

Appendix 1

1.0 Comprehensive Plan Statutory Requirements by State

1.1 Selected State Statutory Requirements for Comprehensive Plans¹

1.2 States with Some Form of Critical Areas Legislation²

¹ Appendix 1.1 is based on Rodney L. Cobb, *Toward Modern Statutes: A Survey of State Laws on Local Land-Use Planning*, American Planning Association, *Modern State Planning Statutes -- The Growing Smart Working Papers* (Planning Advisory Service report no. 480/481, 1998).

² Appendix 1.2 is based on National Governors Association Center for Best Practices, *State Strategies to Address Encroachment at Military Installations 17* (Natural Resources Policy Studies; Washington, DC, March 2003).

*Appendix 1.1
Selected State Statutory Requirements for Comprehensive Plans*

**Table A1-1
Mandatory (15)**

State	Government Unit			State Policy Basis	Model Dev Code	State Role	Internal Consistency	Plan Element		
	City	County	Metro					Land Use	Growth Limits	Critical Areas
AK	M	N	N	N	N	Si	N	M	N	N
CA	M	M	N	N	Y	Si	Y	M	N	M
DE	O	M	N	Y	Y	S	Y	M	N	M
FL	M	M	N	Y	Y	S	Y	M	N	M
GA	M	M	N	Y	Y	S	Y	M	N	N
HI	N	M	N	Y	N	S	N	O	N	N
ID	M	M	N	N	N	Si	N	M	N	N
KY	M	O	N	N	Y	Si	Y	M	N	N
MA	M	M	N	N	N	Si	Y	M	N	N
NE	M	M	N	N	N	Si	N	M	N	N
NV	M	M	N	N	Y	Si	N	O	N	N
OR	M	M	N	Y	Y	S	Y	M	M	N
RI	M	M	N	Y	Y	S	Y	M	N	N
SD	M	M	N	N	N	Si	N	M	N	N
WA	M	M	N	Y	Y	S	Y	M	M	M

M= Mandatory
Mp= Mandatory if there is a planning commission
N=No
O=Optional
Si=Significant
S=Strong
W=Weak
Y=Yes

**Table A1-2
Optional Requirements for Local Comprehensive Plans (10)**

State	Government Unit			State Policy Basis	Model Dev Code	State Role	Internal Consistency	Plan Element		
	City	County	Metro					Land Use	Growth Limits	Critical Areas
AR	O	O	N	Y	Y	Si	N	O	N	N
IL	O	O	N	N	N	Si	N	O	N	N
IA	O	N	N	N	N	W	N	O	N	N
KN	O	O	N	N	N	W	N	O	N	N
NC	O	O	N	N	Y	W	N	N	N	N
NJ	O	N	N	N	N	Si	N	Mp	N	N
NY	O	O	N	N	Y	Si	N	O	N	N
ND	O	O	N	N	N	W	N	O	N	N
TX	O	N	N	N	N	W	N	O	N	N
UT	O	O	N	N	N	Si	N	O	N	N

M= Mandatory
Mp= Mandatory if there is a planning commission
N=No
O=Optional
Si=Significant
S=Strong
W=Weak
Y=Yes

Table A1-3
Mandated Requirements if there is a Planning Commission Created (25)

State	Government Unit			State Policy Basis	Model Dev Code	State Role	Internal Consistency	Plan Element		
	City	County	Metro					Land Use	Growth Limits	Critical Areas
AL	Mp	Mp	N	N	N	W	N	Mp	N	N
AZ	Mp	Mp	N	N	Y	W	N	Mp	N	N
CO	Mp	Mp	N	N	N	W	N	Mp	N	N
CT	Mp	Mp	N	N	N	Si	N	Mp	N	N
IN	Mp	Mp	N	N	N	W	N	Mp	N	N
LA	Mp	Mp	N	N	N	W	N	Mp	N	N
ME	Mp	Mp	N	Y	Y	S	Y	Mp	Mp	Mp
MD	Mp	Mp	N	Y	Y	S	Y	Mp	Mp	Mp
MI	Mp	Mp	N	N	N	W	N	Mp	N	N
MN	M	M	M	N	Y	Si	N	Mp	N	N
MS	Mp	Mp	N	N	N	Si	N	Mp	N	N
MO	Mp	O	N	N	N	W	-	Mp	N	N
MT	Mp	Mp	N	N	N	W	N	O	N	O
NH	Mp	Mp	N	Y	Y	S	N	Mp	N	N
NM	Mp	Mp	N	N	N	W	N	Mp	N	N
OH	Mp	N	N	N	N	W	N	Mp	N	N
OK	Mp	Mp	N	N	N	W	N	Mp	N	N
PA	Mp	Mp	N	N	Y	Si	N	Mp	N	N
SC	Mp	Mp	N	N	N	Si	N	Mp	N	N
TN	Mp	Mp	N	N	N	W	N	Mp	N	N
VT	Mp	Mp	N	Y	Y	S	N	Mp	N	N
VA	Mp	Mp	N	N	N	W	N	O	N	N
WV	Mp	Mp	N	N	N	Si	N	O	N	N
WI	Mp	Mp	N	N	N	W	N	Mp	N	N
WY	Mp	O	N	N	N	W	N	Mp	N	N

M= Mandatory
 Mp= Mandatory if there is a planning commission
 N=No
 O=Optional
 Si=Significant
 Y=Yes
 W=Weak
 S=Strong

Notes and Explanation of Terms Used in Tables 1 - 3:

State: State postal abbreviations

Government Unit:

City = parish, municipality, cities, town, township, borough, and village

County = county

Metro = metropolitan region

State Policy Basis: An important trait of state planning law is that it may require (statutory) local governments to conduct land use planning. If state law does not mandate local planning, communities may ignore the state planning law (optional). States that do not require local planning may not provide the policy framework or the basis to guide local

government planning. Ten (10) states make local land use planning “optional.” Fifteen other states make it “mandatory.” A majority of states (25) requires local planning as a precondition for a local government creating a planning commission. This is a variation on the optional theme.

Model Development Code: This indicates those states that have relied on a model development code, be it the Standard Planning Enabling Act (1928) or a modified version such as the Model Development Code as suggested by the American Law Institute (1976) to guide local planning. An example is Florida’s *Local Government Comprehensive Planning and Land Development Code* (FLA. STAT. .ch. 163-2511–163.3246).

State Role: The role of a state in guiding and supporting local planning may range from laissez faire to attentive oversight with annual reporting requirements as is the case with Florida’s *Local Government Comprehensive Planning and Land Development Code*.

Internal Consistency: Reference to internal consistency implies both horizontal consistency among neighboring jurisdictions and vertical consistency among city, county, regional, and state planning laws. For example, Fla. Stat. ch. 163.3167(3) (West 1990) and Oregon Rev. Stat. § 195.025 (1997) requires that a county provide a coordination role for its municipalities for internal consistency.

Plan Elements: Three elements of a comprehensive plan can have a direct bearing on issues of encroachment and compatibility. They are:

Land Use: In all 50 states, land use elements are either mandatory or optional. The land use element of a comprehensive plan is an important consideration for advocating compatibility among land uses as criteria to prevent encroachment of incompatible land use activity near military installations.

Growth Limits: The ability to plan the maximum expansion limit of a community as an anti-sprawl measure. Boulder, Colorado is, a prime example of setting urban growth boundaries as a means of maintaining identity and curtailing sprawl. This is a potential tool in the encroachment prevention toolkit.

Critical Areas: The American Law Institute’s Model Land Development Code (§§. 7-201*et seq.*) suggests an approach to preservation of areas of critical state concern on the bases of environmental planning. Under the model code, the state land planning agency with appropriate enabling legislation develops a statewide plan that designates specific geographic areas as “Areas of Critical State Concern” and promulgates appropriate regulations. Developments within these areas are carefully monitored to ensure compatibility with the particular qualities of the area. Local governments draft plans that are consistent with the state plan and apply to the state land development oversight agency for permission to develop within the Areas of Critical State Concern. The seven states that have some form of critical state areas of concern legislation can serve as models.

Appendix 1.2

States with some Form of Critical Areas Legislation

Areas of Critical State Concern:

Maryland: Maryland Code: Title 5, Subtitle 6, Section 5-611.

Florida: Title XXVIII, Chapter 380, Section 380.05.

New Jersey: New Jersey State Plan, (IV.D.3.).

South Carolina: Code of Laws of South Carolina: Title 48, Chapter 39, Section 48-39-80 (B)(4).

Hawaii: Hawaii Revised Statutes, Chapter 225M, Section 2(b)(2)(A).

Areas of Critical Concern:

Minnesota: Minnesota Statutes, Chapter Title Critical Areas, Section 116G.02.

Oregon: Oregon Revised Statutes, Chapter 197, Section 197.405.

Areas of Critical or More than Local Concern:

Wyoming: Wyoming Statutes, Title 9, Chapter 5, Article 1, Section 102(a)(i).

Areas of Greater than Local Concern:

Washington: Washington Consolidated Land Use Code, Heading: Local/Regional Coordinating Board or Process.

Areas of Statewide Significance:

Illinois: Illinois Department of Natural Resources, Illinois Natural Areas Inventory, Technical Report (White, 1978). Title 17, Illinois Administrative Code 4010 Part 4010 – Register of Land and Water. Areas of Statewide Significance. Also Available at < <http://dnr.state.il.us/legal/adopted/4010.htm> .

Scenic Areas of Statewide Significance:

California: California Surface Mining and Reclamation Act of 1975, Chapter 9, Article 4, Section 2763.

New York: “Technical Memorandum: Identification of Scenic Areas of Statewide Significance in New York State” (Department of State, 1992).

Areas and Activities of State Interest:

Colorado: Colorado Revised Statutes, Title 24, Article 65.

Areas of Critical Environmental Concern:

Nevada: Nevada Revised Statutes, Chapter 321, Section 770.

Massachusetts: General Laws of Massachusetts, Part I, Title II, Chapter 21A, Section (2)(7).

Areas of Environmental Concern:

North Carolina: North Carolina General Statutes,
Chapter 113A, Article 7, Part 3.

Geographic Areas of Particular Concern:

South Carolina: South Carolina 2001 Code of Regulations,
Chapter 30, Section (D)(21).

Fragile Areas:

Vermont: Vermont States, Title, 10, Chapter 158, Section 6552.

Appendix 2

2.0 Compatible Use Zones Programs

2.1 Air Installations Compatible Use Zones (AICUZ) Program

2.2 Compatible Land Use Partnering

- Title 10 U.S.C. § 2684a – Agreements to limit encroachments and other constraints on military training, testing, and operations
- Title 10 U.S.C. § 2694a -- Surplus DoD Property Transfer for Natural Resource Conservation

Appendix 2.1

Air Installations Compatible Use Zones (AICUZ) Program

AICUZ Program

The Air Installations Compatible Use Zones (AICUZ) program was instituted by the Department of Defense (DoD) in an effort to coordinate the requirements of the missions of military air installations with the development of surrounding communities. A description of the AICUZ program is located at 32 C.F.R. § 256. DoD policy is to work toward achieving compatible land use by means of land use planning and control implemented by the local community. (32 C.F.R. § 256.4(b)(i); *Blue v. United States*, 21 Ct. Cl. 359 (1990) (citing *Stephens v. United States*, 11 Ct. Cl. 352, 363 (1986)).

Under the AICUZ program, studies are conducted that take into account two principal factors — the effect of aircraft noise and aircraft accident potential. The areas affected by aircraft noise are plotted in the form of “noise contours” as part of the AICUZ study. In terms of accident potential, Accident Potential Zones (APZ) are classified as “Clear Zone,” APZ-I or APZ-II, depending on whether the area is most critical (Clear Zone) or has a lower potential for aircraft accidents (APZ-I or APZ-II).

The Department of Defense (DoD) AICUZ Instruction (DoDI 4165.57) was promulgated by the Secretary of Defense under authority of the National Security Act of 1947, as amended. The DoD AICUZ Instruction codified in Federal Regulation as 32 C.F.R. § 256 provides general DoD policy and guidance to achieve compatible use of lands around military installations. The DoD Instruction directs each military branch to develop AICUZ plans for each separate military installation, to analyze noise and safety hazards from aircraft operations, to identify existing and possible future incompatible land uses, and to develop and recommend potential solutions. (32 C.F.R. § 265.5(a)). The completed AICUZ study is then given to local land use authorities for consideration in arriving at decisions that might be asked of them with respect to compatible land use. (32 C.F.R. § 256.4(b) and 256.5(c)). The AICUZ study indicates the noise and safety conditions in the area surrounding the military airfield as well as recommendations listing the zones and indicating compatible land uses in light of noise and safety considerations. The AICUZ study and its findings can have a very direct adverse effect on the ability of a developer to secure federal financing under federally assisted housing programs as well as on local zoning decisions.

There is no statute that required the creation of an AICUZ program by the DoD, nor does any statute direct or constrain the DoD with regard to the AICUZ program. The AICUZ program and its implementing DoD Instruction are the creation of the leadership of the Executive Branch under Federal Management Circular (FMC). FMC 75-2 (1975) prescribes the executive branch’s general policy with respect to achieving compatible land uses on public or private property at or in the vicinity of federal airfields, including general responsibilities to operate military air installations. Because the published DoD AICUZ Instruction, 32 C.F.R. § 256, cites the National Security Act of 1947, as amended, 5 U.S.C.

§ 302 as authority, the AICUZ program appears to be committed to agency discretion. See *Blue v. United States*, 21 Cl. Ct. 359 (1990) (court has no independent statutory authority to judicially review the correctness of AICUZ Data and AICUZ mapping).

The AICUZ program makes it a matter of DoD policy to work toward the goal of compatible land use in regulatory actions conducted by the local community. A number of cases have arisen in which plaintiffs have claimed that certain “influence” or lobbying activities of the United States have resulted in a taking of their property. The most significant case is *De Tom Enterprises, Inc. v. United States*. 213 Ct.Cl. 362, 552 F.2d 337 (1977).

In that case, plaintiff made no claim that aircraft noise was unduly disturbing and, in fact, sought to develop the property for high-density residential purposes. Plaintiff’s application before the local zoning board to change the zoning was denied after the change was opposed (relying upon a noise exposure map) by the Air Base Staff Judge Advocate at the zoning board meeting. The plaintiff alleged that this opposition constituted a “taking” requiring just compensation.

Citing *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1923), the court found that the Air Force’s participation in a regulatory activity was not as extensive or intrusive as to amount to a taking under the Fifth Amendment. The zoning action by the local board was found only to limit a rise in market value and not to amount to a destruction of all use of plaintiff’s property. The United States had merely influenced the county to reject an increase in the plaintiff’s development rights. As to the plaintiff’s claim that the United States had acted “wrongfully” in influencing the county board, the court determined that any such claim sounded in tort and thus was beyond the jurisdiction of the Court of Claims. See also *Blue v. United States*, 21 Ct. Cl. 359 (1990).

The land use compatibility guidance provided in the AICUZ program is embodied in Compatible Land Use Guidelines represented in Tables 1 and 2 below. The objective the AICUZ program is to attempt to balance economic, political, administrative, legal, and other factors to achieve the desired compatible outcome.

Although participation by the military services in the land use planning process via the AICUZ program at the local level does not and cannot guarantee that local authorities will adopt regulations to require compatible land uses in air installation environs, it still provides many benefits. The information provided through the AICUZ Program serves to disclose the effects of installation operations on the civilian community. Active participation is a critical element in implementing the AICUZ program recommendation and can contribute to establishing an atmosphere of fairness that is essential to the success of the program.

The instruction is undergoing revision. It will be reissued in the near future. The reader is referred to the current Department of Defense Instruction (DoDI) No. 4165.57, Air Installations Compatible Use Zones (November 8, 1977) as reference for the current list of DoD approved compatible land uses recommended in Accident Potential Zones.

DoD recommendations for compatible land use within noise zones can be found in the Federal Interagency Committee on Urban Noise (FICUN) 1980 document, “Guidelines for Considering Noise in Land Use Planning and Control,” DoD is currently in the process of updating the 1977 DoDI. The new AICUZ DoDI will incorporate updated land use guidance in noise zones and more closely follow the earlier FICON recommendations for residential development within 65-75 DNL. ***Should a development proceed forward in the local development review process for approval, local installations are urged to contact their AICUZ Program managers for more information and to advise local governments accordingly.***

Appendix 2.2

Table 1. Suggested Land Use Compatibility in Noise Zones¹

LAND USE		NOISE ZONES DNL Levels in Ldn						
SLUCM NO.	NAME	1		2		3		
		0-55	55-65	65-70	70-75	75-80	80-85	85+
10	Residential							
11	Household units							
11.11	Single units detached	Y	Y*	25 ¹	30 ¹	N	N	N
11.12	Single units; semidetached	Y	Y*	25 ¹	30 ¹	N	N	N
11.13	Single units; attached row	Y	Y*	25 ¹	30 ¹	N	N	N
11.21	Two units; side-by-side	Y	Y*	25 ¹	30 ¹	N	N	N
11.22	Two units; one above the other	Y	Y*	25 ¹	30 ¹	N	N	N
11.31	Apartments; walk up	Y	Y*	25 ¹	30 ¹	N	N	N
11.32	Apartments; elevator	Y	Y*	25 ¹	30 ¹	N	N	N
12	Group quarters	Y	Y*	25 ¹	30 ¹	N	N	N
13	Residential hotels	Y	Y*	25 ¹	30 ¹	N	N	N
14	Mobile home parks or courts	Y	Y*	N	N	N	N	N
15	Transient lodgings	Y	Y*	25 ¹	30 ¹	35 ¹	N	N
16	Other residential	Y	Y*	25 ¹	30 ¹	N	N	N
20	Manufacturing							
21	Food ~ kindred products; Manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
22	Textile mill products; manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
23	Apparel and other finished products made from fabrics, leather, and similar materials; manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
24	Lumber and wood products (except furniture); manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
25	Furniture and fixtures; manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
26	Paper & allied products; manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
27	Printing, publishing, and allied industries	Y	Y	Y	Y ²	Y ³	Y ⁴	N
28	Chemicals and allied products; manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
29	Petroleum refining and related industries	Y	Y	Y	Y ²	Y ³	Y ⁴	N

* The designation of these uses as “compatible” in this Zone reflects individual federal agencies’ consideration of general cost and feasibility factors as well as past community experiences and program objectives. Localities, when evaluating the application of these guidelines to specific situations, may have different concerns or goals to consider (Guidelines for Considering Noise in Land Use Planning and Control, June 1980).

¹ Federal Interagency Committee on Urban Noise (FICO=UN), Guidelines for Considering Noise in Land Use Planning and Control, June 1980.

Appendix 2.2

Table 1. Suggested Land Use Compatibility in Noise Zones¹ (cont)

LAND USE		NOISE ZONES DNL Levels in Ldn						
SLUCM		1		2		3		
NO.	NAME	0-55	55-65	65-70	70-75	75-80	80-85	85+
30	Manufacturing (cont'd)							
31	Rubber and misc. plastic products; manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
32	Stone, clay and glass products; manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
33	Primary metal industries	Y	Y	Y	Y ²	Y ³	Y ⁴	N
34	Fabricated metal products; manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
35	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks manufacturing	Y	Y	Y	25	30	N	N
39	Miscellaneous manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴	N
40	Transportation, communication and utilities							
41	Railroad, rapid rail transit and street railway transportation	Y	Y	Y	Y ²	Y ³	Y ⁴	N
42	Motor vehicle transportation	Y	Y	Y	Y ²	Y ³	Y ⁴	N
43	Aircraft transportation	Y	Y	Y	Y ²	Y ³	Y ⁴	N
44	Marine kraft transportation	Y	Y	Y	Y ²	Y ³	Y ⁴	N
45	Highway & street right-of-way	Y	Y	Y	Y ²	Y ³	Y ⁴	N
46	Automobile parking	Y	Y	Y	Y ²	Y ³	Y ⁴	N
47	Communication	Y	Y	Y	25 ⁵	30 ⁵	N	N
48	Utilities	Y	Y	Y	Y ²	Y ³	Y ⁴	N
49	Other transportation, communication and utilities	Y	Y	Y	25 ⁵	30 ⁵	N	N
50	Trade							
51	Wholesale trade	Y	Y	Y	Y ²	Y ³	Y ⁴	N
52	Retail trade – building materials, hardware and farm equipment	Y	Y	Y	Y ²	Y ³	Y ⁴	N
53	Retail trade – general merchandise	Y	Y	Y	25	30	N	N
54	Retail trade – food	Y	Y	Y	25	30	N	N
55	Retail trade – automotive, marine craft, aircraft and accessories	Y	Y	Y	25	30	N	N
56	Retail trade – apparel and accessories	Y	Y	Y	25	30	N	N
57	Retail trade – furniture, home furnishings and equipment	Y	Y	Y	25	30	N	N
58	Retail trade – eating and drinking establishments	Y	Y	Y	25	30	N	N
59	Other retail trade	Y	Y	Y	25	30	N	N

Appendix 2.2

Table 1. Suggested Land Use Compatibility in Noise Zones¹ (cont)

LAND USE		NOISE ZONES DNL Levels in Ldn						
SLUCM NO.	NAME	1		2		3		
		0-55	55-65	65-70	70-75	75-80	80-85	85+
60	Services							
61	Finance, insurance and real estate services	Y	Y	Y	25	30	N	N
62	Personal services	Y	Y	Y	25	30	N	N
62.4	Cemeteries	Y	Y	Y	Y ²	Y ³	Y ^{4,11}	Y ^{6,11}
63	Business services	Y	Y	Y	25	30	N	N
64	Repair services	Y	Y	Y	Y ²	Y ³	Y ⁴	N
65	Professional services	Y	Y	Y	25	30	N	N
65.1	Hospitals, nursing homes	Y	Y*	25*	30*	N	N	N
65.1	Other medical facilities	Y	Y	Y	25	30	N	N
66	Contract construction services	Y	Y	Y	25	30	N	N
67	Governmental services	Y	Y*	Y*	25*	30*	N	N
68	Educational services	Y	Y*	25*	30*	N	N	N
69	Miscellaneous services	Y	Y	Y	25	30	N	N
70	Cultural, entertainment and recreational							
71	Cultural activities (including churches)	Y	Y*	25*	30*	N	N	N
71.2	Nature exhibits	Y	Y*	Y*	N	N	N	N
72	Public assembly	Y	Y	Y	N	N	N	N
72.1	Auditoriums, concert halls	Y	Y	25	30	N	N	N
72.11	Outdoor music shells, amphitheaters	Y	Y*	N	N	N	N	N
72.2	Outdoor sports, spectator sports	Y	Y	Y ⁷	Y ⁷	N	N	N
73	Amusements	Y	Y	Y	Y	N	N	N
74	Recreational activities (incl. golf courses, riding stables, water recreation)	Y	Y*	Y*	25*	30*	N	N
75	Resorts and group camps	Y	Y*	Y*	Y*	N	N	N
76	Parks	Y	Y*	Y*	Y*	N	N	N
79	Other cultural, entertainment and recreation	Y	Y*	Y*	Y*	N	N	N
80	Resource production and extraction							
81	Agriculture (except live- stock)	Y	Y	Y ⁸	Y ⁹	Y ¹⁰	Y ^{10,11}	Y ^{10,11}
81.5	Livestock farming and animal breeding	Y	Y	Y ⁸	Y ⁹	N	N	N
82	Agricultural related activities	Y	Y	Y ⁸	Y ⁹	Y ¹⁰	Y ^{10,11}	Y ^{10,11}
83	Forestry activities and related services	Y	Y	Y ⁸	Y ⁹	Y ¹⁰	Y ^{10,11}	Y ^{10,11}
84	Fishing activities and related services	Y	Y	Y	Y	Y	Y	Y

Appendix 2.2

Table 1. Suggested Land Use Compatibility in Noise Zones¹ (cont)

LAND USE		NOISE ZONES DNL Levels in Ldn						
SLUCM NO.	NAME	1		2		3		
		0-55	55-65	65-70	70-75	75-80	80-85	85+
85	Mining activities and related services	Y	Y	Y	Y	Y	Y	Y
89	Other resource production and extraction	Y	Y	Y	Y	Y	Y	Y

E5.1. NOTES FOR SUGGESTED LAND USE COMPATIBILITY IN NOISE ZONES TABLE

1.
a) Although local conditions regarding the need for housing may require residential use in these Zones, residential use is discouraged in DNL/Ldn 65-70 dbA and strongly discouraged in DNL/Ldn 70-75 dbA. The absence of viable alternative development options should be determined and an evaluation should be conducted prior to approvals indicating that a demonstrated community need for the residential use would not be met if development were prohibited in these Zones.

b) Where the community determines that residential uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dbA (DNL/Ldn 65-70) and 30 dbA (DNL/Ldn 70-75) should be incorporated into building codes and be considered in individual approvals. Normal construction can be expected to provide a NLR of 20 dbA, thus the reduction requirements are often stated as 5, 10 or 15 dbA over standard construction and normally assume mechanical ventilation and closed windows year round. Additional consideration should be given to modifying NLR levels based on peak noise levels or vibrations.

c) NLR criteria will not eliminate outdoor noise problems. However, building location and site planning, design and use of berms and barriers can help mitigate outdoor noise exposure NLR 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. No buildings.

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

8. Residential buildings require a NLR of 25

9. Residential buildings require a NLR of 30.

10. Residential buildings not permitted.

11. Land use not recommended, but if community decides use is necessary, hearing protection devices should be worn by personnel.

E5.2. KEY TO SUGGESTED LAND USE COMPATIBILITY IN NOISE ZONES TABLE

SLUCM	Standard Land Use Coding Manual
Y (Yes)	Land Use and related structures compatible without restrictions.
N (No)	Land Use and related structures are not compatible and should be prohibited.
NLR (Noise Level Reduction)	Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
Yx (Yes with restrictions) compatible; see notes-2 through 4.	Land Use and related structures generally
25, 30, or 35 Land Use and related structures generally	The numbers refer to Noise Level Reduction levels. compatible; measures to achieve NLR of 25, 30 or 35 must be incorporated into design and construction of structure.
25*, 30* or 35* Land Use generally compatible with NLR;	The numbers refer to Noise Level Reduction levels. however, measures to achieve an overall noise reduction do not necessarily solve noise difficulties and additional evaluation is warranted.
DNL	Day-Night Average Sound Level.
Ldn	Mathematical symbol for DNL.

Appendix 2.2

**Table 2. Air Installations Compatible Use Zones
Suggested Land Use Compatibility in Accident Potential Zones¹**

SLUCM* NO.	LAND USE NAME	CLEAR ZONE Recommendation	APZ-I Recommendation	APZ-II Recommendation	Density Recommendation
10	Residential				
11	Household Units				
11.11	Single units: detached	N	N	Y ²	Maximum density of 1-2 Du/acre.
11.12	Single units: semidetached	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				
21	Food & kindred products; manufacturing	N	N	Y ¹	Maximum FAR of 0.56 .
22	Textile mill products; manufacturing	N	Y ¹	Y ¹	Maximum FAR of 0.28 in APZ I/ 0.56 in APZ II.
23	Apparel and other finished products; products made from fabrics, leather and similar materials; manufacturing	N	Y ¹	Y ¹	Same as above
24	Lumber and wood products (except furniture); manufacturing	N	Y ¹	Y ¹	Same as above
25	Furniture and fixtures; manufacturing	N	Y ¹	Y ¹	Same as above
26	Paper and allied products; manufacturing	N	Y ¹	Y ¹	Same as above
27	Printing, publishing, and allied industries	N	Y ¹	Y ¹	Same as above
28	Chemicals and allied products; manufacturing	N	N	N	
29	Petroleum refining and related industries	N	N	N	

Appendix 2.2

Table 2. Air Installations Compatible Use Zones

Suggested Land Use Compatibility in Accident Potential Zones¹ (cont)

SLUCM* NO.	LAND USE NAME	CLEAR ZONE Recommendation	APZ-1¹ Recommendation	APZ¹ Recommendation	Density Recommendation¹
30	<i>Manufacturing (continued)</i>				
31	Rubber and misc. plastic products; manufacturing	N	N	N	
32	Stone, clay and glass products; manufacturing	N	N	Y	Maximum FAR of 0.56 in APZ 2
33	Primary metal products; manufacturing	N	N	Y	Same as above
34	Fabricated metal products; manufacturing	N	N	N	
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 1 & FAR of 0.56 in APZ 2
40	<i>Transportation, communication and utilities.</i>				See Notes 2 & 3 Below.
41	Railroad, rapid rail transit, and street railway transportation	N ³	Y ⁴	Y	Same as above.
42	Motor vehicle transportation	N ³	Y	Y	Same as above
43	Aircraft transportation	N ³	Y ⁴	Y	Same as above
44	Marine craft transportation	N ³	Y ⁴	Y	Same as above
45	Highway and street right-of-way	N ³	Y	Y	Same as above
46	Automobile parking	N ³	Y ⁴	Y	Same as above
47	Communication	N ³	Y ⁴	Y	Same as above
48	Utilities	N ³	Y ⁴	Y	Same as above
49	Other transportation, communication and utilities	N ³	Y ⁴	Y	Same as above
50	<i>Trade</i>				
51	Wholesale trade	N	Y ¹	Y ¹	Maximum FAR of 0.28 in APZ I. Maximum FAR of .56 in APZ II.
52	Retail trade – building materials, hardware and farm equipment	N	Y ¹	Y ¹	Maximum FAR of 0.14 in APZ I & 0.28 in APZ II
53	Retail trade – general merchandise	N	N	Y ¹	Maximum FAR of 0.14.

Appendix 2.2

Table 2. Air Installations Compatible Use Zones

Suggested Land Use Compatibility in Accident Potential Zones¹ (cont)

SLUCM* NO.	LAND USE NAME	CLEAR ZONE Recommendation	APZ-1 Recommendation	APZ-2 Recommendation	Density Recommendation ¹
50	Trade (continued)				
54	Retail trade – food	N	N	Y ¹	Maximum FARs of 0.24
55	Retail trade – automotive, marine craft, aircraft and accessories	N	Y ¹	Y ¹	Maximum FAR of 0.14 in APZ I & 0.28 in APZ II
56	Retail trade – apparel and accessories	N	N	Y ¹	Maximum FAR 0.28
57	Retail trade – furniture, home, furnishings and equipment	N	N	Y ¹	Same as above
58	Retail trade – eating and drinking establishments	N	N	N	
59	Other retail trade	N	N	Y ¹	Maximum FAR of 0.22
60	Services				
61	Finance, insurance and real estate services	N	N	Y	Maximum FARs of .22 for “General Office/Office park”
62	Personal services	N	N	Y	Office uses only. Maximum FAR of 0.22.
62.4	Cemeteries	N	Y	Y	No chapels.
63	Business services	N	Y	Y	Max. FARs of 0.11 APZ I; 0.22 in APZ II
63.7	Warehousing and storage services	N	Y ¹	Y ¹	Maximum FAR of 1.0
64	Repair Services	N	Y	Y	Max. FARs of 0.11 APZ I; 0.22 in APZ II
65	Professional services	N	N	Y	Max. FARs of 0.22
65.1	Hospitals, nursing homes	N	N	N	
65.1	Other medical facilities	N	N	N	
66	Contract construction services	N	Y ⁵	Y	Max. FARs of 0.11 APZ I; 0.22 in APZ II
67	Government Services	N	N	Y	Max FAR of 0.22
68	Educational services	N	N	N	
69	Miscellaneous	N	N	Y ¹	Max. FAR of 0.22

*Appendix 2.2**Table 2. Air Installations Compatible Use Zones**Suggested Land Use Compatibility in Accident Potential Zones¹ (cont)*

SLUCM* NO.	LAND USE NAME	CLEAR ZONE Recommendation	APZ-1 Recommendation	APZ-2 Recommendation	Density Recommendation ¹
70	<i>Cultural, entertainment and recreational</i>				
71	Cultural activities	N	N	N	
71.2	Nature exhibits	N	Y ^{1,5}	Y ^{1,5}	
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	N	N	Y	
74	Recreational activities (including golf courses, riding stables, water recreation)	N	Y ^{1,5}	Y ^{1,5}	No Club House
75	Resorts and group camps	N	N	N	
76	Parks	N	Y ^{1,5}	Y ^{1,5}	Same as 74
79	Other cultural, entertainment and recreation	N	Y ^{1,5}	Y ^{1,5}	Same as 74
80	<i>Resource production and extraction</i>				
81	Agriculture (except live stock)	Y ²	Y ¹	Y ¹	
81.5, 81.7	Livestock farming and breeding	N	Y ¹	Y ¹	
82	Agriculture related activities	N	Y ¹	Y ¹	Max FAR of 0.28; no activity which produces smoke, glare, or involves explosives
83	Forestry Activities	N	Y ¹	Y ¹	Same as Above
84	Fishing Activities	N	Y ¹	Y ¹	Same as Above
85	Mining Activities	N	Y ¹	Y ¹	Same as Above
89	Other resource production or extraction	N	Y ¹	Y ¹	Same as Above

LEGEND. The following legend refers to the preceding table in this enclosure.

*Standard Land Use Coding Manual (SLUCM), U.S. Department of Transportation
 Y (Yes) -Land uses and related structures are normally compatible with out 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; see notes indicated by the superscript.

Nx – (no with exceptions) See notes indicated by the superscript.

NOTES. The following notes refer to the preceding table in this enclosure.

1. A “yes” or a “no” designation for compatible land use is to be used only for general comparison. Within each land use category where, due to the variation of densities of people and structures, uses exist, further evaluation may be needed in each category. In order to assist installations and local governments, general suggestions as to floor/area ratios are provided as a guide to density in some categories. In general, land use restrictions, which limit commercial, services, or industrial buildings or structure occupants to 25 per acre in APZ I, and 50 per acre in APZ II are the range of occupancy levels considered to be low density. Outside events should normally be limited to assemblies of not more than 25 people per acre in APZ I, and maximum assemblies of 50 people per acre in APZ II. Other factors to consider are height of structures, labor intensity in the building; structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, and potential glare to pilots.

2. The suggested maximum density for detached single family housing is one to two du/acre. In a Planned Unit Development of single-family detached units this density could possibly be increased slightly, where the amount of open space is significant and the amount of surface area covered by structures does not exceed 20 percent of the PUD total area.

3. The placing of structures, buildings, or above-ground utility lines in the clear zone is subject to severe restrictions. In the majority of clear zones these items are prohibited. See Tri-Service Manual AFM 32-1123(I);TM 5-803-7, NAVFAC P-971 “Airfield and Heliport Planning & Design” dated May 1, 1999 (reference b above) for specific details.

4. No accessory uses – e.g., no passenger terminals and major above ground electrical transmission lines in APZ I.

5. Accessory uses such as meeting places, auditoriums, etc., are not recommended.

Appendix 2.2 – Compatible Land Use Partnering and Surplus Property Disposal for Conservation Purposes,

10 USCS § 2684a (2003)

§ 2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations

(a) Agreements authorized. The Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity described in subsection (b) to address the use or development of real property in the vicinity of a military installation for purposes of--

(1) limiting any development or use of the property that would be incompatible with the mission of the installation; or

(2) preserving habitat on the property in a manner that--

(A) is compatible with environmental requirements; and

(B) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation.

(b) Eligible entities. An agreement under this section may be entered into with any of the following:

(1) A State or political subdivision of a State.

(2) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

(c) Inapplicability of certain contract requirements. Chapter 63 of title 31 [31 USCS §§ 6301 et seq.] shall not apply to any agreement entered into under this section.

(d) Acquisition and acceptance of property and interests.

(1) An agreement with an eligible entity under this section may provide for--

(A) the acquisition by the entity of all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and

(B) the sharing by the United States and the entity of the acquisition costs.

(2) Property or interests may not be acquired pursuant to the agreement unless the owner of the property or interests consents to the acquisition.

(3) The agreement shall require the entity to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property or interest acquired under the agreement or a lesser interest therein. The Secretary shall limit such transfer request to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

(4) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under the agreement.

(5) For purposes of the acceptance of property or interests under the agreement, the Secretary concerned may accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 3111 of title 40, if the Secretary concerned finds that the appraisal or title documents substantially comply with the requirements.

(e) Acquisition of water rights. The authority of the Secretary concerned to enter into an agreement under this section for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

(f) Additional terms and conditions. The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

(g) Funding.

(1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the Army, Navy, Marine Corps, Air Force, or Defense-wide activities may be used to enter into agreements under this section.

(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.

(h) Definitions. In this section:

(1) The term “Secretary concerned” means the Secretary of Defense or the Secretary of a military department.

(2) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

HISTORY:

(Added Dec. 2, 2002, P.L. 107-314, Div B, Title XXVIII, Subtitle B, § 2811(a), 116 Stat. 2705.)

Appendix 3

3.0 Examples of Leading State Statutes¹

Note: The following state statutes are presented in electronic and printed format, as available. They represent examples of what have been enacted to regulate encroachment of the civilian population and incompatible land use activity in the vicinity of Military Airfields. The reader is encouraged to find the most up to date version of the statute by going on-line at the sites indicated below, if available.

3.1 Arizona Revised Statutes Relating to Military Airports

Ariz. Rev. Stat. (ARS) § 9-461. It may also be found at <http://www.azleg.state.az.us/ars/9/00461.htm>,

ARS§ 11-806 & 829 (1995); ARS § 28-8462; ARS § 28-8461

Other Statutes of notes: ARS § 28-8480 – 8485; § 28-8521; § 28-8522 – 8524;

ARS § 28-8481.9(c). and §32-2113 may be found on the Web site: <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/28/08461.htm&Title=9&DocType=ARS>

Beginning in 1995, the state enacted a number of statutory provisions to address the concern that residential development was encroaching too near military airfields, placing future residents in potentially noisy environments and in accident-potential zones (APZ), and threatening the operational missions of the military.

The uniqueness of the Arizona statute is that the State Attorney General is involved in overseeing and reviewing local comprehensive and general plans for conformity to the encroachment prevention statutes recently enacted by the state legislature. The Arizona statutes are proactive measures to reduce future land use and zoning conflicts between growing urban centers and military installations and auxiliary facilities. Arizona is progressive in a number of specific areas. Its statute incorporates, by reference, maps developed by the State Lands Department depicting accident potential, noise zones and an area of influence surrounding a military airfield. Within the area of influence is required real estate disclosure regarding the presence and operational profile of military installations, principally airfields (*i.e.*, aircraft noise and accident potential) and sound level reduction in new construction.

The state also adopted detailed land use compatibility tables that are more stringent than the Land Use Compatibility tables recommended by DoD. (See Appendix 2.). These statutes and the overall encroachment prevention program promoted by the state represents the leading edge in the application of comprehensive land use plans and regulations that promote balance between civilian and military communities (See discussion in Part III).

3.2 California Senate Bill 1468 (2002) -- General Plans and Military Facilities

Cal. Govt. Code (CGC) at §§ 65300, 65040.2(f) & 65040.9 (2002); §§ 65352, 65944, 65404, 65940, & 65944. (2004); *available at:* <http://www.planning.org/growingsmart/pdf/states/cal.pdf> ; Sections of Cal. Govt. Planning Code *also available at:* http://ceres.ca.gov/planning/pzd/2000/pzd2000_web/ and <http://www.azleg.state.az.us/ars/9/00461.htm> ; and *A Guide to Planning in California*

California has revised several statutes in recognition of the military presence and importance to the state's economy and employment base. These statutes are directed toward incorporating into local city and county general and comprehensive plans recognition of the military's presence, and operational parameters; they require that military readiness become a matter of local planning importance.

3.3 Florida State Senate Bill 1604 (2004)

The Governor signed (*available at:* [Senate Bill 1604](#)) into law on May 25, 2004. The Act amends [Florida Statute § 163.3177](#) and [§ 163.3175](#), §163.3187, and §163.3191 of the Growth Management Act and requires each county in which a military base is located and each affected municipality to send to the commanding officer of the military installation information regarding proposed changes to the comprehensive plan and land development regulations that would affect the intensity, density or use of land adjacent to the military base. The law requires affected local governments to amend their comprehensive plans by June 30, 2006, to include criteria to be used to achieve the compatibility of adjacent or closely proximate lands with military installations. Another unique feature of the Florida Bill is that it calls for an *ex officio* seat on local city or county planning commissions wherein there is situated a military installation

3.4 South Carolina Bill 4282 (2004) -- Federal Defense Facilities Utilization Integrity Protection Act.

[Sections 6-29-1510; 1520; 1525; 1530 and 1540](#), *also available at:* http://www.scstatehouse.net/sess115_2003-2004/bills/4482.htm ; and 2003-2004 4482: Federal Defense Facilities Utilization Integrity Protection Act - www.scstatehouse.net - LPITS

In October 2004, the governor of South Carolina signed Bill 4282, entitled Federal Defenses Facilities Utilization Integrity Act. The act deals with local government planning process and procedures. It specified that "local planning entities and local officials must consider certain matters and take certain actions in regard to development in certain areas bordering Federal military installations located in the State or involving overlay zones or Air Compatible Use Zones at military installations."

Appendix 3.1

-- Arizona Revised Statutes Relating to Military Airports

28-8461. Definitions

In this article, unless the context otherwise requires:

1. “Accident potential zone one” means an area three thousand feet wide by five thousand feet long that starts at the end of each clear zone and that is centered and measured on the extended runway centerline, terminating eight thousand feet from the end of each runway.
2. “Accident potential zone two” means an area three thousand feet wide by seven thousand feet long that starts at the end of each accident potential zone one and that is centered and measured on the extended runway centerline, terminating fifteen thousand feet from the end of each runway, except that, for political subdivisions described in paragraph 8, subdivision (a), accident potential zone two extends thirty thousand feet southwest from the end of each runway.
3. “Airport” means an area of land or water that is designed and set aside for the landing and taking off of aircraft and that is utilized or to be utilized in the interest of the public for those purposes.
4. “Airport hazard” means a structure, tree or use of land that obstructs the air space required for flight of aircraft in taking off or landing at an airport or that is otherwise hazardous to aircraft taking off or landing.
5. “Airport hazard area” means an area of land or water on which an airport hazard might be established if not prevented as provided in this article.
6. “Airstrip” means a strip of ground that is artificially or naturally surfaced and that is designed and used at an airport or landing field for the landing and takeoff of aircraft.
7. “Clear zone” means an area three thousand feet long measured along the extended runway centerline beginning at the end of all main military runways and three thousand feet wide centered on and measured at right angles to the extended runway centerline.
8. “High noise or accident potential zone” means any property located in the following zones:
 - (a) In political subdivisions located in a county with a population of two million or more persons, within the 1988 noise contours developed and recognized by the regional planning agency in that county that includes the arrival and departure corridor that is the accident potential zone one and accident potential zone two plus the land area described as follows: starting two hundred feet from the south end of the westernmost runway at a width of one thousand five hundred feet west and two thousand five hundred feet east, measured perpendicular to the centerline of the runway, and extending southwesterly parallel to the runway for a distance of thirty thousand feet.

(b) In political subdivisions located in a county with a population of more than eight hundred thousand persons but less than two million persons, the area southeast of the runway within the noise contours established by the most recent air installation compatible use zone report recognized by the military airport and political subdivisions in that county including the arrival and departure corridor that is the accident potential zone one and accident potential zone two plus the land area described as follows: starting two hundred feet from the southeast runway end at a width of two thousand feet and extending outward thirty thousand feet to a width of ten thousand four hundred feet.

(c) In political subdivisions located in a county with a population of eight hundred thousand persons or less, within the noise contours established by the most recent air installation compatible use zone report recognized by the military airport and political subdivisions in that county, including the arrival and departure corridor that is the accident potential zone one and accident potential zone two plus the land area described as follows: starting two hundred feet from the end points of the main runways and at a width of three thousand feet and symmetrical about a centerline between the runways extending outward to a point thirty thousand feet from the point of beginning. The outer width is seventeen thousand five hundred feet.

9. “Military airport” means an airport that is operated by an armed force of the United States and that is primarily used for military fixed wing aircraft operations, excluding a runway or airstrip that is not immediately adjacent to facilities primarily used for operational control, maintenance and permanent parking of aircraft.

10. “Occupied building” means any building where people live, work or is otherwise received.

11. “Person” means an individual, firm, partnership, corporation, company, association, joint stock association or body politic, including any trustee, receiver, assignee or other representative of a trustee, receiver or assignee.

12. “Political subdivision” means a city; town or county and includes a school district.

13. “Previous reporting period” means from July 1 of the year before the report is due through June 30 of the year the report is due.

14. “Runway” means an artificially surfaced strip of ground that is designed and used at an airport for the landing and takeoff of aircraft.

15. “school” means any public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve.

16. “School district” means a political subdivision of this state with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools or an accommodation school.

17. “School district development plan” means any proposal to build or expand a school but does not include repairing, maintaining or remodeling an existing school.

18. “Structure” means an object that is constructed or installed by a human including a building, tower, smokestack or overhead transmission line.

19. “Territory in the vicinity of a military airport” means any property located in the following zones:

(a) In counties that have a population of two million or more persons, the zone is ten miles to the north, south and west and four miles to the east parallel from the center of the main runway of a military airport.

(b) In counties that have a population of more than eight hundred thousand but less than two million persons, the zone is five miles to the northwest along a line extending from the end of the northwest runway, one and one-half miles to the southwest, six and one-half miles to the northeast and perpendicular to the runway centerline and ten miles to the southeast along a line extending from the end of the southeast runway of a military airport.

(c) In counties that have a population of eight hundred thousand persons or less, the zone is five miles to the north, south and west and ten miles to the east of the center of the main runway of a military airport.

20. “Tree” means an object of natural growth.

28-8480. Military airport continuation: land acquisition

In addition to authority granted pursuant to other provisions of law, a political subdivision may acquire, by exchange, purchase, lease, donation, devise or condemnation, land or interests in land for the continued operation of a military airport.

28-8481. Planning and zoning; military airport operation compatibility; compliance review; penalty

A. A political subdivision that has territory in the vicinity of a military airport that includes property in a high noise or accident potential zone shall adopt comprehensive and general plans and school district development plans, if applicable, for property in the high noise or accident potential zone to assure development compatible with the high noise and accident potential generated by military airport operations that have or may have an adverse effect on public health and safety. Each political subdivision, excluding school districts, shall adopt and enforce zoning regulations for property in the high noise or accident potential zone to assure development compatible with the high noise and accident potential generated by military airport operations that have or may have an adverse effect on public health and safety.

B. A political subdivision that has territory in the vicinity of a military airport shall incorporate sound attenuation standards pursuant to section 28-8482 into any building code in existence on or adopted after July 1, 2001. This section does not affect or require the modification of any building permit issued before July 1, 2001.

C. A political subdivision that has territory in the vicinity of a military airport that includes property in a high noise or accident potential zone shall adopt, administer and enforce the zoning regulations or school district development plans authorized by subsection A of this section in the same manner as the comprehensive zoning ordinance or school district development plans of the political subdivision as provided by law, except that a variance shall not be granted without a specific finding that the purpose of military airport compatibility is preserved.

D. This section does not affect the existing authority of a political subdivision to plan and zone on the basis of noise or accident potential in the vicinity of an airport owned or controlled by the political subdivision or to adopt restrictions or limitations in addition to those required by this section applicable to territory in the vicinity of a military airport.

E. This section does not restrict, limit or modify; or authorize or require any political subdivision to restrict, limit or modify; the right of a landowner to undertake and complete development and use of any property under the terms and conditions of a development plan or school district development plan approved on or before December 31, 2000 by the political subdivision in whose territory the property is located, except that the development must comply with the sound attenuation standards and specifications incorporated into any building code adopted pursuant to section 28-8482 by the political subdivision in whose territory the development is located. For purposes of this section, “development plan”:

1. Means a plan submitted to and approved by the governing body of the political subdivision pursuant to a zoning ordinance or regulation adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6 and that describes with reasonable certainty the density and intensity of use for a specific parcel or parcels of property.

2. Includes a planned community development plan, a planned area development plan, a planned unit development plan, a development plan that is the subject of a development agreement adopted pursuant to section 9-500.05 or 11-1101, a site plan, a subdivision plat or any other land use approval designation that is the subject of a zoning ordinance adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6.

F. On or after July 1, 2001, a political subdivision that has territory in a high noise or accident potential zone shall notify the owner or owners of property in the high noise and accident potential zone of any additions or changes under this section to the general plan, comprehensive plan, zoning regulations or school district development plan of the political subdivision applicable to property in the high noise or accident potential zone. The political subdivision shall provide a notice of such additions or changes by publication as provided in section 9-462.04, subsection A or section 11-829, subsection C, including a statement that the property is located in a high noise or accident potential zone, at least thirty days before final approval of the addition to or change in The general plan, comprehensive plan, zoning regulation or school district development plan and within thirty days following the final approval of such an addition to or change in the general plan, comprehensive plan, zoning regulation or school district development plan.

G. Any property owner described in subsection F of this section shall notify potential purchasers of the property and any potential lessees or renters that the property is located in a high noise and accident potential zone and is subject to the requirements of this section.

H. On or before August 15 of each year, each political subdivision that has territory that includes property in a high noise or accident potential zone or that is otherwise subject to the requirements of section 28-8482 shall file with the attorney general, and with each political subdivision that has territory in the vicinity of the military airport, a report that demonstrates compliance with this section and section 28-8482 during the previous reporting period. Compliance shall be determined with regard to the law in effect on June 30 of the year in which the report is due. The report shall include the following information regarding the territory in high noise or accident potential zone except the school district's report shall not include the information in paragraphs 1,2,3,4 and 7 of this subsection:

1. Zoning map amendments within the high noise or accident potential zone.
2. Zoning or subdivision ordinance or regulation text amendments applicable to property within the high noise or accident potential zone.
3. Preliminary and final plat approvals for property within the high noise or accident potential zone.
4. Variances from zoning or subdivision ordinances for property within the high noise or accident potential zone.
5. Comprehensive, general or specific plan or school district development plan amendments for property within the high noise or accident potential zone.
6. A statement that the political subdivision complied with the notification requirements of subsection F of this section.
7. A statement that the political subdivision adopted or amended building code provisions pursuant to section 28-8482.

I. If the attorney general has not received a report or affidavit from a political subdivision that is required to file a report pursuant to subsection H of this section within thirty days after the date the report or affidavit was required to be filed pursuant to subsection H or J of this section, the attorney general shall send a written notice by certified mail, return receipt requested, to the political subdivision stating that the attorney general has not received the report or affidavit as required by this section.

J. If a political subdivision that is required to file a report pursuant to subsection H of

this section has previously filed a report in compliance with subsection H of this section and that political subdivision has not taken any of the actions described in subsection H of this section since filing that report, the political subdivision shall file with the attorney general an affidavit stating that no actions were taken by the political subdivision during that period.

K. The attorney general shall determine compliance with this section in accordance with the following requirements applicable to zoning and development in a high noise or accident potential zone and to zoning and development in accident potential zone one and accident potential zone two. Compliance with respect to territory located in the arrival and departure corridor but outside the accident potential zone one, and noise contour lines as described in section 28-8461, paragraph 8, subdivision (b) and (c) shall be determined in accordance with the requirements applicable to territory located in the 65-69 day-night sound level as listed below. This subsection shall not preclude a determination of compliance if the political subdivision and the military airport mutually agree that an individual use is compatible and consistent with the high noise or accident potential of the military airport.

Zoning and development in high noise or accident potential zone	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ One	APZ Two
RESIDENTIAL							
Residential uses other than the residential uses listed below	NO (13)	NO (13)	NO (13)	NO (13)	NO	NO	NO
Single family residential that is subject of zoning approved on or before December 31, 2000 that permits one dwelling unit per acre or less	YES (9)	YES (10)	YES (11)	NO (13)	NO (13)	NO	NO (13)
Single family residential that is the primary residence for persons engaging in agricultural use and ancillary residential buildings incident to the primary agriculture use	YES (9)	YES (10)	YES (11)	YES (12)	NO (13)	NO	NO (13)
TRANSPORTATION, COMMUNICATIONS AND UTILITIES							
Railroad and rapid rail transit	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (15)
Highway and street right-of-way	YES	YES	YES	YES	YES	YES	YES
Motor vehicle parking	YES	YES	YES	YES	YES	YES (15)	YES (15)
Communications (noise sensitive)	YES	YES (2)	YES (3)	NO	NO	YES (15)	YES (16)
Utilities	YES	YES	YES	NO	NO	YES (15)	YES (16)

Zoning and development in high noise or accident potential zone	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ One	APZ Two

RESIDENTIAL

Residential uses other than the residential uses listed below	NO (13)	NO (13)	NO (13)	NO (13)	NO (13)	NO (13)	NO (13)
Single family residential that is subject of zoning approved on or before December 31, 2000 that permits one dwelling unit per acre or less	YES (9)	YES (10)	YES (11)	NO (13)	NO (13)	NO (13)	NO (13)
Single family residential that is the primary residence for persons engaging in agricultural use and ancillary residential buildings incident to the primary agriculture use	YES (9)	YES (10)	YES (11)	YES (12)	NO (13)	NO (13)	NO (13)

TRANSPORTATION, COMMUNICATIONS AND UTILITIES

Railroad and rapid rail transit	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (15)
Highway and street right-of-way	YES	YES	YES	YES	YES	YES	YES
Motor vehicle parking	YES	YES	YES	YES	YES	YES (15)	YES (15)
Communications (noise sensitive)	YES	YES (2)	YES (3)	NO	NO	YES (15)	YES (16)
Utilities	YES	YES	YES	NO	NO	YES (15)	YES (16)

Zoning and development in high noise or accident potential zone	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ One	APZ Two
Other transportation, communications and utilities	YES	YES (5)	YES (6)	YES (7)	YES (8)	YES (15)	YES (16)
COMMERCIAL / RETAIL TRADE							
Wholesale trade	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES
Building materials-retail	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES
General merchandise-retail	YES	YES (1)	YES (2)	NO	NO	NO	NO
Food-retail	YES	YES (1)	YES (2)	NO	NO	NO	NO
Automotive and marine	YES	YES (5)	YES (6)	NO	NO	NO	NO/YES (17)
Apparel and accessories-retail	YES	YES (1)	YES (2)	NO	NO	NO	NO
Eating and drinking places	YES	YES (1)	YES (2)	NO	NO	NO	NO
Furniture and home furnishings-retail	YES	YES (1)	YES (2)	NO	NO	NO	NO/YES (17)
Other retail trade	YES	YES (1)	YES (2)	NO	NO	NO	NO
PERSONAL AND BUSINESS SERVICES							
Finance, insurance and real estate	YES	YES (1)	YES (2)	NO	NO	NO	YES

Zoning and development in high noise or accident potential zone	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ One	APZ Two
Personal services	YES	YES (1)	YES (2)	NO	NO	NO	YES
Business services	YES	YES (1)	YES (2)	NO	NO	NO	YES
Repair services	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES
Contract construction services	YES	YES (5)	YES (6)	NO	NO	NO	YES
Indoor recreation services	YES	YES (5)	YES (6)	NO	NO	NO	YES
Other services	YES	YES (5)	YES (6)	NO	NO	NO	YES
INDUSTRIAL / MANUFACTURING							
Food and kindred products	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Textile mill products	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Apparel	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Lumber and wood products	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Furniture and fixtures	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Paper and allied products	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Printing and publishing	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)

Zoning and development in high noise or accident potential zone	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ One	APZ Two
Chemicals and allied products	YES	YES (5)	YES (6)	YES (7)	NO	NO	NO
Petroleum refining and related industries	YES	YES (5)	YES (6)	YES (7)	NO	NO	NO
Rubber and miscellaneous plastic	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Stone, clay and glass products	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Primary metal industries	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Fabricated metal products	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
Professional, scientific and controlling instruments	YES	YES (1)	YES (2)	NO	NO	NO	NO
Miscellaneous manufacturing	YES	YES (5)	YES (6)	YES (7)	NO	NO	YES (16)
PUBLIC AND QUASI-PUBLIC SERVICES							
Government services	YES (1)	YES (2)	YES (2)	NO	NO	NO	YES (16)
Cultural activities, including churches	YES (1)	YES (2)	NO	NO	NO	NO	NO
Medical and other health services	YES (1)	YES (2)	NO	NO	NO	NO	NO
Cemeteries	YES (5)	YES (6)	YES (7)	NO	NO	NO	YES

Zoning and development in high noise or accident potential zone	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ One	APZ Two
Nonprofit organizations	YES (1)	YES (2)	NO	NO	NO	NO	YES
Correctional facilities	YES (1)	YES (2)	YES (3)	YES (4)	NO	NO	YES
Other public and quasi-public services	YES (1)	YES (2)	NO	NO	NO	NO	YES (16)
OUTDOOR RECREATION							
Playgrounds and neighborhood parks	YES	YES	NO	NO	NO	YES (15)	YES
Community and regional	YES	YES	NO	NO	NO	YES (15)	YES
Nature exhibits	YES	NO	NO	NO	NO	NO	NO
Spectator sports, including arenas	YES (14)	YES (14)	NO	NO	NO	NO	NO
Golf courses and riding stables	YES	YES (5)	YES (6)	NO	NO	YES (15)	YES
Water based recreational areas	YES	YES (5)	YES (6)	NO	NO	NO	NO
Resort and group camps	YES (1)	YES (2)	NO	NO	NO	NO	NO
Auditoriums and concert halls	YES (6)	YES (7)	NO	NO	NO	NO	NO
Outdoor amphitheaters and music shells	YES (14)	YES (14)	YES (14)	NO	NO	NO	NO
Other outdoor recreation	YES	YES (14)	YES (14)	NO	NO	NO	NO

Zoning and development in high noise or accident potential zone	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ One	APZ Two

RESOURCE PRODUCTION, EXTRACTION AND OPEN SPACE

Agriculture (except livestock)	YES (9)	YES (10)	YES (11)	YES (12)	YES (13)	YES (13)	YES (13)
Livestock farming and animal breeding	YES (9)	YES (10)	YES (11)	YES (12)	YES (13)	YES (13)	YES (13)
Forestry activities	YES (9)	YES (10)	YES (13)	YES (13)	YES (13)	NO	YES
Fishing activities and related services	YES	YES	NO	NO	NO	NO	NO
Mining activities	YES	YES	YES	YES	YES	NO	YES (16)
Permanent open space	YES	YES	YES	YES	YES	YES	YES
Water areas	YES	YES	NO	NO	NO	NO	NO

(1) Measures to achieve an outdoor to indoor noise reduction level of twenty-five decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(2) Measures to achieve an outdoor to indoor noise reduction level of thirty decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(3) Measures to achieve an outdoor to indoor noise reduction level of thirty-five decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of the approval, that use of noise reduction level criteria will not alleviate outdoor noise.

- (4) Measures to achieve an outdoor to indoor noise reduction level of forty decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of the approval, that use of noise reduction level criteria will not alleviate outdoor noise.
- (5) Measures to achieve an outdoor to indoor noise reduction level of twenty-five decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.
- (6) Measures to achieve an outdoor to indoor noise reduction level of thirty decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.
- (7) Measures to achieve an outdoor to indoor noise reduction level of thirty-five decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.
- (8) Measures to achieve an outdoor to indoor noise reduction level of forty decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.
- (9) Measures to achieve an outdoor to indoor noise reduction level of twenty-five decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.
- (10) Measures to achieve an outdoor to indoor noise reduction level of thirty decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.
- (11) Measures to achieve an outdoor to indoor noise reduction level of thirty-five decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.
- (12) Measures to achieve an outdoor to indoor noise reduction level of forty decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.
- (13) No new residential buildings or expansions of existing residential buildings are permitted.
- (14) Compatible if special sound reinforcement systems are installed.
- (15) No above ground buildings or structures.

(16) No new buildings or improvements or expansion of non-agriculture buildings or improvements for uses that result in the release of any substance into the air that would impair visibility or otherwise interfere with operating aircraft, such as any of the following:

- (a) Steam, dust and smoke.
- (b) Direct or indirect reflective light emissions.
- (c) Electrical emissions that would interfere with aircraft and air force communications or navigational aid systems or aircraft navigational equipment.
- (d) The attraction of birds or waterfowl such as operation of sanitary landfills or maintenance of feeding stations.
- (e) Explosives facilities or similar activities.

(17) If located in the extended portion of accident potential zone two in territory of a political subdivision described in section 28-8461, paragraph 8, subdivision (a).

(18) Uses not listed are presumed to not be compatible. This does not preclude a determination of compliance if the political subdivision and the military airport mutually agree that an individual use is compatible and consistent with the high noise or accident potential of the military airport.

L. The attorney general shall notify a political subdivision by certified mail, return receipt requested, if, from the content of the report filed by the political subdivision pursuant to subsection H of this section or other evidence, the attorney general has probable cause to believe that the political subdivision has not complied with the requirements set forth in subsection A, C, F or K of this section or section 28-8482. Nothing in this section shall authorize or permit a finding of probable cause of noncompliance with respect to territory that is the subject of a development plan as defined in subsection E of this section approved on or before December 31, 2000 except under section 28-8482 if applicable. A political subdivision that receives a notice from the attorney general pursuant to this subsection shall demonstrate compliance with subsection A, C, F, or K of this section or section 28-8482 within forty-five days after receipt of the notice. If a political subdivision fails to demonstrate compliance with subsection A, C, F, or K of this section or section 28-8482 within forty-five days after receipt of the notice, the attorney general shall bring an enforcement action under this section.

M. The attorney general shall provide to all political subdivisions with territory in the vicinity of a military airport a copy of the report prepared and submitted by the attorney general pursuant to subsection S of this section indicating those political subdivisions that are in compliance or noncompliance with subsection A, C, F, or K of this section and section 28-8482. If a political subdivision files in a timely manner a report or affidavit required under subsection H or J of this section and any zoning map amendment, zoning or subdivision ordinance or regulation text amendment, final plat approval, variance from zoning or subdivision ordinance or comprehensive, general or specific plan or school district development plan amendment that has occurred during the reporting period is consistent with subsection K of this section and the political subdivision provided the notice required pursuant to subsection F of this section or the attorney general fails to provide notice of probable cause of noncompliance pursuant to subsection Lot this section on or before November 15 of that year, the political subdivision is deemed to

have complied with the requirements of this section and section 28-8482 during the period covered by the report or affidavit.

N. If any owner of property that is the subject of a report filed pursuant to subsection H of this section or political subdivision that is required to file a report pursuant to subsection H of this section disagrees with a determination of the attorney general of probable cause of noncompliance pursuant to subsection L of this section, the owner of property or political subdivision may appeal the determination of the attorney general to the superior court in the county in which the affected property or territory is located within thirty days after providing the attorney general written notice of the appeal by certified mail.

O. The following apply to enforcement actions brought under this section:

1. The attorney general may institute a civil action in the name of this state in the superior court in the county of the alleged violation against a political subdivision is required to file a report pursuant to subsection H of this section to restrain, enjoin, correct or abate a violation of this section or section 28-8482, to collect a civil penalty ordered pursuant to this section and to collect attorney fees and costs ordered pursuant to this section if any of the following applies:

(a) The political subdivision fails to file a report or affidavit required by this section within thirty days after the political subdivision receives the written notice from the attorney general that a report has not been filed.

(b) From the content of the report filed by the political subdivision, or other evidence, the attorney general has determined that there is probable cause to believe that the political subdivision has not complied with the requirements set forth in subsection A, C, F, or K of this section or section 28-8482 and forty-five days have passed since the political subdivision received written notice from the attorney general pursuant to subsection I of this section.

(c) The attorney general has probable cause to believe that any change, variance or exemption made by a political subdivision that is required to file a report pursuant to subsection H of this section to its general plan or comprehensive plan or school district development plan applicable to property within the high noise or accident potential zone violates this section and forty-five days have passed since the political subdivision received written notice from the attorney general pursuant to subsection L of this section.

2. The court shall award reasonable attorney fees and other costs in favor of the prevailing party for any civil enforcement action brought under this section. If the attorney general prevails, monies awarded pursuant to this paragraph shall be retained by the attorney general and are continuously appropriated.

3. The court may assess civil penalties in favor of this state to be deposited in the state general fund as follows:

(a) For failure of a political subdivision to file a report or affidavit required by subsection H or J of this section within thirty days after receiving notice from the attorney general, the political subdivision is liable for a civil penalty of up to two hundred dollars for each day after the first thirty days and up to three hundred dollars for each subsequent day up to a maximum of ten thousand dollars.

(b) For failure of a political subdivision that is required to file a report pursuant to subsection H of this section to comply with the requirements of subsection A, C, F or K of this section or section 28-8482, the political subdivision is liable for a civil penalty of up to five hundred dollars for each day for the first ten days and up to five thousand dollars for each subsequent day up to a maximum of fifty thousand dollars. If the political subdivision demonstrates compliance with subsections A, C, F and K of this section and section 28-8482 within forty-five days after receipt of a notice of noncompliance from the attorney general pursuant to subsection I of this section, the accrued penalties shall be waived. If the political subdivision demonstrates a good faith effort to comply with subsections A, C, F and K of this section and section 28-8482, as applicable, within forty-five days after receipt of a notice of noncompliance from the attorney general pursuant to subsection L of this section, the attorney general may waive accrued penalties.

P. A political subdivision that has territory in the vicinity of a military airport that includes property in a high noise or accident potential zone shall submit any proposed comprehensive, general or school district development plan or amendments that are applicable to property within the high noise or accident potential zone to the attorney general at least fifteen days before the first public hearing required pursuant to section 9-46t06 or 11-806.

Q. On written request of the attorney general, a political subdivision shall provide records kept pursuant to this section or section 28-8482 within thirty days after the request.

R. The attorney general may investigate any complaint received that a political subdivision that has territory in the vicinity of a military airport is not in compliance with subsection A, C, F or K of this section or section 28-8482.

S. On or before November 15 of each year, the attorney general shall submit to the Arizona military airport preservation committee established by section 41-3301 a report indicating those political subdivisions that are in compliance with subsections A, C, F and K of this section and section 28-8482, those political subdivisions that are not in compliance with subsections A, C, F and K of this section and section 28-8482 and the actions that the attorney general is taking, or intending to take, to bring those political subdivisions not in compliance with subsections A, C, F and K of this section or section 28-8482 into compliance.

28-8482. Incorporation of sound attenuation standards in building codes

A. A political subdivision that has territory in the vicinity of a military airport shall incorporate the Sound attenuation standards and specifications prescribed in this section into any building code in existence on or adopted after December 31, 2001. These standards and specifications apply to new development and alterations for first occupancy that are the subject of building permit its issued after December 31, 2001 and that are located on property within the territory in the vicinity of a military airport and do not apply to new development and alterations that are located on property within corporate limits of a municipality but outside territory in the vicinity of a military airport.

B. Not later than December 31, 2001, a political subdivision that has territory in the vicinity of a military airport shall adopt an ordinance that requires a noise level reduction to be incorporated in the design and construction of any residential building or portions of buildings where the public is received, office areas and where normal noise level is low for first occupancy, including libraries, schools and churches, pursuant to building permits issued after December 31, 2001 in order to achieve a maximum interior noise level of forty-five decibels in areas within the noise contours described in section 28-8461, paragraph 8, subdivision (a), (b) or (c) as applicable. In order to comply with this section, an ordinance shall require that all residential buildings in territory in the vicinity of a military airport but outside the noise contours as described in this section shall be constructed with a minimum of R18 exterior wall assembly a minimum of R30 roof and ceiling assembly, dual-glazed windows and solid wood, foam-filled fiberglass or metal doors to the exterior or if the specified building standards are not met, the political subdivision may approve as an alternative, a certification by an architect or engineer registered pursuant to title 32, chapter 1 to achieve a maximum interior noise level of forty-five decibels at the time of final construction. A sound attenuation ordinance adopted by a political subdivision pursuant to this subsection shall not require a maximum interior noise level that is less than the maximum interior noise level required by this subsection.

C. The sound attenuation requirements of this section do not apply to ancillary buildings used in agricultural land use.

D. If the gross floor area of a structure or project is expanded by less than fifty per cent, the requirements of this section apply only to the area of expansion. If the gross floor area of a structure or project is expanded by fifty per cent or more, the requirements of this section apply to the entire structure, except for single family, mobile home, manufactured housing unit or duplex dwellings or any multifamily property used for residential purposes.

E. For the purposes of this section, political subdivision does not include a school district.

28-8483. Registry of military airport flight operations: public inspection

The state real estate department and political subdivisions that have territory in the vicinity of a military airport shall request from each military airport in this state a registry of information including maps of military flight operations and a list of contact persons at each military airport who are knowledgeable about the impacts of military flight operations at the military airport. Each registry shall contain the information provided by the military airport, including any map prepared pursuant to section 28-8484, subsection B. The state real estate department and political subdivisions shall maintain the registry of information provided by the military airport and make the registry available to the public on request.

28-8484. Military airport disclosure: residential property

A. Any public report issued after December 31, 2001 pursuant to 32-2183 or 32-2195.03 applicable to property that is located within territory in the vicinity of a military airport shall include the following statements:

1. That the property is located within territory in the vicinity of a military airport.
2. If the state real estate department has been provided the registry of information described in section 28-8483, that the state real estate department maintains a registry of information, including the maps of military flight operations provided by the military airport, pursuant to section 28-8483 and, if provided to the department, the map prepared by the military airport pursuant to subsection B of this section.
3. If the state real estate department has been provided the registry of information described in section 28-8483, that the information is available to the public on request.

B. Each military airport may provide the state real estate department and each political subdivision with territory in the vicinity of the military airport with a map that is in electronic form and that is eight and one-half inches by eleven inches in size showing the exterior boundaries of each territory in the vicinity of a military airport and the exterior boundaries of each high noise or accident potential zone. The state real estate department shall work closely with each military airport and political subdivisions with territory in the vicinity of a military airport as necessary to create a map that is visually useful in determining whether property is located in or outside of a territory in the vicinity of a military airport or in or outside of a high noise or accident potential zone. If there are changes to the map, the military airport shall notify the state real estate department and political subdivisions of the changes and shall provide a new map in electronic form. If a new map is provided, the department and the political subdivisions shall include the map in the registry of information maintained pursuant to section 28-8483. The map shall be included in public reports issued pursuant to section 32-2183 or 32-2195.03, and the map shall be available to the public on request.

C. For any lot reservation or conditional sale that occurs before the issuance of a public report, the disclosure statements listed in subsection a of this section shall be included within the reservation document or conditional sales contract.

D. This section does not require the amendment or reissuance of any public report issued on or before December 31, 2001 or the amendment or reissuance of any reservation document or conditional sales contract accepted on or before December 31, 2001.

28-8485. Airport influence areas; notice

A. After notice and hearing, this state or the governing body of a political subdivision that has established or operates an airport may designate as an airport influence area all property that is in the vicinity of the airport, that is currently exposed to aircraft noise and overflight and either has a day-night average sound level of sixty-five decibels or higher or is within such geographical distance from an existing runway that exposes the area to aircraft noise and overflights as determined by the airport owner or operator.

B. If this state or the governing body of a political subdivision establishes an airport influence area, this state or the governing body shall prepare and file a record of the airport influence area in the office of the county recorder in each county that contains property

in the airport influence area. The record shall be sufficient to notify owners or potential purchasers of property in the airport influence area that property in the area is currently subject to aircraft noise and aircraft overflights.

28-8486. Public airport disclosure: definitions

A. The state real estate department shall have and make available to the public on request a map showing the exterior boundaries of each territory in the vicinity of a public airport. The map shall clearly set forth the boundaries on a street map. The state real estate department shall work closely with each public airport and affected local government as necessary to create a map that is visually useful in determining whether property is located in or outside of a territory in the vicinity of a public airport.

B. For the purposes of this section:

1. “Public airport” means an airport that is owned by a political subdivision of this state or that is otherwise open to the public.

2. “Territory in the vicinity of a public airport” means property that is within the traffic pattern airspace as defined by the federal aviation administration and includes property that experiences a day-night average sound level of sixty decibels or higher at airports where such an average sound level has been identified.

28-8521. Joint powers airport authority: agreement; board of directors

A. In connection with the closing of a military facility two or more cities, towns, Indian tribes or counties may enter into an agreement to establish a joint powers airport authority. A board of directors shall operate and govern the airport authority. The board of directors is composed of persons appointed by the governing body of the cities, towns, Indian tribes or counties that are members of the airport authority.

B. The agreement pursuant to this section shall specify the following:

1. The property to be owned and operated by the airport authority.

2. The appointment of members to the board of directors by each member of the airport authority.

3. The voting method of the board of directors, including whether the board members will have weighted or equal voting.

4. The method for adoption of the airport authority’s annual operating budget by the members of the airport authority and the proportion of the airport authority’s annual operating budget to be provided by each member, including any adjustment to the proportion if a member withdraws from the airport authority or another city, town, Indian tribe or county subsequently joins the airport authority.

5. Termination of the airport authority and the disposal of property and indebtedness on the termination of the airport authority.

6. Procedures for withdrawals from and admissions to membership in the airport authority.

7. Amendments or modifications to the agreement.

8. The airport authority's fiscal year.

9. Other terms as the members of the airport authority deem necessary, appropriate or convenient.

C. The chairperson of the board of directors of the airport authority shall annually present a report of the activities of the airport authority to the house of representatives ways and means committee and the senate finance committee or their successor committees.

28-8522. Joint powers airport authority classification

On its formation, the joint powers airport authority is all of the following:

1. A special purpose district for purposes of article IX, section 19, Constitution of Arizona.
2. A tax levying public improvement district for the purposes of article XIII, section 7, Constitution of Arizona.
3. A municipal corporation for all purposes, including the purposes of title 35, chapter 3, articles 3.2,3.3,4,5 and 7.

28-8523. Annual operating budget

A. Before June 1 or at an earlier time as may be specified in the agreement described in section 28-8521, the joint powers airport authority's board of directors shall recommend to the members of the airport authority an annual operating budget for the airport authority for the next fiscal year. Before the determination by the airport authority board of directors as to the amount of the budget allocation for each member that may require a levy of taxes, the airport authority board of directors shall take into account all revenues and fees of the airport and other monies legally available to fund the operations of the airport and airport authority.

B. The governing bodies of the airport authority's members, including any new members who are admitted pursuant to section 28-8526, shall approve and adopt, in the manner specified in the agreement described in section 28-8521, an operating budget for the airport authority before August 1 or at an earlier time as may be specified in the agreement described in section 28-8521.

28-8524. Allocation of monies: sources: public hearing: reuse, development and capital improvement plans

A. Each member of the airport authority and any new member shall make a pro rata allocation of monies, as specified in the agreement described in section 28-8521, to the airport authority's operating budget from one or any combination of the following sources:

1. If the member is a city or town:
 - (a) An ad valorem tax levied by the governing body of the member within its jurisdiction.
 - (b) A transaction privilege tax levied by the governing body of the member within its jurisdiction.
2. If the member is a city town or county:
 - (a) General monies of the member.
 - (b) Other monies legally available to the member.

B. The tax prescribed by subsection A of this section shall be designated as an airport authority tax. Any property tax levied pursuant to subsection A of this section shall be a secondary tax.

C. The governing body of each airport authority member shall hold a public hearing on both:

1. The question of whether to approve and adopt the annual operating budget of the airport authority.
2. The method of funding the member's annual budget allocation.

D. Notice of a public hearing held pursuant to this section shall be given in a newspaper of general circulation within the member's jurisdiction at least once a week for two weeks before the hearing.

E. On receipt of the recommendation of the airport authority board as to the budget allocation, each member shall consider the amount of monies legally available to fund its budget allocation before its determination of the amount of taxes it shall levy to meet its budget allocation.

F. The airport authority shall adopt and periodically amend a reuse and development plan and a capital improvements plan. Expenditures for or by the airport authority shall be both:

1. Consistent with the plans prescribed in this subsection.
2. Limited to those items that directly relate to or benefit the operation and development of the airport and the airport authority.

G. Any member of the airport authority that fails or refuses to approve and adopt the operating budget for the airport authority shall withdraw from membership in the airport authority as provided in section 28-8525. The remaining members and any new members of the airport authority are responsible for the total operating budget as adopted and shall make their allocation as prescribed in subsection A of this section.

28-8525. Joint powers airport authority: admission

A. On written request to the current members of the joint powers airport authority and on the approval, in the manner specified in the agreement described in section 28-8521, of the current members of the joint powers airport authority before the adoption of the airport authority's operating budget for the next fiscal year but not before the operating budget is recommended by the board of directors, a city town, Indian tribe or county -may be admitted to the airport authority

B. Membership is effective on the receipt of the required approval.

28-8527. Joint powers airport authority: powers: duty

A. Acting through its board of directors, the joint powers airport authority may~

1. Own, operate and maintain property and facilities related to aviation, air navigation and aerospace.
2. Own and lease property and facilities that are not related to aviation, air navigation and aerospace.
3. Prescribe user fees and charges.
4. Operate facilities and construct improvements.
5. If authorized by the members of the airport authority, exercise the right of eminent domain in the names of the members.
6. Engage employees and consultants
7. Enter into Contracts, leases and development agreements.
8. Enter into agreements with this state, any political subdivision of this state or the federal government.
9. Prepare and recommend annual operating budgets.
10. Borrow money and issue revenue and refunding bonds.

11. Sue and be sued.

12. Exercise incidental powers if necessary to the exercise of the powers prescribed in this article and articles 6 and 7 of this chapter.

B. A joint powers airport authority shall submit a written report annually to the joint legislative military airport reuse committee established by section 28-8528. The airport authority shall submit the first report one year after the date the airport authority is established. The report shall describe the activities of the airport authority.

28-8528. Joint legislative military airport reuse committee

A. If a joint powers airport authority is established under this article, the president of the senate and the speaker of the house of representatives shall establish a joint legislative military airport reuse committee consisting of the following members:

1. Four members of the senate who are appointed by the president of the senate, two of whom are members of the minority party.

2. Four members of the house of representatives who are appointed by the speaker of the house of representatives, two of whom are members of the minority party

B. The joint legislative military airport reuse committee shall:

1. Select a chairperson from among its members.

2. Meet at least once each year and at additional times on the call of the chairperson or a majority of its members.

3. Review the report submitted pursuant to section 28-8527.

4. Make recommendations to the president of the senate, the speaker of the house of representatives, the governor, local authorities and the board of directors of the joint powers airport authority to assist in the reuse of closed military facilities in this state.

5. Review the annual report for each military reuse zone submitted by the department of commerce pursuant to section 41-1533 and consider the conditions, progress and outlook of each military reuse zone in this state.

32-2113. Recorded disclosure for territory in the vicinity of a military airport

A. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes territory in the vicinity of a military airport as defined in section 28-8461 a document, applicable to property located within territory in the vicinity of a military airport, with the following disclosure: “This property is located within territory in the vicinity of a military airport and may be subject to increased noise and accident potential.”

B. The attorney general shall prepare in recordable form the document that is executed and recorded by the commissioner pursuant to this section.

C. The document that is executed and recorded by the commissioner shall include a legal description of the territory in the vicinity of a military airport as defined in section 28-8461. The military airport shall cause the legal description to be prepared and shall provide the legal description to the commissioner in recordable form in twelve point font on eight and one-half inch by eleven inch paper.

Appendix 3.2

-- State Code Sections Affected by SB 1468

GOVERNMENT CODE

65040.2. (a) In connection with its responsibilities under subdivision (1) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

- (1) Military installations.
- (2) Military operating areas.
- (3) Military training areas.
- (4) Military training routes.
- (5) Military airspace.
- (6) Other territory adjacent to those installations and areas.

(g) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

65040.9. (a) On or before January 1, 2004, the Office of Planning and Research shall, if sufficient federal funds become available for this purpose, prepare and publish an advisory planning handbook for use by local officials, planners, and builders that explains how to reduce land use conflicts between the effects of civilian development and military readiness activities carried out on military installations, military operating areas, military training areas, military training routes, and military airspace, and other territory adjacent to those installations and areas.

(b) At a minimum, the advisory planning handbook shall include advice regarding all of the following:

- (1) The collection and preparation of data and analysis.
 - (2) The preparation and adoption of goals, policies, and standards.
 - (3) The adoption and monitoring of feasible implementation measures.
 - (4) Methods to resolve conflicts between civilian and military land uses and activities.
 - (5) Recommendations for cities and counties to provide drafts of general plan and zoning changes that may directly impact military facilities, and opportunities to consult with the military base personnel prior to approving development adjacent to military facilities.
- (c) In preparing the advisory planning handbook, the office shall collaborate with the Office of Military Base Retention and Reuse within the Trade, Technology, and Commerce Agency. The office shall consult with persons and organizations with knowledge and experience in land use issues affecting military installations and activities.
- (d) The office may accept and expend any grants and gifts from any source, public or private, for the purposes of this section.

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information that the military provides.

(B) The following definitions govern this paragraph:

(i) "Military readiness activities" mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of **any military installation**.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, **any military airports and ports**, and other local public utilities and facilities, all conelated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, **including military installations**. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

- (1) The reclamation of land and waters.
- (2) Prevention and control of the pollution of streams and other waters.
- (3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.
- (4) Prevention, control, and correction of the erosion of soils, beaches, and shores.
- (5) Protection of watersheds.
- (6) The location, quantity and quality of the rock, sand and gravel resources.
- (7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

- (1) Highways and freeways.
- (2) Primary arterials and major local streets.
- (3) Passenger and freight on-line railroad operations and ground rapid transit systems.
- (4) Commercial, general aviation, heliport, helistop, and **military airport operations**, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.
- (5) Local industrial plants, including, but not limited to, railroad classification yards.
- (6) Other ground stationary noise sources, including, but not limited to, **military**

installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (Ldn). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peak-load water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards. Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

65302.2 Upon the adoption, or revision, of a city or county’s general plan, on or after January 11, 1996, the city or county shall utilize as a source document any urban water management plan submitted to the city or county by a water authority.

65302.3. (a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.

(b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.

(c) If the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

(d) In each county where an airport land use commission does not exist, but where there is a military airport, the general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport.

65302.5. With respect to the safety element required in the general plan, pursuant to subdivision (g) of Section 65302, each county which contains state responsibility areas, as determined pursuant to Section 4125 of the Public Resources **Code**, shall comply with Section 4128.5 of the Public Resources **Code**.

65302.8. If a county or city, including a charter city, adopts or amends a mandatory general plan element which operates to limit the number of housing units which may be constructed on an annual basis, such adoption or amendment shall contain findings which justify reducing the housing opportunities of the region. The findings shall include all of the following:

(a) A description of the city’s or county’s appropriate share of the regional need for housing.

(b) A description of the specific housing programs and activities being undertaken by the local jurisdiction to fulfill the requirements of subdivision (c) of Section 65302.

(c) A description of how the public health, safety, and welfare would be promoted by such adoption or amendment.

(d) The fiscal and environmental resources available to the local jurisdiction.

65560. (a) “Local open-space plan” is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) “Open-space land” is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; areas **adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones**

to military activities and complement the resource values of the military lands; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

PUBLIC UTILITIES CODE

21675. (a) Each commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the planning area. The comprehensive land use plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission shall include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any **military airport** for all of the purposes specified in subdivision (a). The plan shall be consistent with the safety and noise standards in the Air Installation Compatible Use **Zone prepared for that military airport**. This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any **military airport**.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

(d) The commission shall submit to the Division of Aeronautics of the department one copy of the plan and each amendment to the plan.

(e) If a comprehensive land use plan does not include the matters required to be included pursuant to this article, the Division of Aeronautics of the department shall notify the commission responsible for the plan.

Appendix 3.3

-- Florida SB 1604 (2004), An Act Relating to Military Readiness

ENROLLED

2004 Legislature

CS for CS for SB 1604, 1st Engrossed

1
2 An act relating to military affairs: creating
3 s. 163.3175, F.S.; providing legislative
4 findings on the compatibility of development
5 with military installations; providing for the
6 exchange of information relating to proposed
7 land use decisions between counties and local
8 governments and military installations;
9 providing for responsive comments by the
10 commanding officer or his or her designee;
11 providing for the county or affected local
12 government to take such comments into
13 consideration; providing for a representative
14 of the military installation to be an
15 ex-officio, nonvoting member of the county's or
16 local government's land planning or zoning
17 board; encouraging the commanding officer to
18 provide information on community planning
19 assistance grants; providing definitions;
20 amending s. 163.3177, F.S.; providing for the
21 future land use plan element of comprehensive
22 plans to include compatibility with military
23 installations; requiring the inclusion of
24 criteria; requiring local governments to update
25 or amend their comprehensive plan by a certain
26 date; providing for the coordination by the
27 state land planning agency and the Department
28 of Defense on compatibility issues for military
29 installations; amending s. 163.3187, F.S.;
30 providing that amendments to address
31 compatibility or include criteria do not count

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2004 Legislature CS for CS for SB 1604, 1st Engrossed

1 toward the limitation on frequency of amending
2 comprehensive plans; amending s. 162.2191,
3 F.S.; providing that evaluations of
4 comprehensive plans include whether such
5 criteria were successful in resolving land use
6 compatibility uses with military installations;
7 amending s. 288.980, F.S.; creating the Defense
8 Infrastructure Grant Program; providing the
9 purpose and for implementation of the program;
10 amending s. 295.01, F.S.; revising certain
11 requirements relating to scholarships for
12 children of deceased veterans; amending s.
13 443.101, F.S.; providing eligibility for
14 unemployment compensation benefits for the
15 spouses of a member of the military under
16 certain circumstances beginning on a date
17 certain; amending s. 445.007, F.S.; providing
18 for the appointment of a military
19 representative to certain regional workforce
20 boards; amending s. 464.009, F.S.; removing a
21 scheduled repeal of provisions, providing for
22 licensure by endorsement of certain nurses
23 licensed in another state that is a member of
24 the Nurse Licensure Compact; amending s.
25 464.022, F.S.; providing that certain nurses
26 relocating to this state may perform nursing
27 services for a period of 120 days after
28 submitting application for licensure; amending
29 s. 1002.39, F.S.; revising eligibility
30 requirements for military dependents applying
31 for a John M. McKay Scholarship; requiring the

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2004 Legislature

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1 State Board of Education to adopt rules;
 2 amending s. 1003.05, F.S.; directing the
 3 Department of Education to assist in the
 4 development of memoranda of agreement between
 5 school districts and military installations;
 6 providing that qualifying military dependents
 7 receive priority admission to certain special
 8 academic programs; creating s. 1008.221, F.S.;
 9 providing for alternate assessments for the
 10 grade 10 FCAT for certain military dependents;
 11 amending s. 1009.21, F.S.; classifying
 12 dependents of active duty members of the armed
 13 forces and certain liaison officers and their
 14 spouses and dependent children as residents for
 15 tuition purposes; directing Workforce Florida,
 16 Inc., to establish an employment advocacy and
 17 assistance program targeting military spouses
 18 and dependents; directing the Florida Housing
 19 Finance Corporation to assess the housing needs
 20 of Florida's military families; requiring a
 21 report; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 163.3175, Florida Statutes, is
 26 created to read:

27 163.3175 Legislative findings on compatibility of
 28 development with military installations; exchange of
 29 information between local governments and military
 30 installations.--
 31

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2004 Legislature CS for CS for SB 1604, 1st Engrossed

1 (1) The Legislature finds that incompatible
 2 development of land close to military installations can
 3 adversely affect the ability of such an installation to carry
 4 out its mission. The Legislature further finds that such
 5 development also threatens the public safety because of the
 6 possibility of accidents occurring within the areas
 7 surrounding a military installation. In addition, the economic
 8 vitality of a community is affected when military operations
 9 and missions must relocate because of incompatible urban
 10 encroachment. Therefore, the Legislature finds it desirable
 11 for the local governments in the state to cooperate with
 12 military installations to encourage compatible land use, help
 13 prevent incompatible encroachment, and facilitate the
 14 continued presence of major military installations in this
 15 state.

16 (2) Each county in which a military installation is
 17 either wholly or partially located and each affected local
 18 government must transmit to the commanding officer of that
 19 installation information relating to proposed changes to
 20 comprehensive plans, plan amendments, and proposed changes to
 21 land development regulations which, if approved, would affect
 22 the intensity, density, or use of the land adjacent to or in
 23 close proximity to the military installation. Each county and
 24 affected local government shall provide the military
 25 installation an opportunity to review and comment on the
 26 proposed changes.

27 (3) The commanding officer or his or her designee may
 28 provide comments to the county or affected local government on
 29 the impact such proposed changes may have on the mission of
 30 the military installation. Such comments may include:
 31

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2004 Legislature

CS for CS for SB 1604, 1st Engrossed

1 (a) If the installation has an airfield, whether such
 2 proposed changes will be incompatible with the safety and
 3 noise standards contained in the Air Installation Compatible
 4 Use Zone (AICUZ) adopted by the military installation for that
 5 airfield;

6 (b) Whether such changes are incompatible with the
 7 Installation Environmental Noise Management Program (IENMP) of
 8 the United States Army;

9 (c) Whether such changes are incompatible with the
 10 findings of a Joint Land Use Study (JLUS) for the area if one
 11 has been completed; and

12 (d) Whether the military installation's mission will
 13 be adversely affected by the proposed actions of the county or
 14 affected local government.

15 (4) The county or affected local government shall take
 16 into consideration any comments provided by the commanding
 17 officer or his or her designee when making such decision
 18 regarding comprehensive planning or land development
 19 regulation. The county or affected local government shall
 20 forward a copy of any such comments to the state land planning
 21 agency.

22 (5) To facilitate the exchange of information provided
 23 for in this section, a representative of a military
 24 installation acting on behalf of all military installations
 25 within that jurisdiction shall be included as an exofficio,
 26 nonvoting member of the county's or affected local
 27 government's land planning or zoning board.

28 (6) The commanding officer is encouraged to provide
 29 information about any community planning assistance grants
 30 that may be available to a county or affected local government
 31 through the federal Office of Economic Adjustment as an

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2004 Legislature

CS for CS for SB 1604, 1st Engrossed

1 incentive for communities to participate in a joint planning
2 process that would facilitate the compatibility of community
3 planning and the activities and mission of the military
4 installation.

5 (7) As used in this section, the term:

6 (a) "Affected local government" means a municipality
7 adjacent to or in close proximity to the military installation
8 as determined by the state land planning agency.

9 (b) "Military installation" means a base, camp, post,
10 station, airfield, yard, center, home port facility for any
11 ship, or other land area under the jurisdiction of the
12 Department of Defense, including any leased facility. Such
13 term does not include any facility used primarily for civil
14 works, rivers and bays, or other public projects.

15 Section 2. Paragraph (a) of subsection (6) and
16 paragraph (1) of subsection (10) of section 163.3177, Florida
17 Statutes, are amended to read:

18 163.3177 Required and optional elements of
19 comprehensive plan; studies and surveys.--

20 (6) In addition to the requirements of subsections
21 (1)-(5), the comprehensive plan shall include the following
22 elements:

23 (a) A future land use plan element designating
24 proposed future general distribution, location, and extent of
25 the uses of land for residential uses, commercial uses,
26 industry, agriculture, recreation, conservation, education,
27 public buildings and grounds, other public facilities, and
28 other categories of the public and private uses of land. Each
29 future land use category must be defined in terms of uses
30 included, and must include standards to be followed in the
31 control and distribution of population densities and building

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ENROLLED

2004 Legislature

CS for CS for SB 1604, 1st Engrossed

1 and structure intensities. The proposed distribution,
 2 location, and extent of the various categories of land use
 3 shall be shown on a land use map or map series which shall be
 4 supplemented by goals, policies, and measurable objectives.
 5 The future land use plan shall be based upon surveys, studies,
 6 and data regarding the area, including the amount of land
 7 required to accommodate anticipated growth, the projected
 8 population of the area; the character of undeveloped land; the
 9 availability of public services; the need for redevelopment,
 10 including the renewal of blighted areas and the elimination of
 11 nonconforming uses which are inconsistent with the character
 12 of the community; the compatibility of uses on lands adjacent
 13 to or closely proximate to military installations; and, in
 14 rural communities, the need for job creation, capital
 15 investment, and economic development that will strengthen and
 16 diversify the community's economy. The future land use plan
 17 may designate areas for future planned development use
 18 involving combinations of types of uses for which special
 19 regulations may be necessary to ensure development in accord
 20 with the principles and standards of the comprehensive plan
 21 and this act. The future land use plan element shall include
 22 criteria to be used to achieve the compatibility of adjacent
 23 or closely proximate lands with military installations. In
 24 addition, for rural communities, the amount of land designated
 25 for future planned industrial use shall be based upon surveys
 26 and studies that reflect the need for job creation, capital
 27 investment, and the necessity to strengthen and diversify the
 28 local economies, and shall not be limited solely by the
 29 projected population of the rural community. The future land
 30 use plan of a county may also designate areas for possible
 31 future municipal incorporation. The land use maps or map

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1 series shall generally identify and depict historic district
 2 boundaries and shall designate historically significant
 3 properties meriting protection. The future land use element
 4 must clearly identify the land use categories in which public
 5 schools are an allowable use. When delineating the land use
 6 categories in which public schools are an allowable use, a
 7 local government shall include in the categories sufficient
 8 land proximate to residential development to meet the
 9 projected needs for schools in coordination with public school
 10 boards and may establish differing criteria for schools of
 11 different type or size. Each local government shall include
 12 lands contiguous to existing school sites, to the maximum
 13 extent possible, within the land use categories in which
 14 public schools are an allowable use. All comprehensive plans
 15 must comply with the school siting requirements of this
 16 paragraph no later than October 1, 1999. The failure by a
 17 local government to comply with these school siting
 18 requirements by October 1, 1999, will result in the
 19 prohibition of the local government's ability to amend the
 20 local comprehensive plan, except for plan amendments described
 21 in s. 163.3187(1)(b), until the school siting requirements are
 22 met. Amendments proposed by a local government for purposes of
 23 identifying the land use categories in which public schools
 24 are an allowable use or for adopting or amending the
 25 school-siting maps pursuant to s. 163.31776(3) are exempt from
 26 the limitation on the frequency of plan amendments contained
 27 in s. 163.3187. The future land use element shall include
 28 criteria that encourage the location of schools proximate to
 29 urban residential areas to the extent possible and shall
 30 require that the local government seek to collocate public
 31 facilities, such as parks, libraries, and community centers,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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CS for CS for SB 1604, 1st Engrossed

1 Section 3. Paragraph (m) is added to subsection (1) of
2 section 163.3187, Florida Statutes, to read:

3 163.3187 Amendment of adopted comprehensive plan.--

4 (1) Amendments to comprehensive plans adopted pursuant
5 to this part may be made not more than two times during any
6 calendar year, except:

7 (m) A comprehensive plan amendment that addresses
8 criteria or compatibility of land uses adjacent to or in close
9 proximity to military installations in a local government's
10 future land use element does not count toward the limitation
11 on the frequency of the plan amendments.

12 Section 4. Paragraph (n) is added to subsection (2) of
13 section 163.3191, Florida Statutes, to read:

14 163.3191 Evaluation and appraisal of comprehensive
15 plan.--

16 (2) The report shall present an evaluation and
17 assessment of the comprehensive plan and shall contain
18 appropriate statements to update the comprehensive plan,
19 including, but not limited to, words, maps, illustrations, or
20 other media, related to:

21 (n) An assessment of whether the criteria adopted
22 pursuant to s. 163.3177(6)(a) was successful in achieving
23 compatibility with military installations.

* * * *

Sitations - Statute

0163.3175
0163.3177
0163.3187
0163.3191
0288.980
0295.01
0443.101
0445.007
0464.009
0464.022
1002.39
1003.05
1008.221
1009.21

*Appendix 3.4 – South Carolina Bill 4282 (2004)
-- Federal Defense Facilities Utilization Integrity Protection Act*

(R419, H4482)

AN ACT TO AMEND CHAPTER 29, TITLE 6, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LOCAL GOVERNMENT PLANNING, BY ADDING ARTICLE 11 SO AS TO ENACT THE “FEDERAL DEFENSE FACILITIES UTILIZATION INTEGRITY PROTECTION ACT” WHICH PROVIDES PROCESSES AND PROCEDURES WHEREBY LOCAL PLANNING ENTITIES AND OFFICIALS MUST CONSIDER CERTAIN MATTERS AND TAKE CERTAIN ACTIONS IN REGARD TO DEVELOPMENT IN CERTAIN AREAS BORDERING FEDERAL MILITARY INSTALLATIONS LOCATED IN SOUTH CAROLINA OR THE OVERLAY ZONES OR AIR COMPATIBLE USE ZONES AT THESE INSTALLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Federal Defense Facilities Utilization Integrity Protection Act

SECTION 1. Chapter 29, Title 6 of the 1976 Code, as last amended by Act 39 of 2003, is amended by adding:

Article 11

Federal Defense Facilities Utilization Integrity Protection

Section [6-29-1510](#). This article may be cited as the ‘Federal Defense Facilities Utilization Integrity Protection Act’.

Section [6-29-1520](#). The General Assembly finds:

- (1) As South Carolina continues to grow, there is significant potential for uncoordinated development in areas contiguous to federal military installations that can undermine the integrity and utility of land and airspace currently used for mission readiness and training.
- (2) Despite consistent cooperation on the part of local government planners and developers, this potential remains for unplanned development in areas that could undermine federal military utility of lands and airspace in South Carolina.
- (3) It is, therefore, desirous and in the best interests of the people of South Carolina to enact processes that will ensure that development in areas near federal military installations is conducted in a coordinated manner that takes into account and provides a voice for federal military interests in planning and zoning decisions by local governments.

Section [6-29-1525](#). (A) For purposes of this article, ‘federal military installations’ includes Fort Jackson, Shaw Air Force Base, McEntire Air Force Base, Charleston Air Force Base, Beaufort Marine Corps Air Station, Beaufort Naval Hospital, Parris Island Marine Recruit Depot, and Charleston Naval Weapons Station.

(B) For purposes of this article, a ‘federal military installation overlay zone’ is an ‘overlay zone’ as defined in Section 6-29-720(C)(5) in a geographic area including a federal military installation as defined in this section.

Section 6-29-1530. (A) In any local government which has established a planning department or other entity, such as a board of zoning appeals, charged with the duty of establishing, reviewing, or enforcing comprehensive land use plans or zoning ordinances, that planning department or other entity, with respect to each proposed land use or zoning decision involving land that is located within a federal military installation overlay zone or, if there is no such overlay zone, within three thousand feet of any federal military installation, or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield, shall:

(1) at least thirty days prior to any hearing conducted pursuant to Section 6-29-530 or 6-29-800, request from the commander of the federal military installation a written recommendation with supporting facts with regard to the matters specified in subsection (C) relating to the use of the property which is the subject of review; and

(2) upon receipt of the written recommendation specified in subsection (A)(1) make the written recommendations a part of the public record, and in addition to any other duties with which the planning department or other entity is charged by the local government, investigate and make recommendations of findings with respect to each of the matters enumerated in subsection (C).

(B) If the base commander does not submit a recommendation pursuant to subsection (A)(1) by the date of the public hearing, there is a presumption that the land use plan or zoning proposal does not have any adverse effect relative to the matters specified in subsection (C).

(C) The matters the planning department or other entity shall address in its investigation, recommendations, and findings must be:

(1) whether the land use plan or zoning proposal will permit a use that is suitable in view of the fact that the property under review is within the federal military installation overlay zone, or, if there is no such overlay zone located within three thousand feet of a federal military installation or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield;

(2) whether the land use plan or zoning proposal will adversely affect the existing use or usability of nearby property within the federal military installation overlay zone, or, if there is no such overlay zone, within three thousand feet of a federal military installation, or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield;

(3) whether the property to be affected by the land use plan or zoning proposal has a reasonable economic use as currently zoned;

- (4) whether the land use plan or zoning proposal results in a use which causes or may cause a safety concern with respect to excessive or burdensome use of existing streets, transportation facilities, utilities, or schools where adjacent or nearby property is used as a federal military installation;
- (5) if the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan given the proximity of a federal military installation; and
- (6) whether there are other existing or changing conditions affecting the use of the nearby property such as a federal military installation which give supporting grounds for either approval or disapproval of the proposed land use plan or zoning proposal.
- (D) Where practicable, local governments shall incorporate identified boundaries, easements, and restrictions for federal military installations into official maps as part of their responsibilities delineated in Section 6-29-340.

Section 6-29-1540. Nothing in this article is to be construed to apply to former military installations, or approaches or access related thereto, that are in the process of closing or redeveloping pursuant to base realignment and closure proceedings, including the former naval base facility on the Cooper River in and near the City of North Charleston, nor to the planned uses of, or construction of facilities on or near, that property by the South Carolina State Ports Authority, nor to the construction and uses of transportation routes and facilities necessary or useful thereto.”

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 3rd day of June, 2004.

Approved the 28th day of October, 2004. -- S.

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(Footnotes)

¹ *Readers should be aware that hyperlinks and Web addresses given were accurate as of April 5, 2005, but may no longer be active. Laws, ordinances, legislation, etc. that are presented herein are current as of April 2005. The reader is encouraged to seek-out the most current legislation as from time to time it may be amended or re-codified.*

