.090 JLUS Accident Potential Zone I (APZ-I) Restrictions

Acceptable land uses include industrial/manufacturing, transportation, communication/utilities, wholesale trade, open space and recreation. However, uses that concentrate people in small areas are not acceptable. Proposed uses in APZ I shall be in accordance with the Land Uses in 17.16.110, Table 1.

Section 12. Added Section. 17.16.100 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.100 JLUS Accident Potential Zone II (APZ-II) Restrictions

Acceptable uses include those of Accident Potential Zone I, and those personal and business services and commercial/retail trade uses of low intensity or scale of operation. High density functions such as multi-story buildings, places of assembly (theaters, churches, schools, restaurants, etc.) and high density office uses are not permitted. The optimum density recommended for residential usage (where it does not conflict with noise criteria) in Accident Potential Zone II is two dwelling units per acre. For most non-residential usage, buildings shall be limited to one story and the lot coverage shall not exceed 20 percent. Proposed uses in APZ II shall be in accordance with the Land Uses in 17.16.110, Table 1.

Section 13. Added Section. 17.16.110 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.110 Clear Zone, APZ-I and APZ-II

Proposed uses in the Accidental Potential Zones shall be in accordance with the Land Uses contained in 17.16.110, Table 1.

17.16.110 Table 1. Land Use Restrictions in APZs

SLUCM NO.	LAND USE NAME	CLEAR ZONE	APZ-I	APZ-II	DENSITY
10, 11	Residential, Household Units				
11.11	Single units: detached	N	N		N
11.12	Single units: semi-detached	N	N		N
11.13	Single units: attached row	N	N		N
11.21	Two units: side-by-side	N	N		N
11.22	Two units: one above the other	N	N		N
11.31	Apartments: walk-up	N	N		N
11.32	Apartment: elevator	N	N		N
12	Group quarters	N	N		N
13	Residential hotels	N	N		N
14	Mobile home parks or courts	N	N		N
15	Transient lodgings	N	N		N
16	Other residential	N	N		N
20	Manufacturing 3				
21	Food and kindred products; manufacturing	N	N	Y	Maximum FAR 0.56 in APZ II
22	Textile mill products; manufacturing	N	N	Y	Maximum FAR 0.56 in APZ II
23	Apparel and other finished products; products made from fabrics, leather and similar materials; manufacturing	N	N		N
24	Lumber and wood products (except furniture); manufacturing	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
25	Furniture and fixtures; manufacturing	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
26	Paper and allied products; manufacturing	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
27	Printing, publishing, and allied industries	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
28	Chemicals and allied products; manufacturing	N		N	N
29	Petroleum refining and related industries	N	N		N
31	Rubber and miscellaneous plastic products; manufacturing	N	N		N
32	Stone, clay, and glass products; manufacturing	N	N	Y	Maximum FAR 0.56 in APZ II
33	Primary metal products;	N	N	Y	Maximum FAR

SLUCM NO.	LAND USE NAME	CLEAR ZONE	APZ-I	APZ-II	DENSITY
	manufacturing				0.56 in APZ II
34	Fabricated metal products; manufacturing	N	N	Y	Maximum FAR 0.56 in APZ II
35	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks	N		N	N
39	Miscellaneous manufacturing	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
40	Transportation, communication, and utilities ^{3, 4}				
41	Railroad, rapid rail transit, and street railway transportation	N	Y ₆	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
42	Motor vehicle transportation	N	Y ₆	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
43	Aircraft transportation	N	Y ₆	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
44	Marine craft transportation	N	Y ₆	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
45	Highway and street right-of-way	Y ₃	Y ₆	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
46	Automobile parking	N	Y ₆	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
47	Communication	N	Y ₆	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
48	Utilities ⁷	N	Y ₆	Y ₆	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
48.5	Solid waste disposal (landfills, incinerators, etc.)	N		N	N
49	Other transportation, communication, and utilities	N	Y ₆	Y	See Note 6 below
50	Trade				
51	Wholesale trade	N	Y	Y	Maximum FAR of 0.28 in APZ I & .56 in APZ II
52	Retail trade - building materials, hardware and farm equipment	N	Y	Y	See Note 8 below
53	Retail trade ⁹ - including shopping centers, discount clubs, home improvement stores, electronics superstores, etc.	N	N	Y	Maximum FAR of 0.16 in APZ II

54	Retail trade – food	N	N	Y	Maximum FAR of 0.24 in APZ II
SLUCM NO.	LAND USE NAME	CLEAR ZONE	APZ-I	APZ-II	DENSITY
55	Retail trade – automotive, marine craft, aircraft, and accessories	N	Y	Y	Maximum FAR of 0.14 in APZ I & 0.28 in APZ II
56	Retail trade – apparel and accessories	N	N	Y	Maximum FAR of 0.28 in APZ II
57	Retail trade – furniture, home, furnishings and equipment	N	N	Y	Maximum FAR of 0.28 in APZ II
58	Retail trade – eating and drinking establishments	N		N	N
59	Other retail trade	N	N	Y	Maximum FAR of 0.16 in APZ II
60	Services				
61	Finance, insurance and real estate services	N	N	Y	Maximum FAR of 0.22 in APZ II
62	Personal services	N	N	Y	Office uses only. Maximum FAR of 0.22 in APZ II.
62.4	Cemeteries	N	Y ₁₁	Y ₁₁	
63	Business services (credit reporting; mail, stenographic, reproduction; advertising)	N	N	Y	Maximum FAR of 0.22 in APZ II
63.7	Warehousing and storage services ¹²	N	Y	Y	Maximum FAR of 1.0 in APZ I; 2.0 in APZ II
64	Repair Services	N	Y	Y	Maximum FAR of 0.11 APZ I; 0.22 in APZ II
65	Professional services	N	N	Y	Maximum FAR of 0.22 in APZ II
65.1	Hospitals, nursing homes	N	N	N	
65.1	Other medical facilities	N	N	N	
66	Contract construction services	N	Y	Y	Maximum FAR of 0.11 APZ I; 0.22 in APZ II
67	Government Services	N	N	Y	Maximum FAR of 0.24 in APZ II
68	Educational services	N	N	N	
68.1	Child care services, child development centers, and nurseries	N	N	N	
69	Miscellaneous	N	N	Y	Maximum FAR of 0.22 in APZ II
69.1	Religious activities	N	N		N
70	Cultural, entertainment and recreational				
71	Cultural activities	N	N	N	
71.2	Nature exhibits	N	Y ₁₃	Y ₁₃	
72	Public assembly	N	N	N	
72.1	Auditoriums, concert halls	N	N	N	
72.11	Outdoor music shells,	N	N	N	

SLUCM NO.	LAND USE NAME	CLEAR ZONE	APZ-I	APZ-II	DENSITY
72.2	amphitheaters Outdoor sports arenas, spectator sports	N	N	N	
73	Amusements – fairgrounds, miniature golf, driving ranges; amusement parks, etc.	N	N	CUP Occupancy density shall not exceed 180/net acre	
74	Recreational activities (including golf courses, riding stables, water recreation)	N	Y ₁₃	Y ₁₃	Maximum FAR of 0.11 in APZ I; 0.22 in APZ II
75	Resorts and group camps	N	N	N	
76	Parks	N	Y ₁₃	Y ₁₃	Maximum FAR of 0.11 in APZ I; 0.22 in APZ II
79	Other cultural, entertainment and recreation	N	Y ₁₁	Y ₁₁	Maximum FAR of 0.11 in APZ I; 0.22 in APZ II
80	Resource production and extraction				
81	Agriculture (except live stock)	Y ₄	Y ₁₄	Y ₁₄	
81.5, 81.7	Livestock farming and breeding	N	Y _{14,15}	Y _{14,15}	
82	Agriculture related activities	N	Y ₁₄	Y ₁₄	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives
83	Forestry activities ¹⁶	N	Y	Y	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives
84	Fishing activities ¹⁷	N ₁₇	Y	Y	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives
85	Mining activities ¹⁸	N	Y ₁₈	Y ₁₈	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives

89	Other resource production or extraction	N	Y	Y	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives
SLUCM NO.	LAND USE NAME	CLEAR ZONE	APZ-I	APZ-II	DENSITY
90	Other				
91	Undeveloped land	Y	Y	Y	
93	Water areas	N ₁₉	N ₁₉	N ₁₉	

KEY TO TABLE 1 – LAND USE COMPATIBILITY IN APZS

SLUCM – Standard Land Use Coding Manual, U.S. Department of Transportation

Y (Yes) – Land uses and related structures are normally compatible without restriction

N (No) – Land use and related structures are not normally compatible and should be prohibited.

Yx – Yes with restrictions. The land uses and related structures are generally compatible. However, see notes indicated by the superscript.

Nx – No with exceptions. The land uses and related structures are generally incompatible. However, see notes indicated by the superscript.

FAR – Floor Area Ratio. A floor area ratio is the ratio between the square feet of floor area of the building and the gross site area. It is customarily used to measure non-residential intensities.

Du/Ac – Dwelling Units an Acre. This is customarily used to measure residential densities.

NOTES FOR TABLE 1 – LAND USE COMPATIBILITY IN APZS

1. A "Yes" or a "No" designation for compatible land use is to be used only for general comparison. Within each, uses exist where further evaluation may be needed in each category as to whether it is clearly compatible, normally compatible, or not compatible due to the variation of densities of people and structures.

2. Intentionally omitted.

3. Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots.

4. No structures (except airfield lighting and navigational aids necessary for the safe operation of the airfield when there are no other siting options), buildings, or above-ground utility and communications lines should normally be located in Clear Zone areas on or off the air installation. The Clear Zone is subject to the most severe restrictions.

5. Rights-of-way for fenced highways, without sidewalks or bicycle trails, are allowed.

6. No above ground passenger terminals and no above ground power transmission or distribution lines. Prohibited power lines include high-voltage transmission lines and distribution lines that provide power to cities, towns, or regional power for unincorporated areas.

7. Development of renewable energy resources, including solar and geothermal facilities and wind turbines, may impact military operations through hazards to flight or electromagnetic interference. Each new development should to be analyzed for compatibility issues on a case-by-case basis that considers both the proposal and potentially affected mission.

8. Within SLUCM Code 52, maximum FARs for lumberyards (SLUCM Code 521) are 0.20 in APZ-I and 0.40 in APZ-II. For hardware, paint, and farm equipment stores, SLUCM Code 525, the maximum FARs are 0.12 in APZ I and 0.24 in APZ II.

9. A shopping center is an integrated group of commercial establishments that is planned, developed, owned, or managed as a unit. Shopping center types include strip, neighborhood, community, regional, and super-regional facilities anchored by small businesses, a supermarket or drug store, discount retailer, department store, or several department stores, respectively. Included in this category are such uses as big box discount clubs, home improvement superstores, office supply superstores, and electronics superstores. The maximum recommended FAR for SLUCM 53 should be applied to the gross leasable area of the shopping center rather than attempting to use other recommended FARs listed in Table 1 under Retail or Trade.

10. Ancillary uses such as meeting places, auditoriums, etc., are not recommended.

11. No chapels or houses of worship are allowed within APZ I or APZ II.

12. Big box home improvement stores are not included as part of this category.

13. Facilities must be low intensity, and provide no playgrounds, etc. Facilities such as club houses, meeting places, auditoriums, large classes, etc., are not recommended.

14. Livestock grazing is a compatible land use, but feedlots and intensive animal husbandry are excluded. Activities that attract concentrations of birds creating a hazard to aircraft operations should be excluded.

15. Feedlots and intensive animal husbandry are included as compatible land uses.
16. Lumber and timber products removed due to establishment, expansion, or maintenance of Clear Zone lands owned in fee will be disposed of in accordance with applicable DoD guidance.
17. Controlled hunting and fishing may be permitted for the purpose of wildlife management.
18. Surface mining operations that could create retention ponds that may attract waterfowl and present bird/wildlife aircraft strike hazards (BASH), or operations that produce dust or light emissions that could affect pilot vision are not compatible.
19. Naturally occurring water features (e.g., rivers, lakes, streams, wetlands) are pre-existing, nonconforming land uses. Naturally occurring water features that attract waterfowl present a potential BASH. Actions to expand naturally occurring water features or construction of new water features should not be encouraged. If construction of new features is necessary for storm water retention, such features should be designed so that they do not attract water fowl.

Section 14. Added Section, 17.16.120 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.120 Military Impact Areas

Proposed uses in the Military Impact Areas zones shall be in accordance with the Land Uses contained in 17.16.120, Table 2.

17.16.120 Table 2. Land Use Regulations in Noise Zones

LAND USE		LAND USE COMPATIBILITY				
SLUCM NO.	LAND USE NAME	DNL or CNEL 65-69	DNL or CNEL 70-74	DNL or CNEL 75-79	DNL or CNEL 80-84	DNL or CNEL 85+
10	Residential	N ₁	N	N	N	N
11	Household units	N ₁	N	N	N	N
11.11	Single units: detached	N ₁	N	N	N	N
11.12	Single units: semidetached	N ₁	N	N	N	N
11.13	Single units: attached row	N ₁	N	N	N	N
11.21	Two units: side-by-side	N ₁	N	N	N	N
11.22	Two units: one above the other	N ₁	N	N	N	N
11.31	Apartments: walk-up	N ₁	N	N	N	N
11.32	Apartment: elevator	N ₁	N	N	N	N
12	Group quarters	N ₁	N	N	N	N
13	Residential hotels	N ₁	N	N	N	N
14	Mobile home parks or courts	N	N	N	N	N
15	Transient lodgings	N ₁	N	N	N	N
16	Other residential	N ₁	N	N	N	N
20	Manufacturing					
21	Food and kindred products; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
22	Textile mill products; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
23	Apparel and other finished products; products made from fabrics, leather, and similar materials; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
24	Lumber and wood products (except furniture); manufacturing	Y	Y ₂	Y ₃	Y ₄	N

25	Furniture and fixtures; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
LAND USE		LAND USE COMPATIBILITY				
SLUCM NO.	LAND USE NAME	DNL or CNEL 65-69	DNL or CNEL 70-74	DNL or CNEL 75-79	DNL or CNEL 80-84	DNL or CNEL 85+
26	Paper and allied products; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
27	Printing, publishing, and allied industries	Y	Y ₂	Y ₃	Y ₄	N
28	Chemicals and allied products; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
29	Petroleum refining and related industries	Y	Y ₂	Y ₃	Y ₄	N
30	Manufacturing (continued)					
31	Rubber and misc. plastic products; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
32	Stone, clay and glass products; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
33	Primary metal products; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
34	Fabricated metal products; manufacturing	Y	Y ₂	Y ₃	Y ₄	N
35	Professional scientific, and controlling instruments; photographic and optical goods; watches and clocks	Y	25	30	N	N
39	Miscellaneous manufacturing	Y	Y ₂	Y ₃	Y ₄	N
40	Transportation, communication and utilities					
41	Railroad, rapid rail transit, and street railway transportation	Y	Y ₂	Y ₃	Y ₄	N
42	Motor vehicle transportation	Y	Y ₂	Y ₃	Y ₄	N
43	Aircraft transportation	Y	Y ₂	Y ₃	Y ₄	N
44	Marine craft transportation	Y	Y ₂	Y ₃	Y ₄	N
45	Highway and street right- of-way	Y	Y	Y	Y	N
46	Automobile parking	Y	Y	Y	Y	N
47	Communication	Y	25 _s	30 _s	N	N
48	Utilities	Y	Y ₂	Y ₃	Y ₄	N
49	Other transportation, communication and utilities	Y	25 _s	30 _s	N	N
50	Trade					
51	Wholesale trade	Y	Y ₂	Y ₃	Y ₄	N
52	Retail trade -- building materials, hardware and farm equipment	Y	25	30	Y ₄	N
53	Retail trade -- including shopping centers, discount clubs, home	Y	25	30	N	N

	improvement stores, electronics superstores, etc.					
LAND USE		LAND USE COMPATIBILITY				
SLUCM NO.	LAND USE NAME	DNL or CNEL 65-69	DNL or CNEL 70-74	DNL or CNEL 75-79	DNL or CNEL 80-84	DNL or CNEL 85+
54	Retail trade -- food	Y	25	30	N	N
55	Retail trade -- automotive, marine craft, aircraft and accessories	Y	25	30	N	N
56	Retail trade -- apparel and accessories					
57	Retail trade -- furniture, home, furnishings and equipment					
58	Retail trade -- eating and drinking establishments	Y	25	30	N	N
59	Other retail trade	Y	25	30	N	N
60	Services					
61	Finance, insurance and real estate services	Y	25	30	N	N
62	Personal services	Y	25	30	N	N
62.4	Cemeteries	Y	Y ₂	Y ₃	Y _{4,11}	Y _{6,11}
63	Business services	Y	25	30	N	N
63.7	Warehousing and storage	Y	Y ₂	Y ₃	Y ₄	N
64	Repair services	Y	Y ₂	Y ₃	Y ₄	N
65	Professional services	Y	25	30	N	N
65.1	Hospitals,	CUP	N	N	N	N
65.2	Other medical facilities	25	30	N	N	N
65.16	Nursing homes	CUP	N	N	N	N
66	Contract construction services	Y	25	30	N	N
67	Government services	Y ₁	25	30	N	N
68	Educational services	CUP	N	N	N	N
68.1	Child care services, child development centers, and nurseries	CUP	N	N	N	N
69.1	Religious activities	CUP	CUP	N	N	N
70	Cultural, entertainment and recreational					
71	Cultural activities	CUP	CUP	N	N	N
71.1	Churches	CUP	N	N	N	N
71.2	Nature exhibits	Y ₁	N	N	N	N
72	Public assembly	CUP	N	N	N	N
72.1	Auditoriums, concert halls	CUP	N	N	N	N
72.11	Outdoor music shells, amphitheaters	CUP	N	N	N	N
72.2	Outdoor sports arenas, spectator sports	CUP	CUP	N	N	N
73	Amusements	CUP	CUP	N	N	N
74	Recreational activities (including golf courses, riding stables, water recreation)	Y	25	30	N	N
75	Resorts and group camps	CUP	N	N	N	N
76	Parks	Y	25	N	N	N

LAND USE		LAND USE COMPATIBILITY				
SLUCM NO.	LAND USE NAME	DNL or CNEL 65-69	DNL or CNEL 70-74	DNL or CNEL 75-79	DNL or CNEL 80-84	DNL or CNEL 85+
81	Agriculture (except live stock)	Y ₈	Y ₉	Y ₁₀	Y _{10,11}	Y _{10,11}
81.5	Livestock farming	Y ₈	Y ₉	N	N	N
81.7	Animal breeding	Y ₈	Y ₉	N	N	N
82	Agriculture related activities	Y ₈	Y ₉	Y ₁₀	Y _{10,11}	Y _{10,11}
83	Forestry activities	Y ₈	Y ₉	Y ₁₀	Y _{10,11}	Y _{10,11}
84	Fishing activities	Y	Y	Y	Y	Y
85	Mining activities	Y	Y	Y	Y	Y
89	Other resource production or extraction	Y	Y	Y	Y	Y

KEY TO TABLE 2 – LAND USE COMPATIBILITY IN NOISE ZONES

SLUCM – Standard Land Use Coding Manual, U.S. Department of Transportation

Y (Yes) – Land use and related structures compatible without restrictions.

N (No) – Land use and related structures are not compatible and should be prohibited.

Y_x – Yes with restrictions. The land use and related structures generally are compatible. However, see note(s) indicated by the superscript.

N_x – No with exceptions. The land use and related structures are generally incompatible. However, see note(s) indicated by the superscript.

25, 30, or 35 – The numbers refer to noise level reduction (NLR) levels. NLR (outdoor to indoor) is achieved through the incorporation of noise attenuation into the design and construction of a structure. Land use and related structures are generally compatible; however, measures to achieve NLR of 25, 30, or 35 must be incorporated into design and construction of structures. However, measures to achieve an overall noise reduction do not necessarily solve noise difficulties outside the structure and additional evaluation is warranted. Also, see notes indicated by superscripts where they appear with one of these numbers.

DNL – Day-Night Average Sound Level.

CNEL – Community Noise Equivalent Level (normally within a very small decibel difference of DNL)

L_{dn} – Mathematical symbol for DNL.

NOTES FOR TABLE 2 – LAND USE COMPATIBILITY IN NOISE ZONES

1. General

- a. Although local conditions regarding the need for housing may require residential use in these zones, residential use is discouraged in DNL 65-69 and generally prohibited in DNL 70-74. Existing residential development is considered as pre-existing, non-conforming land uses. Consistent with 17.16.140 (A), an evaluation shall be conducted prior to permit approvals, indicating that a demonstrated community need for residential use would not be met if development were prohibited in these zones, and that there are no viable alternative locations. Along with a demonstration of community need, the applicant shall submit a noise study for the subject property demonstrating that 69 L_{dn} is not exceeded on a recurring basis. The noise study shall be performed by a sound engineer taking cumulative measurements over a seven (7) day period.
- b. Where non-conforming residential uses are allowed to rebuild or are permitted under the provisions of section 17.16.130 and the community determines that these uses must be allowed, measures to achieve outdoor to indoor NLR of at least 25 decibels (dB) in DNL 65-69 and 30 dB in DNL 70-74 should be incorporated into building codes and be considered in individual approvals; for transient housing, an NLR of at least 35 dB should be incorporated in DNL 75-79.
- c. Normal permanent construction can be expected to provide an NLR of 20 dB, thus the reduction requirements are often stated as 5, 10, or 15 dB over standard construction and normally assume mechanical ventilation, upgraded sound transmission class ratings in windows and doors, and closed windows year round. Additional consideration should be given to modifying NLR levels based on peak noise levels or vibrations.
- d. NLR criteria will not eliminate outdoor noise problems. However, building location, site planning, design, and use of berms and barriers can help mitigate outdoor noise exposure particularly from ground level sources. Measures that reduce noise at a site should be used wherever practical in preference to measures that only protect interior spaces.

2. Measures to achieve NLR of 25 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
3. Measures to achieve NLR of 30 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
4. Measures to achieve NLR of 35 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
5. If project or proposed development is noise sensitive, use indicated NLR; if not, land use is compatible without NLR.
6. Buildings are not permitted.
7. Land use is compatible provided special sound reinforcement systems are installed.
8. Residential buildings require an NLR of 25
9. Residential buildings require an NLR of 30.
10. Residential buildings are not permitted.
11. Land use that involves outdoor activities is not recommended, but if the community allows such activities, hearing protection devices should be worn when noise sources are present. Long-term exposure (multiple hours per day over many years) to high noise levels can cause hearing loss in some unprotected individuals.

Section 15. Added Section. 17.16.130 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.130 Use Determinations

It is recognized that all possible uses and variations of uses cannot be reasonably listed in Table 1 in Section 17.16.110 and Table 2 in Section 17.16.120. Any use not specifically mentioned or about which there is any question shall be administratively classified by comparison with other uses identified in Table 1. If the proposed use resembles uses specified in Table 1 and Table 2, in terms of intensity and character, it shall be considered as a permitted/non-permitted use within the Clear Zone or Accident Potential Zones or applicable sound contours. If such use is deemed to be a permitted use such use shall be subject to the development standards applicable to the use it most nearly resembles. If a use does not resemble other identified allowable uses within a matrix, it may be permitted as determined by an amendment to this chapter.

Section 16. Added Section. 17.16.140 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.140 Compatible Uses and Densities

This Section specifies additional requirements in addition to those listed in 17.16.110, Table 1 and 17.16.120, Table 2, for uses allowed in the Military Influence Areas 3/4. If these requirements conflict with the requirements applicable to the Clear and Accident Potential Zones specified in Sections 17.16.080-17.16.110, or those listed in 17.16.120, Table 1, above, then the more restrictive requirements apply.

The use and activity categories and associated density maximums and limitations are as follows:

A. Residential Uses.

New or expanded residential development is generally prohibited in MIA 3/4. Except for property located in Clear Zone, APZ I or II, if prior to the adoption date of this chapter the property was either in a residential zone or subdivided for residential use, such properties may be developed as provided in the underlying zone. Proposed multi-family or mixed-use developments identified as "CUP MF Res Potentially Allowed" properties, on the adopted Appendix B, "Commercial Zoned Properties Potentially Available for CUP MF Residential Development" Map, may be permitted through a conditional use permit, subject to the provisions of the underlying zone. Additional regulations and development standards, as found in the specific chapters of the City of Airway Heights Municipal Code, Title 17, apply to any developments proposed within the JLUS Overlay. Motels, hotels, and boarding houses where occupancy is arranged for longer than 30 days are considered residential uses.

1. Residential densities shall not exceed the density allowed by the underlying zone adopted prior to adoption of this Chapter. For multi-family or mixed-use developments, density shall be between 10 to 20 units per acre.

2. All allowed residences shall comply with all requirements of this chapter to include any sound reduction requirements, as found in the 2005 Department of the Navy "Guidelines for Sound Insulation of Residences Exposed to Aircraft Operations", produced by the Wyle Research Group, April, 2005, notification of aviation activities, and aviation easements. Also, accessory dwelling units (ADUs) may be permitted on non-residentially zoned properties, provided the ADU is secondary to an industrial or commercial use, such as security or custodial quarters, and is necessary to the security or operational safety of the facility. Such uses require a conditional use permit.
3. Any permitted residential units shall be located on the section of the property farthest from the operational flight path or runway centerline alignment.
4. Any permitted residential units shall have appropriate sound mitigation, aviation easement (where appropriate due to overflight), a real-estate notice with a nuisance covenant waiving liability and damages resulting from noise generated by aviation activities. The aviation easement shall grant FAFB the right to occupy airspace above the property to the extent such airspace is located within MIA 3/4. The real estate notice and a nuisance waiver shall be signed by the property owner, its successors, assigns, lessees, occupants, invitees, and all other persons on the property who agree to unconditionally waive the right to make a claim, suit or bring a cause of action against FAFB or the City of Airway Heights for any injury, damage or annoyance caused by aircraft operations.

B. High-Intensity Non-Residential Uses.

High-intensity uses are uses that encourage substantial concentrations of people exceeding 180 persons per net acre and are deemed incompatible with Fairchild AFB. These uses are deemed incompatible because of their potential to put a large number of people in harm's way. Hotels and motels in which occupancy is arranged for over 30 days are deemed residential uses. Additional regulations and development standards, as found in the specific chapters of the City of Airway Heights Municipal Code, Title 17, apply to any developments proposed within the JLUS Overlay.

1. New or expanded commercial and industrial uses that result in a net density exceeding 180 persons per net acre are not permitted in the 75 LdN and require a conditional use permit in the remainder of the MIA 3/4.
2. Non-aviation related museums, stadiums, race tracks, amphitheaters and arenas are not permitted in sound contours exceeding 69 LdN. Such uses proposed in 65-69 LdN require a conditional use permit, as provided for in AHMC 17.03.100 and in Section 17.16.140 of this Chapter.
3. Amusement parks, resorts, group camps, public assembly, concert halls, colleges and universities, religious institutions, hotels and motels, entertainment uses and cultural facilities are not permitted within the LdN 75 or higher contours and require a conditional use permit. All other High Intensity Uses are allowed when permitted by the underlying zoning at a net density not exceeding one hundred eighty persons per acre, calculated by dividing the building code occupancy of all structures on the site by the acreage of the subject site, not including property that has been dedicated as right-of-way.
4. In sound contours less than 75 LdN (65 LdN – 74 LdN), an applicant may request to develop a project that exceeds the 180 persons per net acre occupancy provided:
 - a. The proposal is not located in the area shown on the Appendix B, "Commercial Zoned Properties Potentially Available for CUP MF Residential Development" Map as "High-Intensity Non-Residential Uses Prohibited".
 - b. The proposal is sent to FAFB for review and comment, as set forth in 17.16.140(H), and is not located in the Clear Zone and APZs.
 - c. The applicant has applied for and received a conditional use permit (CUP), as provided for in AHMC 17.03.100 and in Section 17.16.140 of this Chapter.
5. For the purpose of this subsection, density shall be calculated by dividing the building code occupancy of all structures on the site by the acreage of the subject site, not including property that has been dedicated as right-of-way.

C. Low Intensity Non Residential Uses.

Low intensity non residential uses do not concentrate people or hazardous materials into small areas, are not sensitive to loud noise and do not directly or indirectly inhibit aviation operations. Additional regulations and development standards, as found in the specific chapters of the City of Airway Heights Municipal Code, Title 17, apply to any developments proposed within the JLUS Overlay.

1. Non residential uses where density does not exceed 180 persons per net acre are deemed to be compatible with Fairchild Air Force Base and are permitted in MIA: 3/4 subject to the Airway Heights Zoning Map.
2. In sound contours less than 75 LdN (65 LdN – 74 LdN), an applicant may request to develop a project that exceeds the 180 persons per net acre occupancy provided:
 - a. It is sent to FAFB for review and comment
 - b. It has applied for and received a conditional use permit (CUP), as provided for in AHMC 17.03.100 and in Section 17.16.140 of this Chapter
3. For the purpose of this subsection density shall be calculated by dividing the building code occupancy of all structures on the site by the acreage of the subject site not including property that has been dedicated as right-of-way.

D. Vulnerable Occupant Uses.

Vulnerable occupant uses are uses in which a majority of occupants are children, elderly or disabled or other people who have reduced mobility or are unable to timely respond to emergencies or avoid harm's way. Examples of vulnerable occupant uses include daycare centers, family daycares, schools (preschool-12), hospitals, adult care and other health care facilities where anesthesia is used or patients remain overnight, correctional facilities, retirement homes, nursing homes, convalescent facilities and assisted living care residences. Additional regulations and development standards, as found in the specific chapters of the City of Airway Heights Municipal Code, Title 17, apply to any developments proposed within the JLUS Overlay.

1. Uses with vulnerable occupants are allowed outside the LdN 75 contour when permitted in the underlying zone at a net density not exceeding 180 persons per net acre calculated by dividing the building code occupancy of all structures on the site. Retirement homes, nursing homes, convalescent facilities, assisted living care residences, hospitals and schools (preschool-12) are not permitted in sound contours exceeding 69 LdN or the approach/departure flight path of FAFB operations. Any such use seeking to locate in sound contours exceeding 64 LdN shall require a conditional use permit, as provided for in AHMC 17.03.100 and in Section 17.16.140 of this Chapter
2. For the purpose of this subsection density shall be calculated by dividing the building code occupancy of all structures on the site by the acreage of the subject site not including property that has been dedicated as right-of-way.

E. Critical Community Infrastructure

Critical Community Infrastructure includes facilities whereby damage or destruction of which would cause significant adverse effects to public health and welfare within or beyond the immediate vicinity or the facility. Additional regulations and development standards, as found in the specific chapters of the City of Airway Heights Municipal Code, Title 17, apply to any developments proposed within the JLUS Overlay.

1. Examples of critical community infrastructure include police stations, fire stations, emergency communication facilities, power plants and waste water treatment facilities. Critical community infrastructure is permitted in MIA 3/4 provided that the use is consistent with the underlying zone.
2. For the purpose of this subsection density shall be calculated by dividing the building code occupancy of all structures on the site by the acreage of the subject site not including property that has been dedicated as right-of-way.

F. Hazardous Uses

Hazardous Uses are uses that release discharge into the air such as smoke, steam or particulates that impair aircraft pilot visibility, uses that have above ground hazardous materials storage or uses that require the storage of large quantities of hazardous (flammable, explosive, corrosive or toxic) materials that have the potential to exacerbate an aircraft accident, or uses that attract wildlife hazardous to military aircraft. Additional regulations and development standards, as found in the specific chapters of the City of Airway Heights Municipal Code, Title 17, apply to any developments proposed within the JLUS Overlay.

1. Examples of hazardous uses include above ground chemical or fuel storage exceeding household quantities, mining and any uses that have open water that acts as an attraction to birds and thereby creates a bird-aircraft strike hazard.
2. Hazardous Uses may be allowed as a conditional use permit if the Hearing Examiner, after consulting with Fairchild AFB, finds that the proposed use will not create a hazard for military aircraft operations and the underlying zone allows the use. The Hearing Examiner may apply such reasonable conditions to the conditional use to assure that the use is compatible with Fairchild AFB.

3. Helipads that are not designated as, and/or do not serve, a military purpose, are not permitted

G. Accessory Uses

Uses which are identified as a prohibited use as a stand-alone use by the underlying zone are not allowed as an accessory use to a permitted use. For example where a daycare use is prohibited it is not allowed as an accessory use to a permitted use such as an office. Additional regulations and development standards, as found in the specific chapters of the City of Airway Heights Municipal Code, Title 17, apply to any developments proposed within the JLUS Overlay.

H. Non-residential density

For the purpose of this subsection the calculated density shall be no greater than one hundred eighty persons per individual acre after subtracting public rights-of-way. However, in consultation with Fairchild AFB officials, alternatives to this calculation may be allowed by the Planning Director if it is deemed to be compatible with the mission of Fairchild AFB. For the purpose of this section, the terminology "consultation" shall mean written notification by the director to Fairchild AFB officials of a project proponent's proposed alternative calculations and consideration by the director of any comments received from Fairchild AFB officials within fifteen days of the officials' receipt of notice of a proposed alternative. Fairchild AFB shall notify the Planning Director within 15-calendar days of receipt of the notification that there is a potential concern with the applicant's request. Such notice, received either in writing or via e-mail, will automatically trigger a 30-day review period, for a total review time of 45-calendar days, to provide Fairchild AFB reviewers adequate time to review and comment on the project. If the Planning Director receives no comment from Fairchild Air Force Base within the initial 15-day comment period, then the Planning Department shall presume that the proposal does not create a concern for Fairchild AFB. Also, any such request shall additionally require a conditional use permit as provided for in AHMC 17.03.100 and in Section 17.16.140 of this Chapter.

Section 16. Added Section 17.16.150 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.150 Review of Permitted Uses and Conditional Use Permits locating in MIA 3/4 --Application of Reasonable Conditions

- A. The Department shall review applications for compliance with the applicable requirements of this Chapter.
- B. The Director may require a detailed site development plan to include but not be limited to a written description and illustration of site development, specific placement of all site improvements, height of improvements and other site alterations for the development. The information shall include sufficient detail to enable the Department or the Hearing Examiner to determine that the proposal is compatible with current and future operations of FAFB and all requirements of this Chapter.
- C. The Director or the Hearing Examiner in regards to a conditional use permit may attach reasonable conditions to the approval of use as necessary to assure consistency with this Chapter and compatibility with Fairchild Air Force Base. Conditions may address but not be limited to the following:
 - 1. establishment of buffers
 - 2. site specific building placement and enclosures
 - 3. vegetation removal and limitations on vegetation heights
 - 4. location and installation of utilities
 - 5. post development management and operations
 - 6. structural design
 - 7. structural height, location and orientation
 - 8. light and glare suppression
 - 9. birdlife suppression
 - 10. air emissions abatement
 - 11. limitations on communication equipment
 - 12. other reasonable conditions or safeguards that will uphold the purpose and intent of this Chapter to protect Fairchild Air Force Base consistent with Comprehensive Plan Goals and Policies.

13. sound attenuation

D. The Director or the Hearing Examiner, whichever applies, will seek comment and recommendations from the Fairchild Air Force Base Installation Commander pursuant to section C(12) above.

Section 17. Added Section. 17.16.160 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.160 Exemptions – MIA 3/4

Necessary military or aviation facilities, air navigation facilities, airport visual approach or aircraft arresting devices, meteorological devices, aviation industry related maintenance, military aviation training and education facilities approved by the Federal Aviation Administration (FAA) or the Department of Defense, for which the location and height is fixed by its functional purpose are exempt from the provisions of the Fairchild Overlay Zone when permitted in the underlying zoning district, provided that the use will not penetrate the UFC 3-260-01 imaginary surfaces, attract wildlife that is hazardous to aviation, adversely impact base operations, or create a safety impact as determined by the Base Commander.

Section 18. Added Section. 17.16.170 of the Airway Heights Municipal Code is hereby added to read as follows:

17.16.170 Conflict with Underlying Zone Requirements

The "JLUS Protections for Fairchild Air Force Base" serve as an overlay district that applies additional standards and requirements to properties located within the underlying zoning designations. Where a requirement from this chapter overlaps or is in conflict with the underlying zone requirements, the most restrictive requirement applies.

Section 19. Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, section, clause or phrase of this ordinance.

Section 20. Effective Date. This ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

INTRODUCED the 3rd day of December, 2012.

PASSED by the City Council of the City of Airway Heights this 17th day of December, 2012.


Patrick D. Rushing, Mayor

ATTEST:

APPROVED AS TO FORM:


Richard G. Cook, Clerk-Treasurer


Stanley M. Schwartz, City Attorney

Date of Publication: December 20, 2012
Ordinance C-771





Department of Defense
INSTRUCTION

NUMBER 4165.57

May 2, 2011

USD(AT&L)

SUBJECT: Air Installations Compatible Use Zones (AICUZ)

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Reissues DoD Instruction (DoDI) 4165.57 (Reference (a)) in accordance with the authority in DoD Directive (DoDD) 5134.01 (Reference (b)) to establish policy, assign responsibilities, and prescribe procedures for the DoD AICUZ program for air installations, in accordance with DoDD 4165.06 (Reference (c)).

b. Establishes policy and assigns responsibility for educating air installation personnel and engaging local communities on issues related to noise, safety, and compatible land use in and around air installations.

c. Prescribes procedures for plotting noise contours for land use compatibility analysis.

2. APPLICABILITY. This Instruction applies to:

a. The Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereafter referred to collectively as the "DoD Components").

b. Air installations of the DoD Components located within the United States.

c. Air installations of the DoD Components located outside of the United States, but for on-base planning purposes only and subject to the requirements of any applicable international agreement, including any basing agreement.

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy to:

a. Promote the health, safety, and welfare of persons in the vicinity of and on air installations by minimizing aircraft noise and safety impacts without degrading flight safety and mission requirements.

b. Promote long-term compatible land use on and in the vicinity of air installations by encouraging State and local governments to adopt enabling legislation and compatible land use regulations into their land use planning and control processes and by partnering with communities and other eligible entities to protect land through restrictive use and conservation easements.

c. Limit acquisition of real property interests to the minimum necessary to ensure the operational integrity of the air installation.

d. Incorporate AICUZ guidelines into on-base land use planning programs.

e. Integrate AICUZ compatible land use strategies into the test and training range environment in accordance with DoDD 3200.15 (Reference (d)).

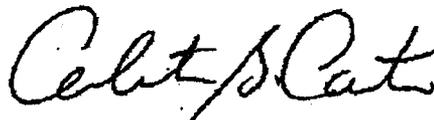
f. Promote education and engagement with communities affected by military operations at air installations: DoDD 5410.18 (Reference (e)) provides policy for the conduct of public affairs community relations activities and programs throughout the DoD.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective upon its publication to the DoD Issuances Website.



Ashton B. Carter
Under Secretary of Defense for
Acquisition, Technology, and Logistics

Enclosures

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 - 2. Responsibilities**
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REFERENCES

- (a) DoD Instruction 4165.57, "Air Installations Compatible Use Zones," November 8, 1977 (hereby cancelled)
- (b) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L))," December 9, 2005
- (c) DoD Directive 4165.06, "Real Property," October 13, 2004
- (d) DoD Directive 3200.15, "Sustainment of Ranges and Operating Areas (OPAREAs)," January 10, 2003
- (e) DoD Directive 5410.18, "Public Affairs Community Relations Policy," November 20, 2001
- (f) DoD Instruction 4165.70, "Real Property Management," April 6, 2005
- (g) DoD Instruction 4165.71, "Real Property Acquisition," January 6, 2005
- (h) DoD Instruction 4165.72, "Real Property Disposal," December 21, 2007
- (i) Unified Facilities Criteria 3-260-01, "Airfield and Helicopter Planning and Design," November 17, 2008
- (j) Part 77 of title 14, Code of Federal Regulations
- (k) Federal Interagency Committee on Urban Noise, "Guidelines for Considering Noise In Land Use Planning and Control," June 1980
- (l) Federal Interagency Committee on Noise, "Federal Agency Review of Selected Airport Noise Analysis Issues," August 1992
- (m) Federal Highway Administration, "Standard Land Use Coding Manual," January 1965
- (n) DoD Instruction 4715.13, "DoD Noise Program," November 15, 2005
- (o) Department of Defense Noise Working Group, "Improving Aviation Noise Planning, Analysis, and Public Communication with Supplemental Metrics," December 2009
- (p) Sections 2391(b)(1), 2684a of title 10, United States Code
- (q) DoD Directive 3030.01, "Office of Economic Adjustment," March 5, 2006
- (r) DoD Instruction 3030.3, "Joint Land Use Study (JLUS) Program," July 13, 2004

ENCLOSURE 2

RESPONSIBILITIES

1. DEPUTY UNDER SECRETARY OF DEFENSE FOR INSTALLATIONS AND ENVIRONMENT (DUSD(I&E)). The DUSD(I&E), under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall:

- a. Provide general oversight over the AICUZ program.
- b. Provide additional guidance as necessary.

2. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

- a. Develop, implement, and maintain an AICUZ program for each air installation.
- b. Ensure that each air installation conducts and maintains an AICUZ study.
- c. Develop AICUZ for DoD-controlled joint military-civilian use airfields.
- d. Provide education and training for air installation leadership on aircraft noise and safety, land use compatibility, and community engagement.
- e. Acquire, manage, and dispose of real property interests associated with the AICUZ program consistent with DoDIs 4165.70, 4165.71, and 4165.72 (References (f), (g), and (h)).
- f. Review and approve AICUZ studies and updates for each air installation.

ENCLOSURE 3

PROCEDURES

1. GENERAL

a. The DoD Components shall ensure that their air installations engage State and local governments and communities to foster compatible land use and to help local governments and communities better understand the nature of aircraft operations and procedures in and around the air installation. DoD Components shall ensure participation in local comprehensive planning processes, engage the community, and seek effective land use controls such as, but not limited to, AICUZ overlay zoning ordinances, planned unit developments, subdivision regulations, and height regulations. Other strategies to achieve compatibility include use of building codes, transfer development rights, real property acquisition, buffer lands and restrictive easement acquisition, and disclosure ordinances.

b. Regional and local governments may not always have the authority to enact land use controls to achieve compatibility. In circumstances where incompatible development threatens the mission, acquisition of real property interests may be required to ensure compatibility.

c. The DoD Components shall ensure that their air installations establish effective working relationships with State, tribal, and local governments, including local planning commissions, special purpose districts, regional and State agencies, airport land-use commissions, and other Federal agencies to communicate the objectives of the AICUZ program and operational requirements. This Instruction does not impose any requirements on members of the public or State or local governments, nor does it prescribe any specific course of action for these groups to take in dealing with the DoD on land-use questions.

d. The DoD Components shall ensure that each of their air installations:

(1) Address land use compatibility on and in the vicinity of the air installation where:

(a) Aircraft operations may affect the public health, safety, or welfare.

(b) Certain uses or structures may obstruct the airspace, attract birds, create electromagnetic or thermal interference, or produce dust, smoke, steam, or light emissions that may impact a pilot's vision, or otherwise be hazardous to or incompatible with aircraft operations.

(2) Apply these compatible land use guidelines:

(a) Limit concentrations of people and facilities in areas exposed to a higher risk from aircraft accidents.

(b) Promote compatibility with the noise exposure from air installation operations.

(c) Promote restrictions on land uses and heights of natural objects and man-made objects in the vicinity of air installations that may obstruct the airspace, attract birds, cause electromagnetic or thermal interference, or produce dust, steam, smoke, or light emissions to provide for safety of flight and the public welfare.

e. The DoD Components shall ensure that their air installations use the land area and height standards defined in the Unified Facilities Criteria 3-260-01 (Reference (i)) for purposes of identifying airspace obstructions and potential land use compatibility issues in accordance with part 77 of title 14, Code of Federal Regulations (Reference (j)).

2. AICUZ STUDY CONTENT

a. An AICUZ study shall include:

(1) A description of the aircraft noise and aircraft accident potential environment around the air installation for existing operations.

(2) A description of the long-term (5-10 year) aircraft noise and accident potential environment for projected aircraft operations that is consistent with the planning horizon used by State, tribal, regional, and local planning bodies.

(3) Recommendations for achieving compatible land use development considering aircraft noise, accident potential, bird or wildlife aircraft strike hazard (BASH), electromagnetic interference, dust, steam, smoke or light emissions, and heights of natural and man-made objects near the air installation that affect flight safety within the air installation's environs.

(4) Identification of existing and potential incompatible land uses.

b. Land use compatibility determinations concerning aircraft noise shall be derived from the Federal Interagency Committee on Urban Noise, "Guidelines for Considering Noise In Land Use Planning and Control" (Reference (k)) and as endorsed by the Federal Interagency Committee on Noise (FICON) in the "Federal Agency Review of Selected Airport Noise Analysis Issues" (Reference (l)).

c. The Federal Highway Administration's Standard Land Use Coding Manual (SLUCM) (Reference (m)) shall be used for a standard descriptor of land uses. The SLUCM standards, including their codes and sub-codes, provide planners with detailed information describing specific land use categories. Based on the SLUCM codes, land use compatibility guidelines for Clear Zones and Accident Potential Zones (APZs) (as defined in Glossary and discussed in paragraph 3.f. of this enclosure) are shown in Appendix 1 to this enclosure. Suggested land use compatibility guidelines in aircraft noise zones are shown in Appendix 2. Additions to some land use categories have been incorporated into Tables 1 and 2 of Appendix 2 subsequent to issuance of the SLUCM to reflect additional land uses and to clarify the categorization of certain uses.

- d. Areas of critical concern beyond the AICUZ footprint may be established.

3. AIRCRAFT ACCIDENT POTENTIAL

a. Areas immediately beyond the ends of runways possess a measurably higher potential for aircraft accidents. For this reason, development should be restricted to certain types of land uses and densities.

b. Land use compatibility for APZs is founded on the concept of minimizing density of land use in the vicinity of air installations. In addition to limiting density, certain types of land uses such as residential development, educational facilities, and medical facilities are considered incompatible and are strongly discouraged in APZs. Appendix 2 to this enclosure provides a detailed land use compatibility matrix for local governments as well as DoD personnel for on-base planning. Table 1 of Appendix 2 provides land use compatibility recommendations for the Clear Zones and APZs I and II. To assist local governments in implementing land use controls in APZs, recommended floor area ratios (FAR) are provided for select commercial uses.

c. DoD fixed-wing runways are separated into two types, Class A and Class B, for the purpose of defining aircraft accident potential areas.

d. Specific details on runway types can be found in Reference (i).

e. The descriptions of APZ boundaries in Appendix 1 to this enclosure are guidelines only. Their strict application would increase the safety of the general public but would not provide complete protection against the effects of aircraft accidents. Where it is desirable to restrict the density of development of an area, it is not usually possible to state that one density is safe and another is not. Air installations should work to create the greatest degree of safety that can be reasonably attained based on local circumstances. Local situations may differ significantly from the assumptions and data upon which these guidelines are based and may require individual study.

4. APZS AND CLEAR ZONES FOR FIXED-WING AIRCRAFT

a. A Clear Zone is required at the ends of all active DoD runways.

b. APZs may be modified:

(1) Where multiple flight tracks exist and significant numbers of aircraft operations are on multiple flight tracks, modifications may be made to create APZs that conform to the multiple flight tracks.

(2) Where most aircraft do not overfly the APZs, modifications may be made to alter the straight APZs shown in Appendix 2 to this enclosure and adjust them to conform to the actual lines of flight.

(3) Where other unusual conditions exist, modifications may be made to alter APZs as necessary.

5. APZS AND CLEAR ZONES FOR ROTARY-WING AIRCRAFT

a. The dimension of Clear Zones for rotary-wing runways and helipads for visual and standard instrument flight rules (IFR) operations is 400 feet long (the width can vary). The Clear Zone length for Army and Air Force IFR same direction ingress and egress is 825 feet,

b. The dimension of APZs for rotary-wing runways and helipads is 800 feet long.

c. The dimensions for APZs and Clear Zones for rotary-wing runways and helipads are discussed in greater detail in Reference (i).

6. AIRCRAFT NOISE

a. General

(1) Long-term land use compatibility with noise resulting from the operation of military aircraft should minimize the effects on people, animals (domestic and wild), and structures on or in proximity to air installations. Appendix 3 to this enclosure provides a detailed land use compatibility matrix for DoD Component personnel to use for on-base planning and to engage with local governments to foster compatible land use development. Table 2 of Appendix 2 provides land use compatibility recommendations based on SLUCM codes and day-night average sound level (DNL) or community noise equivalent level (CNEL) noise areas on and around air installations.

(2) The A-weighted day-night average sound level (ADNL) noise descriptor shall be used to describe the aircraft noise environment around air installations, except in California, where the CNEL descriptor shall be used to describe the aircraft noise environment. If laws require some other aircraft noise descriptor, it may be used in addition to, or as a substitute for, ADNL. Supplemental noise metrics may also be used to augment the ADNL or CNEL analysis as noted by the FICON in Reference (k). Since land use compatibility guidelines are based on yearly average noise levels, aircraft noise contours should be developed based on average annual day (AAD) operations. However, where the DoD Component determines that AAD does not adequately represent the aircraft noise impacts at a particular air installation, average busy day (ABD) operations can be used with supporting rationale.

b. Reducing Noise Impacts. Reasonable, economical, and practical measures shall be taken to reduce and control the generation of aircraft noise from flying and flying-related activities.

Typical measures normally include siting of engine test and run-up facilities in remote areas when practical, use of sound suppression equipment, and adjustment of aircraft flight paths to avoid developed areas when such adjustment can be accomplished safely and without significant impairment of operational effectiveness.

c. Plotting Aircraft Noise Contours

(1) As a minimum, contours for DNL 65, 70, 75, 80, and 85 shall be plotted on maps for Air Force, Navy, and Marine Corps air installations as part of AICUZ studies. The Army shall apply Operational Noise Management Program DNL designations of 60-65, 65-75, and greater than 75 at its air installations. Contours below 65 DNL are not required but may be provided if local conditions warrant discussion of lower aircraft noise levels, such as in rural and desert areas, or where significant noise complaints have been received from areas outside DNL 65 contours.

(2) Utilize guidance and noise assessment and management techniques from the DoD Noise Program in accordance with DoDI 4715.13 (Reference (n)) to support the AICUZ program.

(3) Supplemental noise metrics may be used to augment DNL and CNEL noise analyses to provide additional information to describe the noise environment in the vicinity of air installations. A detailed discussion of supplemental metrics and their application can be found in the DoD Noise Working Group's "Improving Aviation Noise Planning, Analysis, and Public Communication with Supplemental Metrics" (Reference (o)).

7. AICUZ UPDATES. Land use planning involves long-range strategies to influence present and future uses of lands. Frequent AICUZ updates and changes in land use recommendations can undermine the neighboring community's willingness to incorporate DoD Component recommendations into local comprehensive plans or to enact land use controls. AICUZ study recommendations should be based on best available, realistic long-range projections of air installation operations in support of local, State, and regional government land use planning objectives. Examples of when AICUZ updates should be undertaken include major mission changes, increases in nighttime flying (flights between 10:00 p.m. and 7:00 a.m.), basing of significant numbers of additional or a new type of aircraft, and base realignment affecting flying operations.

8. ACQUISITION OF INTERESTS IN LANDS

a. When local development regulations do not provide sufficient protection for aircraft operations (e.g., preventing incompatible development or airspace obstructions), the DoD Component shall consider the acquisition of necessary real property interests.

(1) Ownership in fee or of an appropriate restrictive use easement within the Clear Zone is preferred, unless State and local government development regulations will clearly have long-term effectiveness or acquisition is not practicable.

(2) The acquisition of restrictive use easements or interests in land outside the Clear Zone, such as APZs and noise zones, should only be pursued when State and local governments are unwilling or unable to enact land use controls to achieve land use compatibility in accordance with AICUZ guidelines and the operational integrity of the air installation is manifestly threatened. Acquisition of interests in land may also be pursued in such circumstances where long-term land use controls are considered to be ineffective and the DoD Component determines all possibilities of achieving compatible use zoning, or similar protection, have been exhausted.

b. Acquisition of real property interests shall follow the policy and procedures in References (c) and (f). Acquisition of real property interests from willing sellers pursuant to agreements with non-Federal governmental agencies and non-governmental organizations, authorized by section 2684a of title 10, United States Code (Reference (p)), can be an effective means of preserving compatible land uses.

c. For real property acquisitions, in accordance with paragraph 4.c. above the signature of this Instruction, these types of rights should be considered, as appropriate:

(1) To make low and frequent flights over the land and to generate noises associated with:

(a) Aircraft in flight, whether or not while directly over the land.

(b) Aircraft and aircraft engines operating on the ground at the installation.

(c) Aircraft engine test stand, test cell, and hush-house operations at the installation.

(2) To prohibit or limit the release into the air of any substance that would impair the visibility or otherwise interfere with the operations of aircraft, such as, but not limited to, steam, dust, and smoke.

(3) To prohibit or limit light emissions, either direct or indirect (reflective), visible or invisible, including lasers, that might interfere with pilot vision or performance of instruments, equipment and weapons systems.

(4) To prohibit electromagnetic emissions that would interfere with aircrew, aircraft, aircraft sensors, aircraft communications systems, or aircraft navigational equipment.

(5) To prohibit any use of the land that would unnecessarily attract birds, such as, but not limited to, operation of sanitary landfills, maintenance of feeding stations, or growing of certain types of vegetation attractive to birds.

(6) To prohibit and remove any buildings or other non-frangible structures.

(7) To top, cut to ground level, and to remove trees, shrubs, brush, or other forms of obstructions that the DoD Component determines might interfere with the operation of aircraft, including emergency landings.

(8) To ingress and egress upon, over, and across the land for the purpose of exercising the rights acquired or retained.

(9) To post signs on the land indicating the nature and extent of the Government's control over it.

(10) To prohibit land uses other than:

(a) Agriculture (except such uses that would attract birds or waterfowl).

(b) Livestock grazing (except managed intensive grazing, concentrated animal feeding operations, feedlots, dairy herds, and intensive animal husbandry).

(c) Permanent open space (open space recreational use shall conform to the compatibility guidelines in Appendix 2 of this enclosure).

(d) Existing water areas.

(e) Rights-of-way for fenced highways, without sidewalks or bicycle trails.

(f) Rights-of-way for railroads without terminals or platforms so long as rail traffic does not extend into the flight path.

(g) Communications and utility rights-of-way, provided all facilities are at or below grade.

(11) To prohibit entry of persons onto the land except in connection with activities otherwise authorized.

(12) To control the height of structures to ensure that they do not become a hazard to flight.

(13) To install airfield lighting and navigational aids.

d. When disposal of non-DoD Federal property at or in the vicinity of an air installation will impact its mission, the Military Department exercising real property accountability for the air installation will seek to have the disposal agency retain compatible land use easements over the property to be disposed of for the benefit of the air installation.

9. JOINT LAND USE STUDY (JLUS)

a. The Office of Economic Adjustment (OEA) administers the JLUS Program pursuant to section 2391(b)(1) of Reference (p) and in accordance with DoDD 3030.01 (Reference (q)) and DoDI 3030.3 (Reference (r)) to promote consistent ongoing compatible use and outreach programs between installations and local communities.

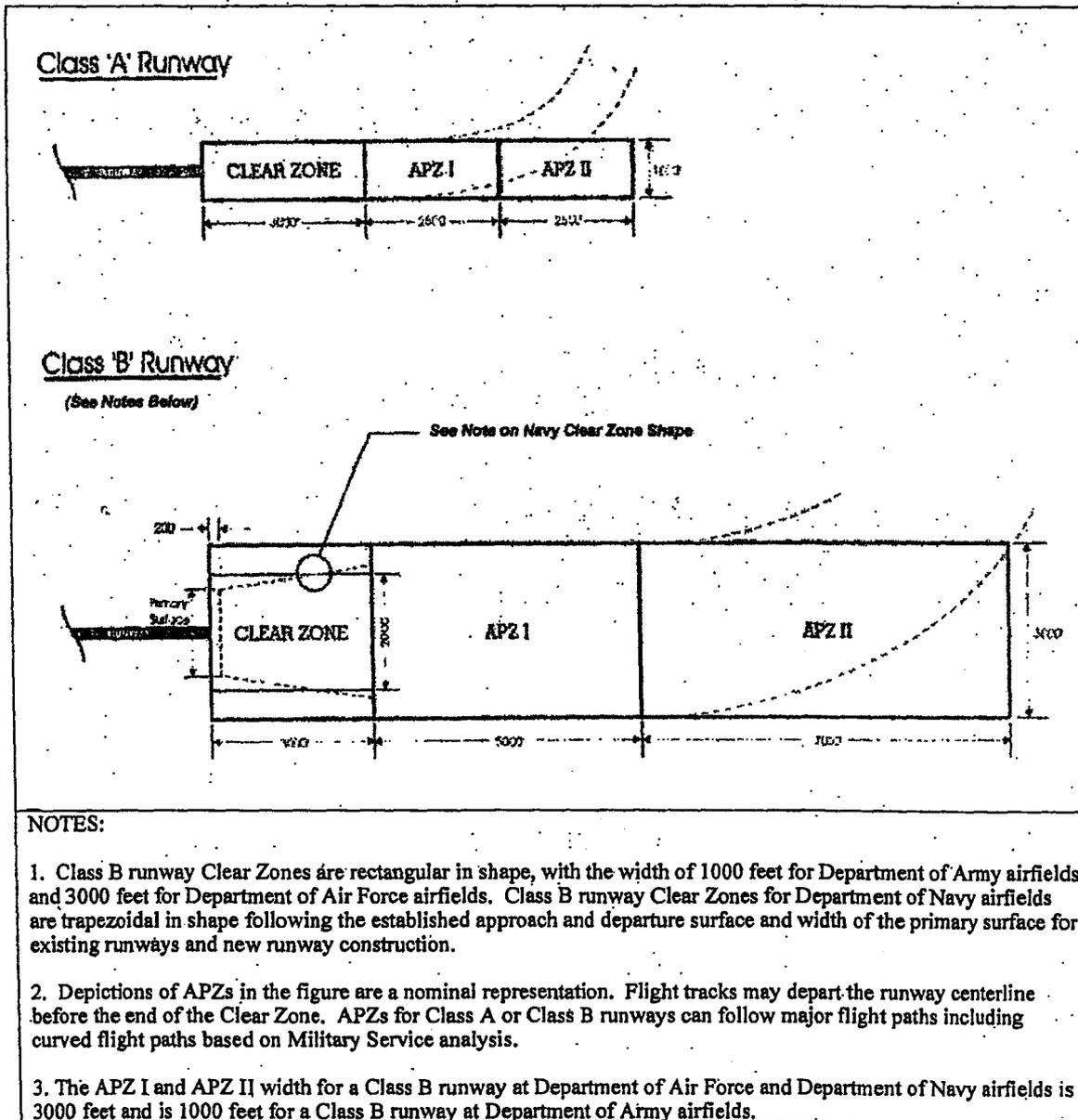
b. Each time an AICUZ is updated, the DoD Components shall consider whether further engagement with the neighboring local communities is needed through a JLUS to preserve the operational utility of the air installation.

APPENDIX 1 TO ENCLOSURE 3

APZ GUIDELINES

Guidelines for runway APZs and Clear Zones are depicted in the Figure.

Figure. Runway APZs and Clear Zones



APPENDIX 2 TO ENCLOSURE 3

RECOMMENDED LAND USE COMPATIBILITY IN APZs

Suggested land use compatibility guidelines in the Clear Zone and APZs are shown in Table 1. Additions to some land use categories have been incorporated into Table 1 subsequent to issuance of the SLUCM to reflect additional land uses and to clarify the categorization of certain uses. The compatible land use recommendations for the Clear Zone and APZs are provided for local governments as well as DoD personnel for on-base planning.

Table 1. Land Use Compatibility in APZs

SLUCM NO.	LAND USE NAME	CLEAR ZONE Recommendation ¹	APZ-I Recommendation ¹	APZ-II Recommendation ¹	DENSITY Recommendation ¹
11	Household Units				
11.11	Single units: detached	N	N	Y ²	Maximum density of 2 Du/Ac
11.12	Single units: semi-detached	N	N	N	
11.13	Single units: attached row	N	N	N	
11.21	Two units: side-by-side	N	N	N	
11.22	Two units: one above the other	N	N	N	
11.31	Apartments: walk-up	N	N	N	
11.32	Apartment: elevator	N	N	N	
12	Group quarters	N	N	N	
13	Residential hotels	N	N	N	
14	Mobile home parks or courts	N	N	N	
15	Transient lodgings	N	N	N	
16	Other residential	N	N	N	
21	Food and kindred products; manufacturing	N	N	Y	Maximum FAR of 0.56 IN APZ II
22	Textile mill products; manufacturing	N	N	Y	Maximum FAR of 0.56 IN APZ II
23	Apparel and other finished products; products made from fabrics, leather and similar materials; manufacturing	N	N	N	
24	Lumber and wood products (except furniture); manufacturing	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
25	Furniture and fixtures; manufacturing	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
26	Paper and allied products; manufacturing	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
27	Printing, publishing, and allied industries	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
28	Chemicals and allied products; manufacturing	N	N	N	

Table 1. Land Use Compatibility in APZs, Continued

SLUCM NO.	LAND USE NAME	CLEAR ZONE Recommendation ¹	APZ-I Recommendation ¹	APZ-II Recommendation ¹	DENSITY Recommendation ¹
29	Petroleum refining and related industries	N	N	N	
31	Rubber and miscellaneous plastic products; manufacturing	N	N	N	
32	Stone, clay, and glass products; manufacturing	N	N	Y	Maximum FAR 0.56 in APZ II
33	Primary metal products; manufacturing	N	N	Y	Maximum FAR 0.56 in APZ II
34	Fabricated metal products; manufacturing	N	N	Y	Maximum FAR 0.56 in APZ II
35	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks	N	N	N	
39	Miscellaneous manufacturing	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
41	Railroad, rapid rail transit, and street railway transportation	N	Y ^b	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
42	Motor vehicle transportation	N	Y ^b	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
43	Aircraft transportation	N	Y ^b	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
44	Marine craft transportation	N	Y ^b	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
45	Highway and street right-of-way	Y ^a	Y ^b	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
46	Automobile parking	N	Y ^b	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
47	Communication	N	Y ^b	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
48	Utilities ^c	N	Y ^b	Y ^b	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II
48.5	Solid waste disposal (landfills, incinerators, etc.)	N	N	N	
49	Other transportation, communication, and utilities	N	Y ^b	Y	See Note 6 below
51	Wholesale trade	N	Y	Y	Maximum FAR of 0.28 in APZ I & 0.56 in APZ II

Table 1. Land Use Compatibility in APZs, Continued

SLUCM NO.	LAND USE NAME	CLEAR ZONE Recommendation ¹	APZ-I Recommendation ¹	APZ-II Recommendation ¹	Density Recommendation ¹
52	Retail trade – building materials, hardware and farm equipment	N	Y	Y	See Note 8 below
53	Retail trade ⁹ – including shopping centers, discount clubs, home improvement stores, electronics superstores, etc.	N	N	Y	Maximum FAR of 0.16 in APZ II
54	Retail trade – food	N	N	Y	Maximum FAR of 0.24 in APZ II
55	Retail trade – automotive, marine craft, aircraft, and accessories	N	Y	Y	Maximum FAR of 0.14 in APZ I & 0.28 in APZ II
56	Retail trade – apparel and accessories	N	N	Y	Maximum FAR of 0.28 in APZ II
57	Retail trade – furniture, home, furnishings and equipment	N	N	Y	Maximum FAR of 0.28 in APZ II
58	Retail trade – eating and drinking establishments	N	N	N	
59	Other retail trade	N	N	Y	Maximum FAR of 0.16 in APZ II
60	Services ¹⁰				
61	Finance, insurance and real estate services	N	N	Y	Maximum FAR of 0.22 in APZ II
62	Personal services	N	N	Y	Office uses only. Maximum FAR of 0.22 in APZ II.
62.4	Cemeteries	N	Y ¹¹	Y ¹¹	
63	Business services (credit reporting; mail, stenographic, reproduction; advertising)	N	N	Y	Maximum FAR of 0.22 in APZ II
63.7	Warehousing and storage services ¹²	N	Y	Y	Maximum FAR of 1.0 in APZ I; 2.0 in APZ II
64	Repair Services	N	Y	Y	Maximum FAR of 0.11 APZ I; 0.22 in APZ II
65	Professional services	N	N	Y	Maximum FAR of 0.22 in APZ II
65.1	Hospitals, nursing homes	N	N	N	
65.1	Other medical facilities	N	N	N	
66	Contract construction services	N	Y	Y	Maximum FAR of 0.11 APZ I; 0.22 in APZ II
67	Government Services	N	N	Y	Maximum FAR of 0.24 in APZ II
68	Educational services	N	N	N	
68.1	Child care services, child development centers, and nurseries	N	N	N	

Table 1. Land Use Compatibility in APZs, Continued

SLUCM NO.	LAND USE NAME	CLEAR ZONE Recommendation ¹	APZ-I Recommendation ¹	APZ-II Recommendation ¹	Density Recommendation ¹
69	Miscellaneous	N	N	Y	Maximum FAR of 0.22 in APZ II
69.1	Religious activities	N	N	N	
Cultural, Entertainment, and Recreation					
71	Cultural activities	N	N	N	
71.2	Nature exhibits	N	Y ¹³	Y ¹³	
72	Public assembly	N	N	N	
72.1	Auditoriums, concert halls	N	N	N	
72.11	Outdoor music shells, amphitheaters	N	N	N	
72.2	Outdoor sports arenas, spectator sports	N	N	N	
73	Amusements – fairgrounds, miniature golf, driving ranges; amusement parks, etc.	N	N	Y	
74	Recreational activities (including golf courses, riding stables, water recreation)	N	Y ¹³	Y ¹³	Maximum FAR of 0.11 in APZ I; 0.22 in APZ II
75	Resorts and group camps	N	N	N	
76	Parks	N	Y ¹³	Y ¹³	Maximum FAR of 0.11 in APZ I; 0.22 in APZ II
79	Other cultural, entertainment and recreation	N	Y ¹¹	Y ¹¹	Maximum FAR of 0.11 in APZ I; 0.22 in APZ II
Resource production and extraction					
81	Agriculture (except live stock)	Y ¹	Y ¹⁴	Y ¹⁴	
81.5, 81.7	Livestock farming and breeding	N	Y ^{14,15}	Y ^{14,15}	
82	Agriculture related activities	N	Y ¹⁴	Y ¹⁴	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives
83	Forestry activities ¹⁶	N	Y	Y	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives
84	Fishing activities ¹⁷	N ¹⁷	Y	Y	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives

Table I. Land Use Compatibility in APZs, Continued

SLUCM NO.	LAND USE NAME	CLEAR ZONE Recommendation ¹	APZ-I Recommendation ¹	APZ-II Recommendation ¹	Density Recommendation ¹
85	Mining activities ⁸	N	Y ¹⁸	Y ¹⁸	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives
89	Other resource production or extraction	N	Y	Y	Maximum FAR of 0.28 in APZ I; 0.56 in APZ II, no activity which produces smoke, glare, or involves explosives
91	Undeveloped land	Y	Y	Y	
93	Water areas ¹⁹	N ¹⁹	N ¹⁹	N ¹⁹	

KEY TO TABLE 1 – LAND USE COMPATIBILITY IN APZS

SLUCM – Standard Land Use Coding Manual, U.S. Department of Transportation

Y (Yes) – Land uses and related structures are normally compatible without restriction

N (No) – Land use and related structures are not normally compatible and should be prohibited.

Yx – Yes with restrictions. The land uses and related structures are generally compatible. However, see notes indicated by the superscript.

Nx – No with exceptions. The land uses and related structures are generally incompatible. However, see notes indicated by the superscript.

FAR – Floor Area Ratio. A floor area ratio is the ratio between the square feet of floor area of the building and the gross site area. It is customarily used to measure non-residential intensities.

Du/Ac – Dwelling Units an Acre. This is customarily used to measure residential densities.

NOTES FOR TABLE 1 – LAND USE COMPATIBILITY IN APZS

1. A "Yes" or a "No" designation for compatible land use is to be used only for general comparison. Within each, uses exist where further evaluation may be needed in each category as to whether it is clearly compatible, normally compatible, or not compatible due to the variation of densities of people and structures. In order to assist air installations and local governments, general suggestions as to FARs are provided as a guide to density in some categories. In general, land use restrictions that limit occupants, including employees, of commercial, service, or industrial buildings or structures to 25 an acre in APZ I and 50 an acre in APZ II are considered to be low density. Outside events should normally be limited to assemblies of not more than 25 people an acre in APZ I, and maximum assemblies of 50 people an acre in APZ II. Recommended FARs are calculated using standard parking generation rates for various land uses, vehicle occupancy rates, and desired density in APZ I and II. For APZ I, the formula is $FAR = 25 \text{ people an acre} / (\text{Average Vehicle Occupancy} \times \text{Average Parking Rate} \times (43560/1000))$. The formula for APZ II is $FAR = 50 / (\text{Average Vehicle Occupancy} \times \text{Average Parking Rate} \times (43560/1000))$.

Table 1. Land Use Compatibility in APZs, Continued

NOTES FOR TABLE 1 – LAND USE COMPATIBILITY IN APZS

2. The suggested maximum density for detached single family housing is two Du/Ac. In a planned unit development (PUD) of single family detached units where clustered housing development results in large open areas, this density could possibly be increased slightly provided the amount of surface area covered by structures does not exceed 20 percent of the PUD total area. PUD encourages clustered development that leaves large open areas.
3. Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots.
4. No structures (except airfield lighting and navigational aids necessary for the safe operation of the airfield when there are no other siting options), buildings, or above-ground utility and communications lines should normally be located in Clear Zone areas on or off the air installation. The Clear Zone is subject to the most severe restrictions.
5. Rights-of-way for fenced highways, without sidewalks or bicycle trails, are allowed.
6. No above ground passenger terminals and no above ground power transmission or distribution lines. Prohibited power lines include high-voltage transmission lines and distribution lines that provide power to cities, towns, or regional power for unincorporated areas.
7. Development of renewable energy resources, including solar and geothermal facilities and wind turbines, may impact military operations through hazards to flight or electromagnetic interference. Each new development should to be analyzed for compatibility issues on a case-by-case basis that considers both the proposal and potentially affected mission.
8. Within SLUCM Code 52, maximum FARs for lumberyards (SLUCM Code 521) are 0.20 in APZ-I and 0.40 in APZ-II. For hardware, paint, and farm equipment stores, SLUCM Code 525, the maximum FARs are 0.12 in APZ I and 0.24 in APZ II.
9. A shopping center is an integrated group of commercial establishments that is planned, developed, owned, or managed as a unit. Shopping center types include strip, neighborhood, community, regional, and super-regional facilities anchored by small businesses, a supermarket or drug store, discount retailer, department store, or several department stores, respectively. Included in this category are such uses as big box discount clubs, home improvement superstores, office supply superstores, and electronics superstores. The maximum recommended FAR for SLUCM 53 should be applied to the gross leasable area of the shopping center rather than attempting to use other recommended FARs listed in Table 1 under Retail or Trade.
10. Ancillary uses such as meeting places, auditoriums, etc., are not recommended.
11. No chapels or houses of worship are allowed within APZ I or APZ II.
12. Big box home improvement stores are not included as part of this category.
13. Facilities must be low intensity, and provide no playgrounds, etc. Facilities such as club houses, meeting places, auditoriums, large classes, etc., are not recommended.
14. Livestock grazing is a compatible land use, but feedlots and intensive animal husbandry are excluded. Activities that attract concentrations of birds creating a hazard to aircraft operations should be excluded.
15. Feedlots and intensive animal husbandry are included as compatible land uses.

Table 1. Land Use Compatibility in APZs, Continued

NOTES FOR TABLE 1 – LAND USE COMPATIBILITY IN APZS

16. Lumber and timber products removed due to establishment, expansion, or maintenance of Clear Zone lands owned in fee will be disposed of in accordance with applicable DoD guidance.
17. Controlled hunting and fishing may be permitted for the purpose of wildlife management.
18. Surface mining operations that could create retention ponds that may attract waterfowl and present bird/wildlife aircraft strike hazards (BASH), or operations that produce dust or light emissions that could affect pilot vision are not compatible.
19. Naturally occurring water features (e.g., rivers, lakes, streams, wetlands) are pre-existing, nonconforming land uses. Naturally occurring water features that attract waterfowl present a potential BASH. Actions to expand naturally occurring water features or construction of new water features should not be encouraged. If construction of new features is necessary for storm water retention, such features should be designed so that they do not attract water fowl.

APPENDIX 3 TO ENCLOSURE 3

RECOMMENDED LAND USE COMPATIBILITY IN NOISE ZONES

Suggested land use compatibility guidelines in noise zones are shown in Table 2. Additions to some land use categories have been incorporated into Table 2 subsequent to issuance of the SLUCM to reflect additional land uses and to clarify the categorization of certain uses. The land use compatibility recommendations are provided for local governments as well as DoD personnel for on-base planning.

Table 2. Land Use Compatibility in Noise Zones

LAND USE		SUGGESTED LAND USE COMPATIBILITY				
SLUCM NO.	LAND USE NAME	DNL or CNEL 65-69	DNL or CNEL 70-74	DNL or CNEL 75-79	DNL or CNEL 80-84	DNL or CNEL 85+
10	Residential	N ¹	N ¹	N	N	N
11	Household units	N ¹	N ¹	N	N	N
11.11	Single units: detached	N ¹	N ¹	N	N	N
11.12	Single units: semidetached	N ¹	N ¹	N	N	N
11.13	Single units: attached row	N ¹	N ¹	N	N	N
11.21	Two units: side-by-side	N ¹	N ¹	N	N	N
11.22	Two units: one above the other	N ¹	N ¹	N	N	N
11.31	Apartments: walk-up	N ¹	N ¹	N	N	N
11.32	Apartment: elevator	N ¹	N ¹	N	N	N
12	Group quarters	N ¹	N ¹	N	N	N
13	Residential hotels	N ¹	N ¹	N	N	N
14	Mobile home parks or courts	N	N	N	N	N
15	Transient lodgings	N ¹	N ¹	N ¹	N	N
16	Other residential	N ¹	N ¹	N	N	N
21	Food and kindred products; manufacturing	Y	Y ²	Y ³	Y ⁴	N
22	Textile mill products; manufacturing	Y	Y ²	Y ³	Y ⁴	N
23	Apparel and other finished products; products made from fabrics, leather, and similar materials; manufacturing	Y	Y ²	Y ³	Y ⁴	N
24	Lumber and wood products (except furniture); manufacturing	Y	Y ²	Y ³	Y ⁴	N
25	Furniture and fixtures; manufacturing	Y	Y ²	Y ³	Y ⁴	N
26	Paper and allied products; manufacturing	Y	Y ²	Y ³	Y ⁴	N
27	Printing, publishing, and allied industries	Y	Y ²	Y ³	Y ⁴	N

Table 2. Land Use Compatibility in Noise Zones, Continued

Land Use		Suggested Land Use Compatibility				
SLUCM NO.	LAND USE NAME	DNL or CNEL 65-69	DNL or CNEL 70-74	DNL or CNEL 75-79	DNL or CNEL 80-84	DNL or CNEL 85+
28	Chemicals and allied products; manufacturing	Y	Y ²	Y ³	Y ⁴	N
29	Petroleum refining and related industries	Y	Y ²	Y ³	Y ⁴	N
30	Manufacturing (continued)					
31	Rubber and misc. plastic products; manufacturing	Y	Y ²	Y ³	Y ⁴	N
32	Stone, clay and glass products; manufacturing	Y	Y ²	Y ³	Y ⁴	N
33	Primary metal products; manufacturing	Y	Y ²	Y ³	Y ⁴	N
34	Fabricated metal products; manufacturing	Y	Y ²	Y ³	Y ⁴	N
35	Professional scientific, and controlling instruments; photographic and optical goods; watches and clocks	Y	25	30	N	N
39	Miscellaneous manufacturing	Y	Y ²	Y ³	Y ⁴	N
41	Railroad, rapid rail transit, and street railway transportation	Y	Y ²	Y ³	Y ⁴	N
42	Motor vehicle transportation	Y	Y ²	Y ³	Y ⁴	N
43	Aircraft transportation	Y	Y ²	Y ³	Y ⁴	N
44	Marine craft transportation	Y	Y ²	Y ³	Y ⁴	N
45	Highway and street right-of-way	Y	Y	Y	Y	N
46	Automobile parking	Y	Y	Y	Y	N
47	Communication	Y	25 ³	30 ⁵	N	N
48	Utilities	Y	Y ²	Y ³	Y ⁴	N
49	Other transportation, communication and utilities	Y	25 ³	30 ⁵	N	N
51	Wholesale trade	Y	Y ²	Y ³	Y ⁴	N
52	Retail trade – building materials, hardware and farm equipment	Y	25	30	Y ⁴	N
53	Retail trade – including shopping centers, discount clubs, home improvement stores, electronics superstores, etc.	Y	25	30	N	N
54	Retail trade – food	Y	25	30	N	N

Table 2. Land Use Compatibility in Noise Zones, Continued

Land Use		Suggested Land Use Compatibility				
SLUCM NO.	LAND USE NAME	DNL or CNEL 65-69	DNL or CNEL 70-74	DNL or CNEL 75-79	DNL or CNEL 80-84	DNL or CNEL 85+
	Trade (Construction)					
55	Retail trade – automotive, marine craft, aircraft and accessories	Y	25	30	N	N
56	Retail trade – apparel and accessories					
57	Retail trade – furniture, home, furnishings and equipment					
58	Retail trade – eating and drinking establishments	Y	25	30	N	N
59	Other retail trade	Y	25	30	N	N
	Services					
61	Finance, insurance and real estate services	Y	25	30	N	N
62	Personal services	Y	25	30	N	N
62.4	Cemeteries	Y	Y ²	Y ³	Y ^{4,11}	Y ^{6,11}
63	Business services	Y	25	30	N	N
63.7	Warehousing and storage	Y	Y ²	Y ³	Y ⁴	N
64	Repair services	Y	Y ²	Y ³	Y ⁴	N
65	Professional services	Y	25	30	N	N
65.1	Hospitals, other medical facilities	25	30	N	N	N
65.16	Nursing homes	N ¹	N ¹	N	N	N
66	Contract construction services	Y	25	30	N	N
67	Government services	Y ¹	25	30	N	N
68	Educational services	25	30	N	N	N
68.1	Child care services, child development centers, and nurseries	25	30	N	N	N
69	Miscellaneous	Y	25	30	N	N
69.1	Religious activities	Y	25	30	N	N
	Cultural, entertainment and recreation					
71	Cultural activities (& churches)	25	30	N	N	N
71.2	Nature exhibits	Y ¹	N	N	N	N
72	Public assembly	Y	N	N	N	N
72.1	Auditoriums, concert halls	25	30	N	N	N
72.1.1	Outdoor music shells, amphitheaters	N	N	N	N	N
72.2	Outdoor sports arenas, spectator sports	Y ¹	Y ¹	N	N	N
73	Amusements	Y	Y	N	N	N

Table 2. Land Use Compatibility in Noise Zones, Continued

Land Use		Suggested Land Use Compatibility				
SLUCM NO.	LAND USE NAME	DNL or CNEL 65-69	DNL or CNEL 70-74	DNL or CNEL 75-79	DNL or CNEL 80-84	DNL or CNEL 85+
74	Recreational activities (including golf courses, riding stables, water recreation)	Y	25	30	N	N
75	Resorts and group camps	Y	25	N	N	N
76	Parks	Y	25	N	N	N
79	Other cultural, entertainment and recreation	Y	25	N	N	N
81	Agriculture (except live stock)	Y ⁸	Y ⁹	Y ¹⁰	Y ^{10,11}	Y ^{10,11}
81.5	Livestock farming	Y ⁸	Y ⁹	N	N	N
81.7	Animal breeding	Y ⁸	Y ⁹	N	N	N
82	Agriculture related activities	Y ⁸	Y ⁹	Y ¹⁰	Y ^{10,11}	Y ^{10,11}
83	Forestry activities	Y ⁸	Y ⁹	Y ¹⁰	Y ^{10,11}	Y ^{10,11}
84	Fishing activities	Y	Y	Y	Y	Y
85	Mining activities	Y	Y	Y	Y	Y
89	Other resource production or extraction	Y	Y	Y	Y	Y

KEY TO TABLE 2 - LAND USE COMPATIBILITY IN NOISE ZONES

SLUCM - Standard Land Use Coding Manual, U.S. Department of Transportation

Y (Yes) - Land use and related structures compatible without restrictions.

N (No) - Land use and related structures are not compatible and should be prohibited.

Y* - Yes with restrictions. The land use and related structures generally are compatible. However, see note(s) indicated by the superscript.

N* - No with exceptions. The land use and related structures are generally incompatible. However, see note(s) indicated by the superscript.

25, 30, or 35 - The numbers refer to noise level reduction (NLR) levels. NLR (outdoor to indoor) is achieved through the incorporation of noise attenuation into the design and construction of a structure. Land use and related structures are generally compatible; however, measures to achieve NLR of 25, 30, or 35 must be incorporated into design and construction of structures. However, measures to achieve an overall noise reduction do not necessarily solve noise difficulties outside the structure and additional evaluation is warranted. Also, see notes indicated by superscripts where they appear with one of these numbers.

DNL - Day-Night Average Sound Level.

CNEL - Community Noise Equivalent Level (normally within a very small decibel difference of DNL)

Ldn - Mathematical symbol for DNL.

Table 2. Land Use Compatibility in Noise Zones, Continued

NOTES FOR TABLE 2 – LAND USE COMPATIBILITY IN NOISE ZONES

1. General

a. Although local conditions regarding the need for housing may require residential use in these zones, residential use is discouraged in DNL 65-69 and strongly discouraged in DNL 70-74. The absence of viable alternative development options should be determined and an evaluation should be conducted locally prior to local approvals indicating that a demonstrated community need for the residential use would not be met if development were prohibited in these zones. Existing residential development is considered as pre-existing, non-conforming land uses.

b. Where the community determines that these uses must be allowed, measures to achieve outdoor to indoor NLR of at least 25 decibels (dB) in DNL 65-69 and 30 dB in DNL 70-74 should be incorporated into building codes and be considered in individual approvals; for transient housing, an NLR of at least 35 dB should be incorporated in DNL 75-79.

c. Normal permanent construction can be expected to provide an NLR of 20 dB, thus the reduction requirements are often stated as 5, 10, or 15 dB over standard construction and normally assume mechanical ventilation, upgraded sound transmission class ratings in windows and doors, and closed windows year round. Additional consideration should be given to modifying NLR levels based on peak noise levels or vibrations.

d. NLR criteria will not eliminate outdoor noise problems. However, building location, site planning, design, and use of berms and barriers can help mitigate outdoor noise exposure particularly from ground level sources. Measures that reduce noise at a site should be used wherever practical in preference to measures that only protect interior spaces.

2. Measures to achieve NLR of 25 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.

3. Measures to achieve NLR of 30 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.

4. Measures to achieve NLR of 35 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.

5. If project or proposed development is noise sensitive, use indicated NLR; if not, land use is compatible without NLR.

6. Buildings are not permitted.

7. Land use is compatible provided special sound reinforcement systems are installed.

8. Residential buildings require an NLR of 25

9. Residential buildings require an NLR of 30.

Table 2. Land Use Compatibility in Noise Zones, Continued

NOTES FOR TABLE 2 – LAND USE COMPATIBILITY IN NOISE ZONES

10. Residential buildings are not permitted.

11. Land use that involves outdoor activities is not recommended, but if the community allows such activities, hearing protection devices should be worn when noise sources are present. Long-term exposure (multiple hours per day over many years) to high noise levels can cause hearing loss in some unprotected individuals.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AAD	average annual day
ABD	average busy day
ADNL	A-weighted day-night average sound level
AICUZ	air installations compatible use zone
APZ	Accident Potential Zone
BASH	bird or wildlife aircraft strike hazard
CNEL	community noise equivalent level
dB	decibel
DNL	day-night average sound level
DoDD	DoD Directive
DoDI	DoD Instruction
Du/Ac	dwelling units an acre
FAR	floor area ratio
FICON	Federal Interagency Committee on Noise
IFR	instrument flight rules
JLUS	joint land use study
NLR	noise level reduction
OEA	Office of Economic Adjustment
PUD	planned unit development
SLUCM	Standard Land Use Coding Manual

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this Instruction.

A-weighted. An expression of the relative loudness of sounds in air as perceived by the human ear where the decibel values of sounds at low frequencies are reduced. By contrast, unweighted decibels make no correction for audio frequency.

air installation. Fixed-wing and rotary-wing military airfields.

APZ I. The area beyond the Clear Zone that possesses a significant potential for accidents.

APZ II. The area beyond APZ I having a measurable potential for accidents.

area of critical concern. An area within the airfield environment as defined by the DoD Component where land use controls may be desirable to protect long-term mission capability. The development of the final boundary of areas of critical concern shall also take into account natural and manmade features.

Class A runway. A runway primarily intended for small, light aircraft and that does not have the potential for development for heavy or high performance aircraft use, or for which no foreseeable requirements for such use exists. Ordinarily, less than 10 percent of the operations at airfields with Class A runways involve aircraft in the Class B category and the runway(s) are less than 8,000 feet long.

Class B runway. A runway primarily intended for high-performance and large, heavy aircraft. For example, runways that accommodate heavy aircraft or have the potential for development to heavy aircraft use.

Clear Zone. A surface on the ground or water beginning at the runway end and symmetrical about the runway centerline extended.

United States. The several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, Midway and Wake Islands, the United States Virgin Islands, any other territory or possession of the United States, and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States.



Agenda Item for City Council <input type="checkbox"/> Work Session <input checked="" type="checkbox"/> Legislative		Date Initiated	October 11, 2011	Item No. <u>G</u> 
Department	Development Services	Workshop	May 28, 2013	
Contact Name	Derrick Braaten	Committee		
Phone	(509) 244-2552	Public Hearing	May 13, 2013 July 8, 2013 July 15, 2013	
Email	dbraaten@cawh.org	Council	June 17, 2013	
Council Sponsor		2 nd Council	July 15, (3 rd) August 5, 2013	
Legal Review by		Legal Review		
Agenda Item Name	Amending AHMC 17.11, C-2, General Commercial			

Agenda Wording: Amending AHMC 17.11, C-2, General Commercial, through CC Ordinance C-797.

Summary (Background): Starting in October, 2011, the City began work to update AHMC 17.11, C-2, General Commercial. The proposed amendment will allow for multi-family residential, with a conditional-use permit, on limited C-2 zoned properties lying outside of the City's adopted 70 LdN sound contour, incorporates new JLUS standards, raises allowed building heights from 50' to 60'. The delay in implementation of the updated AHMC 17.11 was due to the JLUS process and concerns from other jurisdictions as to how the proposed changes to AHMC 17.11 will impact FAFB and SIA. The City agreed the City Council would not take action on regulations permitting the locating of limited multi-family on commercial zoned properties before May 15, 2013.

Staff is proposing to amend AHMC 17.11, as submitted. The new code provides clarification regarding development standards for limited multi-family developments, raises building heights from 50' to 60', and incorporate adopted JLUS Standards, thereby preventing incompatible development in the commercial zones of the City.

Supports Comp Plan Goal: Explore land-use compatibility with FAFB and SIA, where practicable. (Table 4.1)

Fiscal Impact	Funding Source (BARS) Line # & Description
\$ N/A	N/A

City Manager Recommendation: Approval

Date: July 23, 2013

Council Action:	<input type="checkbox"/> Schedule Public Hearing	<input type="checkbox"/> Move to Legislative Session
<input type="checkbox"/> To Staff	<input type="checkbox"/> New Work Session	<input type="checkbox"/> No Further Action
<input type="checkbox"/> Refer to Committee	<input type="checkbox"/> CEDC <input type="checkbox"/> Finance <input type="checkbox"/> PW	<input type="checkbox"/> PS <input type="checkbox"/> Ad Hoc
Committee Action Date	<input type="checkbox"/> To Legislative	<input type="checkbox"/> To Work Session

**CITY OF AIRWAY HEIGHTS
SPOKANE COUNTY, WASHINGTON**

ORDINANCE C- 797

**AN ORDINANCE OF THE CITY OF AIRWAY HEIGHTS, WASHINGTON AMENDING
CHAPTER 17.11 OF THE AIRWAY HEIGHTS MUNICIPAL CODE, ENTITLED C-2,
GENERAL COMMERCIAL AND PROVIDING FOR OTHER MATTERS PROPERLY
RELATING THERETO.**

WHEREAS, pursuant to the provisions of the Revised Code of Washington (RCW) Chapter 35A.63, the City Council of Airway Heights, Spokane County, Washington, hereinafter referred to as the "Council," has created a planning commission, hereinafter referred to as the "Commission"; and

WHEREAS, the Council has afforded the Commission the responsibility to assist in the preparation of development regulations, review plans and regulations related to land use management, and to hold public hearings in the exercise of duties and responsibilities; and

WHEREAS, the City initiated the process to amend AHMC 17.11 in October, 2011, as part of its review and replacement of AHMC 17.11, Mixed-Use Overlay, and the development and incorporation of JLUS standards for the City. During that process, this item was brought to the City Planning Commission on two occasions; on or about December 15, 2011 and on or about April 15, 2012; and

WHEREAS, on both occasions, the Planning Commission recommendation to the City Council was to approve the proposed changes; and

WHEREAS, appropriate notice was sent to the Department of Commerce (DOC) and other state agencies, as required by RCW 36.70A.106, for the start of the required 60-day review of any amendments to a jurisdiction's development code on April 25, 2013. The required 60-day review ends on June 24, 2013; and

WHEREAS, the City of Airway Heights provided notice to the public, adjacent jurisdictions and various stakeholders, by posting in those designated locations throughout the City of Airway Heights and by advertising in the Cheney Free Press on March 22, 2012. The notice stated that the preliminary SEPA determination was a Determination of Non-Significance (DNS) and any SEPA comments are due May 9, 2013, with any appeal of the DNS being due May 14, 2013. It also notified the public that the City would be holding a public hearing before the Planning Commission May 13, 2013 and that the City will accept written comments until 5 pm, May 9, 2013; and

WHEREAS, under SEPA, a preliminary Determination of Non-Significance (DNS) was issued on April 25, 2013 for ZCA 2013-01, with the Notice of Application, SEPA determination, comment period, and public hearing being mailed to 43 various agencies and stakeholders, and posted in the Cheney Free Press on April 25, 2013; and

WHEREAS, the SEPA comment period ended on May 9, 2013, and the SEPA appeal period ended on May 14, 2013; and

WHEREAS, the City of Airway Heights Planning Commission held a public hearing regarding the proposed amendments to the existing AHMC 17.11, C-2, General Commercial, ZCA 2013-01 on May 13, 2013; and

WHEREAS, at the May 13, 2013 public hearing, due to the complexity of the regulations proposed, a request from staff to provide an adequate response to comments received, and to ensure the public has an opportunity to comment on the proposals, the Planning Commission voted to keep the record open regarding this item until June 10, 2013, at which time it will hold a second public hearing; and

WHEREAS, the June 10th Planning Commission meeting was canceled due to a lack of quorum; and

WHEREAS, the Planning Commission held a public hearing regarding the proposed amendments to the existing AHMC 17.37, AHMC 17.11, C-2, General Commercial, ZCA 2013-01 on July 8, 2013; and

WHEREAS, at the July 8, 2013 public hearing, two landowners in the East Annexation Area provided comments in support of the amendments, as proposed; and

WHEREAS, at the July 8, 2013 Planning Commission meeting, the Planning Commission recommended that the City Council adopt ZCA 2013-01, as submitted, through Ordinance C-798; and

WHEREAS, the City Council held a public hearing regarding ZCA 2013-01 on July 15, 2013; and

WHEREAS, at the July 15, 2013 public hearing, two landowners in the East Annexation Area provided comments in support of the amendments, as proposed; and

WHEREAS, at the July 15, 2013 public hearing, a representative of Spokane County provided comment, asking that the properties in the East Annexation Area not include any new residential development and asking that the City wait to finalize the amendments to AHMC 17.11 until the SIA Master Plan is completed; and

WHEREAS, the City has a deficiency of available multi-family housing units, with current multi-family developments having occupancy rates exceeding 95%, compared to the Office of Financial Management occupancy average of 89%; and

WHEREAS, there are over 300 residential units located within the FAFB Accident Potential Zone 2 (APZ 2); and

WHEREAS, the residential density in the APZ 2 exceeds the 2 residential units/acre listed in the Air Installation Compatible Use Zone (AICUZ) standards and may be considered an encroachment on FAFB operations; and

WHEREAS, the residents living in the APZ 2 experience some of the highest noise impacts and increased risk to their health and safety from FAFB operations; and

WHEREAS, there are limited housing choices for Airway Heights residents, namely a deficiency in residential units other than single-family; and

WHEREAS, the people living in the APZ 2 tend to be on the lower end of the income scale and many have located within APZ 2 because they have no other affordable housing choices available; and

WHEREAS, studies indicate that the paradigm of home ownership has changed, in that retirees are downsizing from their single-family residences and relocating to urban areas and small lot developments; and

WHEREAS, studies indicate that young professionals desire to locate in vibrant, urban scale environments and due to the 2008 housing and banking crisis are not as interested in homeownership and if they are, they cannot afford it, or tend to wait until later in life than previous generations; and

WHEREAS, the City desires its residential developments to provide a mix of residential types to accommodate the desires of all its residents; and

WHEREAS, all people living within the City of Airway Heights incorporated boundaries are resident of Airway Heights; and

WHEREAS, the City has a responsibility to assist its residents in improving their quality of life when possible or necessary; and

WHEREAS, the City has a responsibility to ensure development occurs in such a way as to minimize the health and safety risk to the public; and

WHEREAS, the City desires its residential developments to provide a mix of residential types to accommodate the desires of all its residents; and

WHEREAS, all people living within the City of Airway Heights incorporated boundaries are resident of Airway Heights; and

WHEREAS, the City has a responsibility to assist its residents in improving their quality of life when possible or necessary; and

WHEREAS, the City has a responsibility to ensure development occurs in such a way as to minimize the health and safety risk to the public; and

WHEREAS, no significant adverse environmental impacts have been identified by the SEPA Official; and

WHEREAS, the proposed amendment to AHMC 17.11, allowing limited, conditionally approved multi-family residential development on certain commercially zoned properties and raising maximum building heights to 60' on commercial zoned properties will expand housing opportunities, especially for those located within APZ 2; and

WHEREAS, the City has a responsibility to protect FAFB operations from potential encroachment concerns; and

WHEREAS, the proposed amendments have been developed so as to ensure compatibility with FAFB operations; and

WHEREAS, providing alternative housing options for Airway Heights residents is a step towards helping to reduce the residential density in the APZ-2 and mitigating existing residential encroachment against FAFB; and

WHEREAS, the public noticing and public hearing requirements of the AHMC, Chapter 14, have been met.

NOW, THEREFORE, the City of Airway Heights City Council ordains as follows:

Section 1. Amendment. Section 17.11.010 of the Airway Heights Municipal Code is hereby amended to read as follows:

17.11.010 Purpose and intent.

The C-2 zone is a land use classification suitable for general commercial uses. Its function is to provide for areas in which retail sales relating to heavy equipment and to products normally displayed or stored out of doors may be conducted, such as automobile sales, truck and tractor sales, boat sales, lumberyards, etc. It also provides for areas in which businesses requiring substantial space may be carried on, such as motels and recreational vehicle parks, and limited multi-family residential development.

Section 2. Amendment. Section 17.11.030 of the Airway Heights Municipal Code is hereby amended to read as follows:

17.11.030 Conditional uses.

In accordance with AHMC 17.03.100 through 17.03.140, the Hearing Examiner may grant approval for the following uses in the C-2 zone, when satisfied that the use will be consistent with the Comprehensive Plan and the intent of the C-2 zone, and when the conditional use will not have a material adverse effect on neighboring properties. In granting such approval, the Hearing Examiner may require special restrictions such as sight-obscuring fences, suitable landscaping, yard requirements, signs, etc., and may also require time limits for the proposed use. Any reasonable restrictions for the suppression of noise, smoke, or odors may be required.

- A. Drive-in theaters;
- B. Migratory amusements, such as circuses, carnivals, and fireworks stands;
- C. Multi-Family Residential, as part of an approved mixed-use development plan, as defined in AHMC 17.37, and only on those properties as shown on AHMC 17.16, JLUS Protections for Fairchild Air Force Base, Appendix B, "Commercial Zoned Properties Potentially Available For CUP MF Residential Development" Map, and/or Appendix A of this chapter, "Commercial Zoned Properties Potentially Available For MF Residential Development" Map.
- D. Multi-Family Residential, as defined in AHMC 17.09; with a density range of 10-20 units per acre and only on those properties as shown on Appendix A of this chapter, "Commercial Zoned Properties Potentially Available For CUP MF Residential Development" Map.
- E. Proposed uses of a commercial nature that cannot be determined to be comparable to those uses listed on AHMC 17.05, Table 1, Zoning Matrix.
- F. Custodial quarters, accessory dwelling units;
- G. Outdoor facilities for commercial kennels and pet shops;

H. Lumberyards (new lumber and materials);

I. Non-Residential mixed-use developments consisting of a mix of commercial, office and light industrial or light manufacturing uses, that are determined to have an impact that is similar to those of a commercial nature.

1. Examples of this type of use would be software engineering, light manufacturing facilities that are completely contained within a structure and is limited in the number of employees, office space, retail, restaurants, service providers, small engine/vehicle (cars and light trucks), auto-supply stores, etc.
2. Examples of use that would not be permitted would be manufacturing requiring outdoor storage of materials or products,

Section 3. Amendment. 17.11.040 of the Airway Heights Municipal Code is hereby amended to read as follows:

17.11.040 Prohibited uses.

The following uses are prohibited in the C-2 zone:

- A. Billboards and other outdoor advertising structures other than those advertising the business located on the same lot as the structure in accordance with Chapter 17.24 AHMC;
- B. New Single-Family Residential;
- C. Residential uses in the designated Fairchild Air Force Base (FAFB) Air Installation Compatibility Use Zone (AICUZ) Accident Potential Zones (APZs);
- D. Residential uses in designated sound contours exceeding 70LdN;
- E. Wrecking, salvage, and junk yards.

Section 4. Amendment. 17.11.050 of the Airway Heights Municipal Code is hereby amended to read as follows:

Before the issuance of a building permit, evidence of compliance with AHMC 17.11.060 through 17.11.140 shall be provided to the Planning Department.

- A. Conditionally approved residential uses located in designated 65LdN or higher aviation sound contours shall have appropriate sound mitigation, such that the interior noise level reduction (NLR) achieves a 25 Db reduction in noise heard inside the unit that is produced from outside sources.
 1. At a minimum, any required sound mitigation shall be designed/installed as indicated in the 2005 Department of the Navy "Guidelines for Sound Insulation of Residences Exposed to Aircraft Operations", produced by the Wyle Research Group, April, 2005, if located within designated sound contours.
 2. A site-specific sound study shall be performed to ensure the proposed site does not exceed 69 LdN. Such studies shall be performed for a minimum of seven (7) days and nights.
 3. Any required sound mitigation shall be reviewed and approved as adequate by an acoustical engineer, or licensed architect or interior designer certified in acoustical or sound mitigation by the State of Washington.

Section 5. Amendment. 17.11.060 of the Airway Heights Municipal Code is hereby amended to read as follows:

17.11.060 Density.

- B. No density requirements apply in the C-2 zone, except for those areas within the Fairchild Air Force Base accident potential zones defined in Chapter 17.16 AHMC;

- C. Conditionally approved multi-family developments shall have a minimum density of ten (10) units per acre, up to a maximum of twenty (20) units per acre;
- D. Proposed land uses within the JLUS Protections for FAFB Overlay (AHMC 17.16), as shown on the City's adopted Zoning Map, must comply with the density limits outlined in AHMC 17.16.140, JLUS Protections for FAFB, Compatible Uses and Densities.

Section 6. Amendment. 17.11.070 of the Airway Heights Municipal Code is hereby amended to read as follows:

17.11.070 Minimum lot area and frontage.

No minimum lot size shall apply in the C-2 zone. A minimum street frontage of 60 feet is required.

- A. Commercial uses utilizing a shared access may be permitted to reduce the minimum street frontage required, provided the combined overall frontage of all uses using the combined access equals, or exceeds, 60'.
- B. A mixed-use development may be permitted to reduce the minimum street frontage required, provided such a reduction is not determined by the Hearing Examiner to cause an increased risk to health and safety.

Section 7. Amendment. 17.11.080 of the Airway Heights Municipal Code is hereby amended to read as follows:

17.11.080 Minimum yards.

A. Minimum setback requirements from lot lines are as follows:

Front yard – 25 feet

Rear yard – 10 feet

Side yard – 7 feet per story

Corner yard – 15 feet

- B. The use of centralized or shared parking areas, whereas the businesses front on a parking area, may allow for a reduction of the front setback requirements.
- C. The use of appropriate building materials may allow for a reduction in building side setbacks, such that the design and materials used provide the same or better protection than those created by the adopted setbacks.
- D. Conditionally approved residential structures shall not be permitted within 100' of the SR-2 (Sunset Highway, US-2) right-of-way;
- E. Conditionally approved residential structures shall not be permitted within 100' of the adopted 70 LdN sound contour lines;
- F. The Technical Review Committee may alter these setback guidelines if a design is proposed that differs from these standards, but still provides the same level of safety and aesthetics as intended by these setbacks.

Section 8. Amendment. 17.11.090 of the Airway Heights Municipal Code is hereby amended to read as follows:

17.11.090 Building coverage and height.

A. The maximum building coverage shall be 60 percent of the lot area.

- 1. The maximum building coverage on a site may be increased, provided all required setbacks are met and a centralized parking area is being used by multiple structures.

2. If a parking structure is included as part of a building's design, the maximum building coverage may be permitted to be increased.

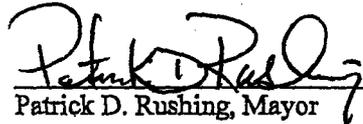
B. The maximum building height shall be 60 feet above the mean ground level.

Section 9. Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, section, clause or phrase of this ordinance.

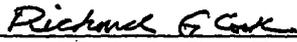
Section 10. Effective Date. This ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

INTRODUCED the 17th day of June, 2013.

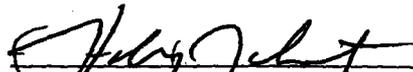
PASSED by the City Council of the City of Airway Heights this 5th day of August, 2013.


Patrick D. Rushing, Mayor

ATTEST:


Richard G. Cook, Clerk-Treasurer

APPROVED AS TO FORM:

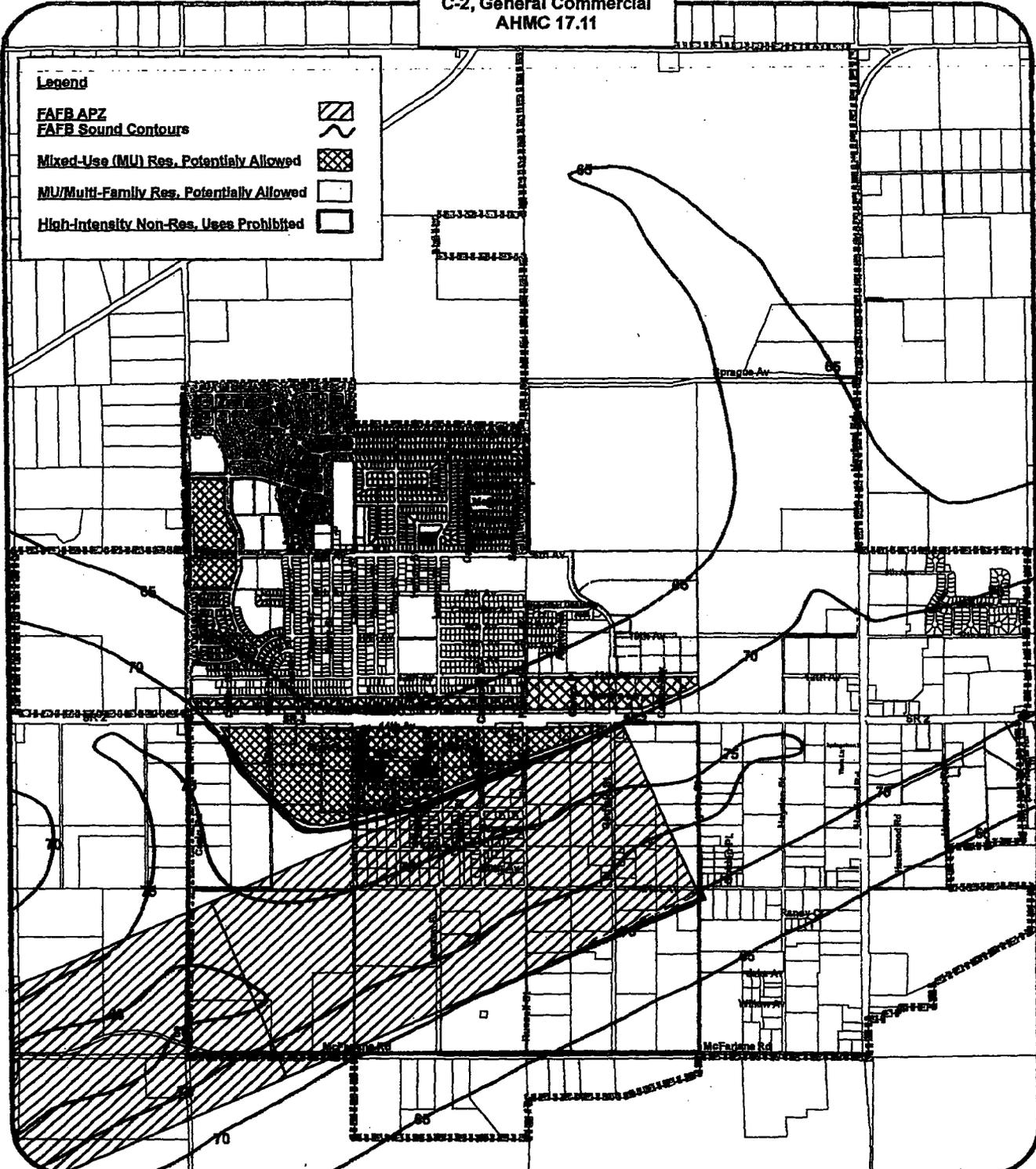

Stanley M. Schwartz, City Attorney

Ordinance C-797
Date of Publication: August 8, 2013

Appendix A
C-2, General Commercial
AHMC 17.11

Legend

- FAFB APZ 
- FAFB Sound Contours 
- Mixed-Use (MU) Res. Potentially Allowed 
- MU/Multi-Family Res. Potentially Allowed 
- High-Intensity Non-Res. Uses Prohibited 



Source: AH GIS
October, 2012

City of Airway Heights
Commercial Zoned Properties
Potentially Available for CUP MF
Residential Development

Information displayed on this map was compiled from various sources and may not have been verified and should not be used to determine actual boundaries. This information should be used for planning purposes only



Agenda Item for City Council <input type="checkbox"/> Work Session <input checked="" type="checkbox"/> Legislative		Date Initiated	October 11, 2012	
Department	Development Services	Workshop	May 28, 2013	
Contact Name	Derrick Braaten	Committee		
Phone	(509) 244-2552	Public Hearing	May 13, 2013 July 8, 2013 July 15, 2013	
Email	dbraaten@cawh.org	Council	June 17, 2013	
Council Sponsor		2 nd Council	July 15, 2013 (3 rd) August 5, 2013	
Legal Review by		Legal Review		
Agenda Item Name	Adding New AHMC 17.37, Mixed-Use Overlay			

Agenda Wording: Adding AHMC 17.37, Mixed-Use Overlay, as a new chapter, through CC Ordinance C-798.

Summary (Background): Starting in October, 2011, the City began work to update AHMC 17.37, Mixed-Use Overlay. It was recognized as being too broad and did not really provide any standards or conditions except those established by the Hearing Examiner through a conditional use permit. Therefore, to prevent incompatible uses being developed due to a lack of appropriate regulatory guidance, an emergency moratorium was established December 20, 2011, which expired on December 20, 2012. The moratorium is on the acceptance of any applications for "conditionally approved residential units located on commercially zoned properties". The delay in implementation of the updated AHMC 17.37 is due to the JLUS process and concerns from other jurisdictions as to how the proposed changes to AHMC 17.37 will impact FAFB and SIA. The City agreed the City Council would not reinstate AHMC 17.37 before May 15, 2013.

Staff is proposing to replace AHMC 17.37, as proposed. The new code provides clarifies the mixed-use development process, establishes commercial/residential floor ratios, establish development standards for mixed-use developments, incorporate adopted JLUS Standards, thereby preventing incompatible development in the commercial zones of the City.

Supports Comp Plan Goal: Explore land-use compatibility with FAFB and SIA, where practicable. (Table 4.1)

Fiscal Impact	Funding Source (BARS) Line # & Description
\$ N/A	N/A

City Manager Recommendation: Approval

Date: July 23, 2013

Council Action:	<input type="checkbox"/> Schedule Public Hearing	<input type="checkbox"/> Move to Legislative Session
<input type="checkbox"/> To Staff	<input type="checkbox"/> New Work Session	<input type="checkbox"/> No Further Action
<input type="checkbox"/> Refer to Committee	<input type="checkbox"/> CEDC <input type="checkbox"/> Finance <input type="checkbox"/> PW	<input type="checkbox"/> PS <input type="checkbox"/> Ad Hoc
Committee Action Date	<input type="checkbox"/> To Legislative	<input type="checkbox"/> To Work Session

**CITY OF AIRWAY HEIGHTS
SPOKANE COUNTY, WASHINGTON**

ORDINANCE C-798

**AN ORDINANCE OF THE CITY OF AIRWAY HEIGHTS, WASHINGTON
REPEALING CHAPTER 17.37 OF THE AIRWAY HEIGHTS MUNICIPAL CODE
ENTITLED MIXED-USE OVERLAY, AND ADOPTING A NEW CHAPTER 17.37
ENTITLED MIXED-USE OVERLAY AND PROVIDING FOR OTHER MATTERS
PROPERLY RELATING THERETO.**

WHEREAS, the Land Use Element of the Comprehensive Plan promotes the orderly development of lands within the City; and

WHEREAS, pursuant to the provisions of RCW Chapter 36.70, the Council has adopted Airway Heights Municipal Code, Title 17, Zoning, which regulates the use of land; and

WHEREAS, it is the intent of the City Council to ensure development of fair and reasonable regulations; and

WHEREAS, the City of Airway Heights has reviewed its existing Municipal Code governing land use and determined that modifications to Title 17, Zoning, are warranted; and

WHEREAS, there is a need to maximize alternative housing options for Airway Heights residents to create a mix of uses and further the goals and purposes of the State Growth Management Act; and

WHEREAS, the City has a responsibility to ensure development occurs in such a way as to minimize the health and safety risk to the public to include protecting Fairchild Air Force Base (FAFB) and Spokane International Airport (SIA) operations from actual and potential encroachment; and

WHEREAS, the City signed a Memoranda of Understanding (MOU) on August 2, 2012, forming what is referred to as the "JLUS MOU Group", with the City of Spokane, Spokane County, and Spokane International Airport (SIA), with FAFB acting as an advisory participant to, among other matters, reach an amicable agreement regarding JLUS implementation and ensure an appropriate balance is struck between landowner rights, the public's health and safety, and the public interest; and

WHEREAS, the JLUS MOU Group reached consensus concerning the proposed JLUS Ordinance of the City (AHMC Chapter 17.16) which adopts the 2009 JLUS Study, the amended MIA 3/4 designation and the Spokane County Regulations set forth in County Resolution 12-344 to the extent they are not inconsistent with the City JLUS Ordinance; and

WHEREAS, the City JLUS Ordinance incorporates the Department of Defense Instruction NO. 4165.57 dated May 2, 2011 to include identifying uses that may, under certain conditions, be compatible with FAFB operations; and

WHEREAS, the City believes, subject to the JLUS Ordinance, that there may be certain conditions where developments with multi-family dwellings may be acceptable in C-2 zones; and

WHEREAS, the version of AHMC 17.37. Mixed-Use Overlay being proposed has been designed to protect FAFB and to address design standards, floor ratios, and the City's adopted JLUS standards, and ensuring that there will not be an increased risk to residents' health and safety or quality of life if residential development occurs in commercial areas potentially affected by FAFB aviation operations; and

WHEREAS, the City received a letter from the CEO of SIA, dated October 18, 2012 requesting a moratorium on modifications to the City development regulations until SIA completes its Master Plan which is anticipated to receive final approvals by March 31, 2013 from other governmental entities including the FAA; and

WHEREAS, in recognition of the above matters the City Council indicated its desire to consider and adopt subsequent to April 1, 2013 new mixed use regulations that will permit the reasonable use and enjoyment of property through a mix of uses on properties throughout the City that potentially includes those identified on Appendix B of AHMC 17.16 "Commercial Zoned Properties Potentially Eligible for CUP MF or MU Development" through a public process; and

WHEREAS, appropriate notice was sent to the Department of Commerce (DOC) and other state agencies, as required by RCW 36.70A.106, for the start of the required 60-day review of any amendments to a jurisdiction's development code on April 25, 2013. The required 60-day review ended on June 24, 2013; and

WHEREAS, the City of Airway Heights provided notice to the public, adjacent jurisdictions and various stakeholders, by posting in those designated locations throughout the City of Airway Heights and by advertising in the Cheney Free Press on April 25, 2013.

WHEREAS, the preliminary SEPA determination was a Determination of Non-Significance (DNS) and any SEPA comments were due May 9, 2013, with any appeal of the DNS being due May 14, 2013; and

WHEREAS, it also notified the public that the City would be holding a public hearing before the Planning Commission May 13, 2013 and that the City will accept written comments on the project until 5 pm, May 13, 2013, or in-person at the public hearing; and

WHEREAS, a Public Hearing regarding ZCA 2013-02 was held on May 13, 2013 before the Planning Commission; and

WHEREAS, at that public hearing, the Planning Commission tabled its recommendation to the City Council regarding ZCA 2013-02; and

WHEREAS, the Planning Commission declared the record would be kept open until a second public hearing is held before the Planning Commission on June 10, 2013; and

WHEREAS, the June 10th Planning Commission meeting was canceled due to a lack of quorum; and

WHEREAS, the Planning Commission held a public hearing regarding the proposed amendments to the existing AHMC 17.11, C-2, General Commercial, ZCA 2013-02 on July 8, 2013; and

WHEREAS, at the July 8, 2013, no members of the public commented on the proposed amendments to AHMC 17.37; and

WHEREAS, at the July 8, 2013 Planning Commission meeting, the Planning Commission recommended that the City Council adopt ZCA 2013-02, as submitted, through Ordinance C-798; and

WHEREAS, the City Council held a public hearing regarding ZCA 2013-02, on July 15, 2013; and

WHEREAS, at the July 15, 2013 public hearing, no public comments were received regarding the proposed amendments to AHMC 17.37; and

FURTHER, THE CITY COUNCIL CONCLUDES, THAT:

WHEREAS, the Airway Heights Planning Commission has jurisdiction to hear and make recommendations to the City Council on amendments to Airway Heights Zoning Code; and

WHEREAS, the public noticing requirements of the AHMC, Chapter 14, have been met.

WHEREAS, no significant adverse environmental impacts have been identified by the SEPA Official which cannot be mitigated; and

WHEREAS, the City of Airway Heights desires to ensure residents experience a positive quality of life, while protecting their health and safety; and

WHEREAS, the proposed AHMC 17.37 has been designed to address the concerns expressed during the 2011-2012 review process, incorporates the City's recently adopted JLUS standards, design standards, and does not increase the risk to resident health and safety.

NOW, THEREFORE, the City of Airway Heights City Council ordains as follows:

Section 1. Repeal. There is hereby repealed in its entirety from Airway Heights Municipal Code, Chapter 17.37, entitled "Mixed-Use Overlay."

Section 2. Added. A new Chapter 17.37, entitled "Mixed-Use Overlay", consisting of 13 sections is hereby added to the Airway Heights Municipal Code.

Section 3. Added Section. 17.37.010 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.010 Purpose

The intent of this chapter is to allow for greater flexibility in the utilization of land, particularly within the Village Square Overlay, through single mixed-use buildings and multi-building mixed-use developments that are in compliance with the goals and visions of the comprehensive plan. Single mixed-use buildings and multi-building mixed-use developments are intended to allow for efficient use of land and public services in an urban setting; encourage pedestrian oriented development; human interaction and sense of place; create safe, attractive and convenient environments; and increase development alternatives. The purpose of this chapter is to establish standards for single mixed-use buildings and multi-building mixed-use developments.

Section 4. Added Section. 17.37.020 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.020 Definitions

"Mixed-Use Development" means a project that integrates a mix of compatible commercial and residential uses in a single coordinated project that creates a pedestrian oriented urban environment through a mix of high density residential, specified design standards, and compatible commercial and/or professional uses. The overall design of a mixed-use development should create an integrated, complementary urban environment and feel.

"Single Building Mixed-Use Development" means a single building that incorporates the planned integration of commercial and residential land uses consisting of some combination of office, light industrial (if allowed in underlying zone), hotel, retail, public entertainment and public uses, and housing that achieves physical and functional integration.

"Multi-Building Mixed-Use Development" means a single unified development of two or more buildings that incorporates the planned integration of commercial and residential land uses consisting of a combination of office, light industrial (if allowed in underlying zone), hotel, retail, public entertainment and public uses, and housing in a densely configured group of buildings that, as a whole, achieves physical and functional integration.

"Fairchild Air Force Base (FAFB) Military Influence Area" or "MIA" refers to the area under the influence of FAFB's current, and potentially future, mission profile.

1. MIA 1 is the entirety of Spokane County
2. MIA 2 is a geometrically defined area extending in a 5,000' radius from the centerline of the FAFB runway.

3. MIA 3/4 is as shown on the adopted City of Airway Heights Zoning Map, and is based upon 2009 JLUS Report, Appendix L, Figure 4. Within the municipal boundaries of Airway Heights, the 65 LdN sound contour is based on the 1995 FAFB AICUZ sound contours.
4. The specific application and how these MIAs apply to development is further defined in AHMC 17.16, JLUS Protections for Fairchild Air Force Base.

“Spokane International Airport (SIA) Aviation Influence Area” refers to the area within City Boundaries that lie within 65 LdN or higher sound contours caused by SIA aviation activities.

“Integrated Mixed-Use” means a combination of compatible commercial and residential uses, usually in a single building, that have a net result of creating an urban environment and feel. Multi-building projects shall be designed so that the integrated uses create complimentary ambient sound buffers and it is clear that the residential experience will be similar to that achievable in a high density urban area.

“Development standards” means the standards regulating the design, utilization, and orientation of the building(s) and the land on which the building(s) are to be located.

“Frontage standards” means the standards regulating the design, utilization, and orientation of project elements associated with the land between the front of a building and the right-of-way and the portion of a building facing the right-of-way.

Section 5. Added Section 17.37.030 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.030 Applicability

New developments or buildings constructed after the effective date of this ordinance are subject to the provisions of this chapter. Existing buildings that are modified to the extent that the footprint or square footage is increased by fifty percent or more are also subject to the provisions of this chapter. The standards of the Mixed-Use Overlay are in addition to the standards of the underlying zoning district, and are secondary to the regulations of AHMC 17.16, JLUS Protections for Fairchild Air Force Base. Approval of a single mixed-use building or a multi-building mixed-use development does not require or result in a change in zoning designation; however, it will require a conditional use permit. Single mixed-use buildings and multi-building mixed-use developments are allowed in the following zones/overlays:

- A. C-1, Restricted Commercial Zone;
- B. C-2, General Commercial zones, limited to those areas shown AHMC 17.11, Appendix A: Commercial Zoned Properties Potentially Available for Residential Development;
- C. Residential elements of any Mixed-Use project shall not be permitted in sound contours exceeding 70LdN.

Section 6. Added Section 17.37.040 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.040 Development Standards

- A. Mixed-use projects.

1. Mixed-use projects shall be submitted as a Mixed-Use Master Plan as defined in subsection 17.37.120, Mixed-Use Master Plans.
2. Mixed-use projects shall provide a minimum residential density of 10 units per acre as required by AHMC 17.09, R-3, Multi-Family Residential.
3. The maximum building height shall be 60 feet above finished grade plane.
4. The maximum building coverage shall be 60 percent of the lot area if not located within the Village Square Overlay. The Hearing Examiner may approve a higher percentage of lot coverage for mixed-use projects located within the Village Square Overlay or those using a centralized parking area.
5. Projects located within the FAFB MIA or the SIA Aviation Influence Area shall:
 - a. Meet all standards or limitations listed under AHMC 17.16, JLUS Protections, or AHMC 17.15, Aviation Overlay Zone, whichever is most applicable based on the project's location.
 - i. No mixed-use projects shall be allowed within the FAFB AICUZ APZs.
 - ii. No residential elements of a mixed-use project shall be located within 100' of SR-2 right-of way.
 - iii. No residential elements of a mixed-use project shall be located within 100' of the 70 LdN sound contours adopted by the City, as shown on the most current City of Airway Heights Zoning Map.
 - iv. The Development Services Director, or designee, shall be authorized to determine which aviation overlay applies to a specific project. It is possible a site lies within both influence areas, and if so, the more restrictive regulations shall apply.
 - b. Sound mitigation shall be required if a proposed project is located within a 65 LdN or higher sound contour, such that the decibel level produced by exterior noise sources is reduced by a minimum of 25 Db noise-level-reduction (NLR) when heard from the interior of the structure.
 - i. At a minimum, any required sound mitigation shall be designed/installed as indicated in the 2005 Department of the Navy "Guidelines for Sound Insulation of Residences Exposed to Aircraft Operations", produced by the Wyle Research Group, April, 2005, if located within designated sound contours.
 - c. Any required sound mitigation shall be reviewed and approved as adequate by a certified acoustical engineer, or licensed architect or interior designer certified in acoustical or sound mitigation.
 - d. The maximum level of allowed residential density may be reduced on projects within aviation influence zones.
 - e. Facilities providing onsite outdoor activities (open areas, decks/patios/balconies, etc) may be limited in location, type, and size.
 - f. The specific location or footprint of a proposed project may be limited to prevent conflicts with aviation activities.
6. One or more outdoor accessible features shall be provided to encourage interaction among residents. A minimum of 5 percent of the total site must be devoted to outdoor accessible features, including, but not limited to, landscaped courtyards, gardens with pathways, or other multipurpose outdoor accessible features. These features should be centrally located within the site to the fullest extent possible.

- a. The minimum required setback areas will not be counted toward the minimum required percentage of outdoor accessible features.
 - b. Rooftop decks may count for up to 50 percent of the required outdoor accessible features provided that it is ADA accessible to all dwelling units and is provided with amenities such as seating areas, landscaping, and/or other features that encourage pedestrian use as determined by the Hearing Examiner.
 - c. A project may be permitted, or even required, to reduce the amount, or design, of outdoor accessible features if the project lies within the City's adopted MIA 3/4 or Aviation Influence Area. Such a determination shall be made during the review process.
 - i. If it is determined that outdoor accessible features are required to be reduced, then an indoor facility designed to encourage resident interaction (community center, recreation center, gym, etc) shall be provided.
 - ii. Indoor recreational or community gathering facilities, such as community centers, gyms, recreational centers, etc., shall be counted as commercial space when determining the commercial/residential square footage ratios.
7. Retail uses shall not be permitted horizontally adjacent to residential. Office space horizontally adjacent to residential is permitted. Appropriate sound attenuation may be required between residential and non-residential uses as determined by the Hearing Examiner.
- a. Any residential units requiring sound mitigation due to surrounding commercial uses shall be designed to ensure surrounding commercial uses do not create within the residential unit an interior noise exceeding 55 LdN, and maintaining ambient interior noise levels of 40 LdN, within the ADA unit.
 - b. Any required sound mitigation shall be reviewed and approved as adequate by a certified acoustical engineer, or licensed architect or interior designer certified in acoustical or sound mitigation.
8. Metal siding, metal pole buildings, and manufactured housing shall not be permitted within mixed-use projects.
9. All travel and parking areas shall be paved.
10. Mixed-use projects shall provide enclosures for recyclable and garbage collection points, as outlined in AHMC 17.25.
11. Biofiltration swales. Biofiltration swales, when used, shall be integrated with the overall site design with one of the following methods:
- a. Locate biofiltration swales, ponds, or other approved biofiltration systems as part of a landscape screen. The swale or pond should be designed so it does not impede pedestrian circulation or shared parking between two or more properties;
 - b. Where topography is favorable, locate the biofiltration swale, pond, or other approved biofiltration system within the paved parking or service area. The swale or pond shall be landscaped as part of the required internal parking lot landscaping and oriented so it does not impede pedestrian circulation;
 - c. Locate the swale along the front edge of the property. Incorporate landscaping and screening to visually enhance the swale without reducing maintainability and sun exposure.
12. Pedestrian walkways shall be separated from structures by a minimum 3-foot landscaped buffer.
- B. Single Building Mixed-Use Developments.

1. If a mixed-use project consists of a single mixed-use building, it shall be a minimum of 2 stories.
 2. Residential usage is not permitted on the ground floor of a site with a single mixed-use building.
 - a. Except, those units specifically required under the federal ADA regulations shall be allowed on the ground floor of a single-building project. The necessary number of ADA accessible units shall be as required under the International Building Code (IBC) and the American National Standards Institute (ANSI).
 - i. Allowed ADA accessible ground-floor unit(s) shall be designed and located in such a way as to prevent the public from viewing the interior of the unit(s).
 - ii. Any ground-level ADA unit shall be designed so that surrounding commercial uses do not create within the residential unit an interior noise exceeding 55 LdN, and maintaining ambient interior noise levels of 40 LdN, within the ADA unit.
 - iii. Any required sound mitigation shall be reviewed and approved as adequate, by a certified acoustical engineer, or licensed architect or interior designer certified in acoustical or sound mitigation.
 3. For a mixed-use project with a single mixed-use building, commercial uses are permitted within the first 2 stories, except that retail uses shall not be permitted horizontally adjacent to residential, except as noted in section 17.37.040(B)(2), above.
 4. If a project has a single mixed-use building with 2 stories, then a minimum of 50% of the total floor space shall be devoted to commercial uses.
 - a. Any required ADA residential units located on a ground floor shall be counted towards the total residential units/square footage allowed.
 - b. Storage areas, such as storage units, lockers, secure bike storage/lockers, etc., shall be considered as a percentage of the total commercial space, providing such areas are considered, and to be used as, common areas for the development.
 - c. Mechanical or riser rooms shall be counted towards the total commercial space.
 - d. Indoor facilities designed to encourage resident interaction, such as community centers, gyms, recreational centers, etc., shall be counted as commercial space when determining the commercial/residential square footage ratios.
 5. If a project has a single mixed-use building with 3 stories, then at least one-third (33%) of the overall floor area shall be devoted to commercial uses.
 6. If a project has a single mixed-use building with 4 or more stories, then at least one-quarter (25%) of the overall floor area shall be devoted to commercial uses.
- C. Multi-Building Mixed-use developments.
1. These standards are in addition to those listed above in Section 17.37.040 (A-B). If there is a conflict, the more restrictive shall apply.
 2. Multi-building projects shall be designed so that the integrated uses create complimentary ambient sound buffers and it is clear that the residential experience will be similar to that achievable in a high density urban area.
 3. Multi-Building Mixed-use developments shall not be constructed on multiple parcels. If a proposed mixed-use development consists of multiple parcels, the parcels must be aggregated prior to project approval.
 4. Multi-Building Mixed-use developments shall be integrated mixed-uses that, at a minimum, consist of 2 story structures, with a minimum of 50% of the total floor space being devoted to commercial uses in each structure.

5. Multi-Building Mixed-use developments consisting of buildings three stories in height shall have at least one-third (33%) of the overall space dedicated to commercial uses in each structure.
6. Multi-Building Mixed-use developments consisting of buildings four stories in height shall have at least one-quarter (25%) of the overall space dedicated to commercial uses in each structure.
 - a. Any required ADA residential units located on a ground floor shall be counted towards the total residential units/square footage allowed.
 - b. Storage areas, such as storage units, lockers, secure bike storage/lockers, etc., may be considered as a percentage of the total commercial space, depending on the specific layout and design and at the discretion of the Hearing Examiner.
 - c. Mechanical or riser rooms may be counted towards the total commercial space.
 - d. Indoor facilities designed to encourage resident interaction, such as community centers, gyms, recreational centers, etc., shall be counted as commercial space when determining the commercial/residential square footage ratios.
7. It is permitted for there to be more commercial square footage than residential.
8. Separate buildings within multi-building mixed-use developments shall be connected through pedestrian linkages delineated through landscaping, differentiated surface materials or texture. Delineation through striping alone shall not be considered sufficient.
9. Parking shall be of a centralized design, with a single parking area serving all structures and uses. The parking area shall be landscaped as required under AHMC 17.22.100.
10. Multiple buildings within mixed-use developments shall have at least one similar design characteristic, such as building facades, surface materials, colors, landscaping, or signage.
- D. The Planning Official is authorized to consider alternative design proposals given that the alternative design proposal fulfills the purpose and intent of this chapter. The approval or denial of alternative design proposals is at the discretion of the Hearing Examiner.

Section 7. Added Section 17.37.050 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.050 Frontage Standards

- A. Walls. Blank walls are not permitted along arterial or collector street frontages, including frontages along State Route 2. At least 50 percent of the overall ground level wall area facing an arterial or collector street shall be devoted to interest-creating features such as pedestrian entrances, transparent display windows, or windows affording a view in retail or lobby spaces.
- B. Storefront setback. Mixed-use projects located within the Village Square Overlay are exempt from the front yard setback requirement in subsection 17.37.060 (A), except that a 10 foot minimum landscaped setback from the edge of the curb is required. Commercial elements fronting on SR-2 (US-2) shall have a minimum setback of 50-feet off the highway.
- C. Residential elements in any Mixed-use projects that front State Route 2 shall have a minimum 100 foot front yard setback. Any access drives on SR-2 (US-2) shall be approved by the Washington State Department of Transportation (WSDOT).
 1. The minimum 10 foot landscaped setback shall comply with Type III or Type IV landscaping requirements. Planters with ground cover or other proposed landscaping may be allowed at the discretion of the Development Services Director, or designee.
- D. Sidewalks. Sidewalks shall be provided along all street classifications, excluding alleyways.

1. Sidewalk design standards shall be as specified in the City of Airway Heights Public Works Standards.
 2. Sidewalks shall be located within the minimum 10 foot landscaped setback, however, a minimum 3 feet separation between the building and the sidewalk shall be provided.
 3. Benches and decorative art are permitted within the entire front yard setback; however, the clear-view triangle must be maintained.
- E. Weather protection. Weather protection is required over display windows, doors, and entryways for first-floor commercial and individual residence entries, and may project into the required front setback. The standards for weather protection are as follows:
1. Weather protection may be in the form of a recessed entry, awning, marquee, canopy, or building overhang;
 2. Weather protection, other than a recessed entry, shall project from the edge of the building a minimum of 36 inches;
 3. Weather protection may project into the required setback, however, a minimum of 60 inches from the edge of the curb shall be provided;
 4. Weather protection may only be extended to the edge of the curb between a passenger loading point and a building entrance;
 5. Weather protection must have a minimum clearance of eight feet;
 6. Weather protection, other than a recessed entry, shall be a minimum of 4 feet wide serving commercial and individual residence entries;
 7. All lettering, color and graphics on pedestrian coverings shall conform to Chapter 11.17, Sign Code.
 8. Addressing shall be in a contrasting color to the wall, with numbers being a minimum of 6" in size.
- F. Building entry location. At least one building entry shall be visible from the street and shall either provide direct access to the sidewalk or be connected to the sidewalk by way of a pedestrian linkage. The pedestrian linkage shall be clearly marked and identifiable from the sidewalk.

Section 8. Added Section 17.37.060 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.060 Setbacks

- A. Single building and multi-building mixed-use developments are subject to the following minimum setbacks:
1. Front yard – 25 feet.
 - a. The front yard setback may be reduced if the mixed-use project fronts on a centralized parking area or is located in the Village Square Overlay, provided such a reduction is not determined to be an increased risk to health and safety.
 - b. The 100 foot minimum setback for projects fronting State Route 2 may be altered by WSDOT if determined to not be an increased risk to public health and safety.
 2. Rear yard – 10 feet;
 - a. Mixed-use sites located in the Village Square Overlay may not require a rear yard setback, provided that adequate parking is provided on site or as part of a centralized shared parking plan;

- b. Multi-building mixed-use projects may not require a rear yard setback between structures that make up the mixed-use development, provided that adequate parking is provided on site or as part of a centralized shared parking plan;
- 3. Side yard – 5 feet per story;
 - a. Mixed-use sites located in the Village Square Overlay may not require a side yard setback provided that the buildings are designed to provide equivalent or better fire protection than that created by the 5' setback requirement and adequate parking is provided on site or as part of a centralized shared parking plan;
 - b. Multi-Building mixed-use projects may not require a side yard setback between structures that make up the mixed-use development, provided that the buildings are, designed to provide equivalent or better fire protection than that created by the 5' setback requirement.
- 4. Flanking street yard – 15 feet; the Planning Official may consider alternative proposals for flanking street yard setbacks.
- 5. All setback requirements shall be measured from the project's property line and the above setback exceptions do not apply to setback requirements between different projects or properties.
- B. The Hearing Examiner may require that buildings and other site improvements be set back from the right-of-way or easement to allow for future street improvements or expansions.
- C. Allowed projections.
 - 1. Fireplace structures and bay or garden windows or similar structures may project a maximum of 24 inches into any setback.
 - 2. Porches and decks which exceed 18 inches above finished grade plane may project 24 inches into the rear, side, and flanking street setbacks and five feet into the front yard setback.
 - 3. Uncovered porches and decks not exceeding 18 inches above finished grade may project into required setbacks at the discretion of the Planning Official provided that the projection does not interfere with the flow of pedestrian traffic along the sidewalk and is not a threat to the health and safety of the public.
 - 4. Building eaves shall not project into required side setbacks.

Section 9. Added Section. 17.37.070 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.070 Screening

- A. Whenever a mixed-use project abuts any residential property there shall be a 5 foot minimum Type I Landscape Screen or a sight obscuring six foot wall or fence, established and maintained along the property line, except within the required front yard setback walls and fences shall not exceed three and one-half (3½) feet.
 - 1. The Planning Official may allow increased fence heights within the front yard setback provided that there is no increased risk to health and safety.
- B. All storage must be completely screened from the view of surrounding properties. No outdoor storage shall be permitted.
- C. All mechanical equipment shall be architecturally screened or enclosed to blend with the surrounding structures, as seen from public streets. Panels or other devices to collect solar energy are not subject to the provisions of this section.

Section 10. Added Section. 17.37.080 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.080 Landscaping

- A. Landscaping shall be provided as set forth in AHMC 17.22, Landscaping.
- B. All areas not used for pedestrian ingress and egress to a building and which are located between a parking area, public right-of-way (but not an alley), and the façade of a building must be landscaped.
- C. Street trees. Street trees shall be installed either on the sidewalk within grates, or bordering the sidewalk. The trees shall be spaced not more than twenty-five feet apart except when driveways prohibit this spacing.
 - 1. If street trees are placed in grates on the sidewalk, ADA accessibility on the sidewalk shall be maintained.
- D. The Planning Official is authorized to consider alternative design proposals given that the alternative design proposal fulfills the purpose and intent of AHMC 17.22, Landscaping. The approval or denial of alternative design proposals is at the discretion of the Development Services Director, or designee.

Section 11. Added Section. 17.37.090 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.090 Lighting

- A. Lighting for parking areas and pedestrian ways shall be provided to ensure personal safety.
- B. Lighting shall be integrated into the architectural character both in terms of illumination and fixtures.
- C. Lighting shall not be permitted to trespass onto adjacent private parcels nor shall light sources (luminaries) be visible at the property line. All building lights shall be directed onto the building itself and/or the ground immediately adjacent to the building. The light emissions should not be visible above the roofline of the building.
- D. All lighting shall comply with all local, state, and federal regulations with respect to the selection and regulation of light sources.
- E. Special attention shall be made to ensure any proposed lighting does not conflict with Federal Aviation Agency (FAA) or Department of Defense (DOD) aviation regulations.

Section 12. Added Section. 17.37.100 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.100 Parking

- A. Off-street parking shall be provided.
- B. The minimum number of parking spaces provided shall be as set forth in AHMC 17.21 Table 1.
- C. Off-street parking areas shall be landscaped as set forth in AHMC 17.22.100.
- D. The maximum number of spaces provided shall be no more than 125% of applicable minimum requirement for sites 10 acres or less, and no more than 115% of the minimum for sites larger than 10 acres.

- E. Off-street parking shall be located to the rear or side of a structure, not at street frontage.
- F. On-street parking (if allowed) may be counted toward minimum required parking spaces when on-street parking directly fronts the site. Such parking shall be defined, marked spaces and not intrude into the lanes of travel.
- G. Direct, continuous pedestrian connections must be provided between any on-street parking, remote parking, or public parking facilities and the uses being served.
- H. The Hearing Examiner may authorize shared or joint use parking among uses which are likely to be visited with a single driving trip and that are adequately linked to their parking, provided an adequate legal agreement for the joint or shared parking usage is recorded for the duration of the arrangement.
 - a. If multiple parcels are to be used for joint or shared parking purposes then the owners of all parcels must sign the recorded agreement.
 - b. Multi-Building mixed-use developments shall have centralized parking designed to accommodate the parking needs for all structures and uses.
 - c. The Hearing Examiner may authorize up to a twenty-five percent (25%) reduction in required parking spaces if parking is consolidated.
- I. The Hearing Examiner may authorize up to a twenty-five percent (25%) reduction in required parking if transit service is available to the site at the time of project approval.
- J. Bicycle parking shall be provided for each commercial structure located within any mixed-use development.
 - 1. Bicycle parking shall not interfere with pedestrian passage, leaving a clear area of at least 36-inches between bicycles and other existing and potential obstructions.
 - 2. Each building with commercial uses shall have an equivalent number of bicycle parking spaces equal to 20% of required motor-vehicle parking spaces, with a minimum of 2 bike spaces.
 - 3. For buildings with multiple uses, bicycle parking standards shall be calculated at 20% of the total required motor-vehicle parking, with a minimum of 3 bike spaces.
 - 4. Providing sheltered spaces (under an eave, overhang, independent structure, secure lockers, or similar cover) is encouraged.
 - a. The Hearing Examiner may authorize the reduction of one and one-half (1.5) motor-vehicle parking spaces for each secure bicycle storage space/locker provided.

Section 13. Added Section. 17.37.110 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.110 Signage

- A. Off-premise billboards and inflatable signs exceeding one cubic foot are not allowed.
- B. Cloth or banner type signage shall not be permitted except to advertise a promotional event and shall be removed at the end of the event or 30 days, whichever is sooner.
- C. The provisions set forth above are in addition to the provisions of AHMC Chapter 17.11, Sign Code.

Section 14. Added Section. 17.37.120 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.120 Mixed-Use Master Plans

The required components of Mixed-Use Master Plans are as follows:

- A. Exterior site plan and written description of all existing physical features, including but not limited to structures, roads, infrastructure, landscaping, and natural features.
- B. Exterior site plan and written description of all proposed uses and use types. Exterior site plan and written description of proposed physical features, including but not limited to structures, roads, publicly accessible areas, parking, infrastructure, landscaping, and natural features.
- C. Interior site plan showing the uses within proposed and existing buildings.
- D. Landscape and irrigation plan.
- E. Written description of proposal's consistency with the purpose statement and other applicable standards of this chapter.
- F. Written description of the proposal's compatibility with surrounding land uses.
- G. Written parking plan describing how residential and non-residential uses can provide sufficient and coordinated parking to avoid impacts to adjacent off-site properties or uses.
- H. Certification of water and sewer availability and capacity for the project, as proposed and submitted, from the City of Spokane Water and Sewer Departments if located east of Hayford Rd.

Section 15. Added Section 17.37.130 of the Airway Heights Municipal Code is hereby added to read as follows:

17.37.130 Review and Approval Process

- A. Predevelopment Conference. A predevelopment conference is required with the Planning Department in order to explain the approval process, identify potential issues and answer questions.
- B. Technical Review. A proposal shall be reviewed by the Technical Review Committee prior to application submittal.
- C. Design Flexibility. In order to allow for design flexibility, the following may be modified pursuant to the procedures and decision criteria:
 1. The setback requirements in subsection 17.37.060 (A) may be modified upon a showing that the modified setback allows for increased pedestrian-oriented space or amenities open to the public.
 - a. Additionally, a zero lot line shall be allowed for mixed-use projects upon a showing that any negative design implications to adjacent properties are mitigated. Zero lot line structures shall be constructed to meet the minimum requirements of the International Building Code, International Residential Code, International Fire Code, Uniform Plumbing Code, and the International Mechanical Code, as well as any other required local, state, or federal regulations.
 2. The weather protection requirement in 17.37.050 (C) may be modified upon a showing that weather protection is not appropriate for the particular development or street and/or that other design features are provided that create or will maintain a pedestrian oriented environment that is compatible with the surrounding developments and aesthetics.
 3. The landscaping requirements in subsection 17.37.080 may be modified upon a showing that alternative landscaping features would offer improved aesthetics and would provide at least the same level of public safety and aesthetic amenity.

D. Project Compliance Review. Project compliance review will take place at the time of application submittal. The project will be reviewed for compliance with this title and all other federal, state, and local laws which may be applicable.

1. A State Environmental Policy Act (SEPA) Environmental Checklist shall be required for all mixed-use projects.
2. Certification of water and sewer availability and capacity for the project, as proposed and submitted, from the City of Spokane Water and Sewer Departments if located east of Hayford Rd.

E. Hearing Examiner public hearing. The proposed mixed-use project shall go before the Hearing Examiner as a Conditional Use Permit application.

Section 16. Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, section, clause or phrase of this ordinance.

Section 17. Effective Date. This ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

INTRODUCED the 17th day of June, 2013.

PASSED by the City Council of the City of Airway Heights this 5th day of August, 2013.


Patrick D. Rushing, Mayor

ATTEST:

APPROVED AS TO FORM:


Richard G. Cook, Clerk-Treasurer

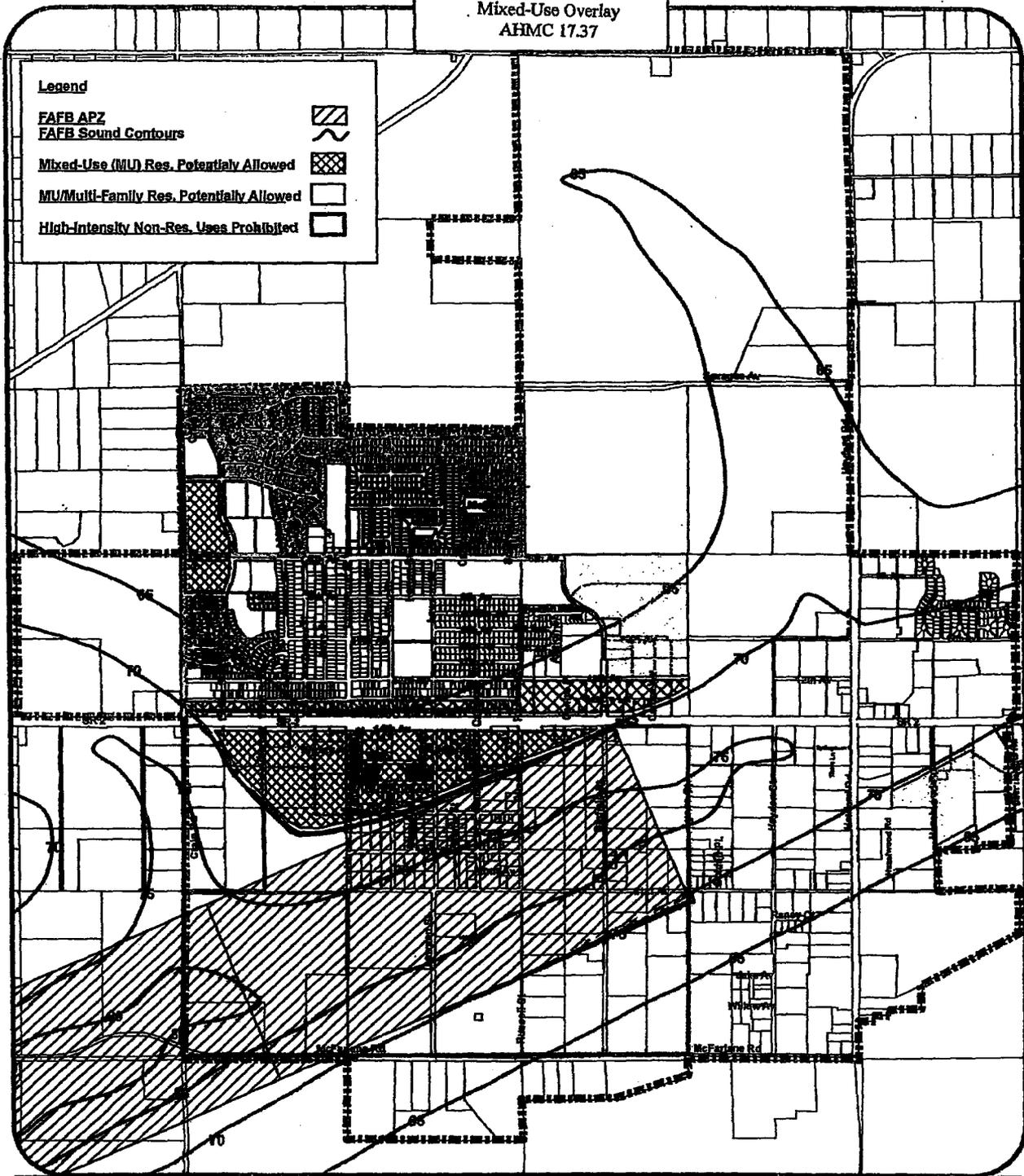

Stanley M. Schwartz, City Attorney

Ordinance C-798
Date of Publication: August 8, 2013

Appendix: A
Mixed-Use Overlay
AHMC 17.37

Legend

- FAFB APZ 
- FAFB Sound Contours 
- Mixed-Use (MU) Res. Potentially Allowed 
- MU/Multi-Family Res. Potentially Allowed 
- High-Intensity Non-Res. Uses Prohibited 



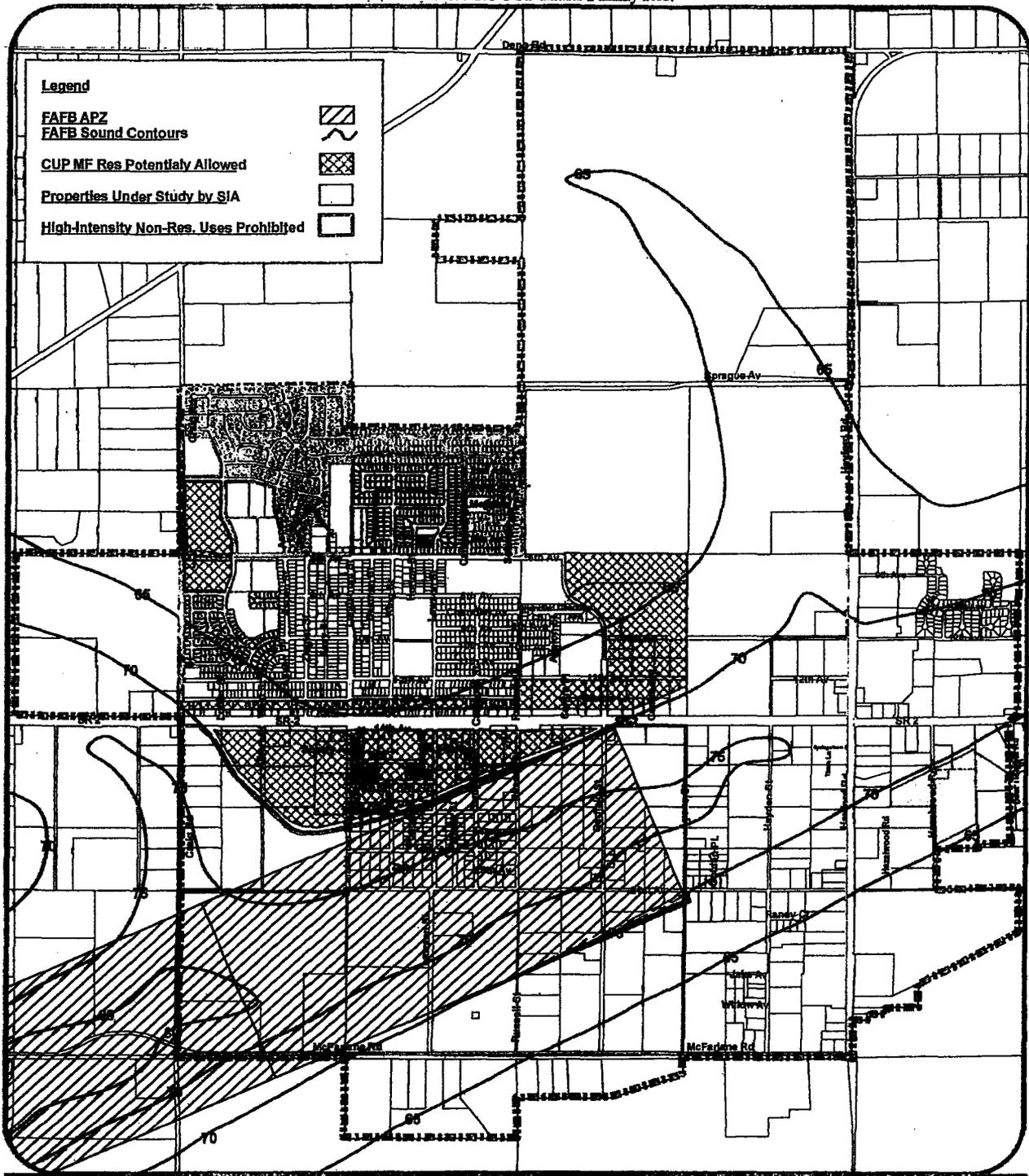
Source: AH GIS
October, 2012

City of Airway Heights
Commercial Zoned Properties
Potentially Available for CUP MF
Residential Development

Information displayed on this map was compiled from various sources and may not have been verified and should not be used to determine actual boundaries. This information should be used for planning purposes only

MAP 2

AHMC Pt. 16, JLU3 Protections
 Appendix B
 Commercial Zoned Properties Potentially Available for CUP Multi-Family Res.



Legend

- FAFB APZ
- FAFB Sound Contours
- CUP MF Res Potentially Allowed
- Properties Under Study by SIA
- High-Intensity Non-Res. Uses Prohibited



Source: AH GIS
 October, 2012

City of Airway Heights
Commercial Zoned Properties
Potentially Available for CUP MF
Residential Development

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