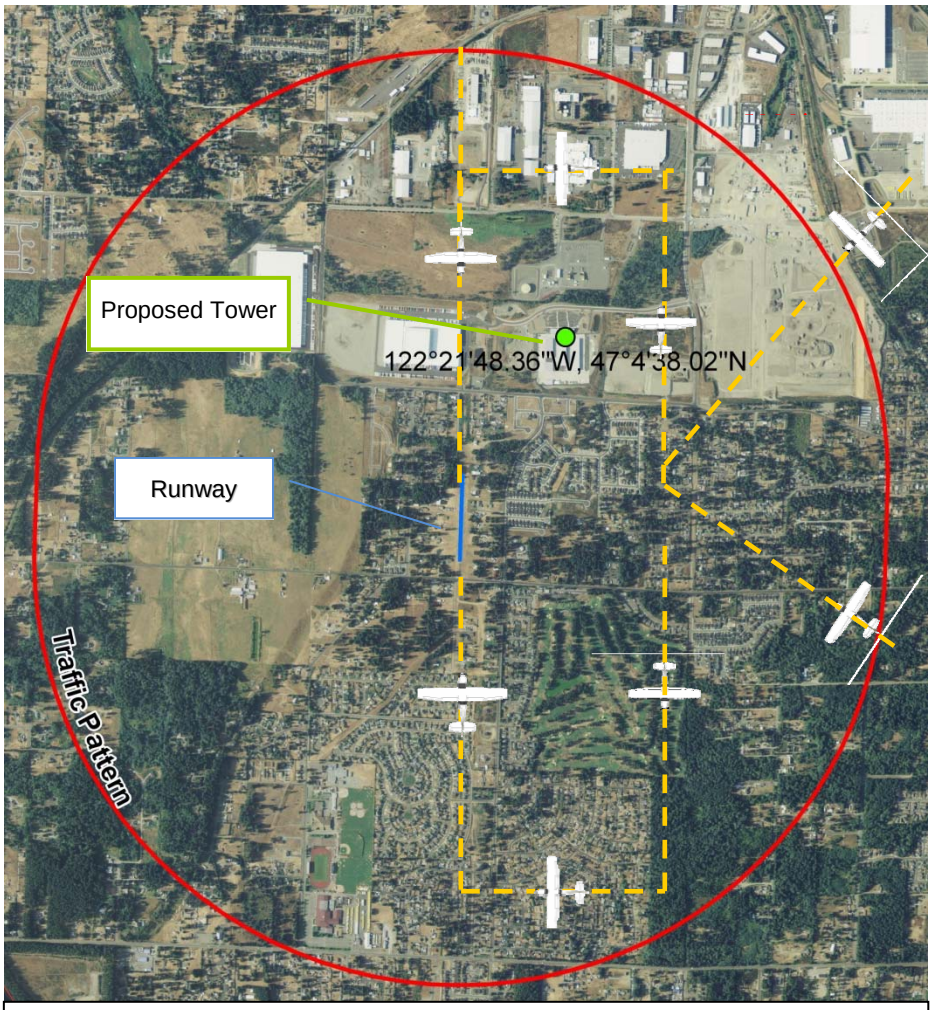
Conditional Use Permit

Conditional use permits are another way in which the criteria of underlying zoning designations can be modified. Many uses are appropriate for a particular zoning district, but may require special consideration to integrate them into the community. Conditional uses are permitted only where certain conditions exist. For example, residential uses may be permitted in nonresidential zoning districts when they meet these criteria.

Variances

A variance is nothing more than a waiver of one or more specific physical (rather than use) standards, such as bulk, yard, site coverage or height, contained in an ordinance. Variances should be used only in extreme circumstances. The Planning Enabling Act details several prerequisites that **must** be met before a variance may be granted. These include:

- Special circumstance of the subject property (including size and shape or surroundings). Strict application of the zoning ordinance would deprive the property owner of rights or privileges enjoyed by other owners of properties in the vicinity and under identical zone classifications.
- The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located.



Be sure to review the airport's operational characteristics in relation to the proposed conditional use. In this example, an applicant has proposed a tower within the traffic pattern of the public use airport.

Tips

Accessory uses should be permitted only when they would be permitted as a standalone use. For example, in zones that prohibit a daycare but allows an office use, a daycare would not be allowed as an accessory use. .

Docketing Process

How to recommend changes to your jurisdiction's comprehensive plan and development regulations?

Docketing is a process by which parties recommend changes to comprehensive plans and development regulations. Jurisdictions compile and maintain a list of suggested changes and consider them on an annual basis. The docket process allows parties to note deficiencies and recommend changes. These suggested changes are reviewed by the jurisdictions and made available for review by the public. There is no fee for submitting the docket form in some jurisdictions. This process allows for public input on policy affecting land use compatibility.

Tools that Address Specific Airport Land Use Compatibility Factors

Noise and Compatibility Criteria

Density and Intensity Limits

Establishment of criteria limiting the maximum number of dwellings or people in areas close to the airport is the most direct method of reducing the potential severity of an aircraft accident. In setting these criteria, consideration must be given to the two different forms of aircraft accidents: those in which the aircraft is descending, but is flying and under directional control of the pilot; and those in which the aircraft is out of control as it falls (also see later discussion of Clustering).

Limits on usage intensity—the number of people per acre—must take into account both types of potential aircraft accidents. To the extent that accidents and incidents are of the controlled variety, then allowing high concentrations of people in a small area would be sensible, as long as intervening areas are less populated. However, concentrated populations present a greater risk for severe consequences in the event of an uncontrolled accident at that location. Limiting the average usage intensity over a site reduces the risks associated with either type of accident. In most types of land use development, though, people are not spread equally throughout the site. To minimize the risks from an uncontrolled accident, the criteria should also limit the extent to which people can be concentrated and development can be clustered in any small area.

Open Land Requirements

Creation of requirements for open land near an airport addresses the objective of enhancing safety for the occupants of an aircraft forced to make an emergency landing away from a runway. If sufficiently large and clear of obstacles, open land areas can be valuable for light aircraft anywhere near an airport.

For large and high-performance aircraft, however, open land has little value for emergency landing purposes and is useful primarily where it is an extension of the clear areas immediately adjoining a runway.

Noise Insulation

Noise insulation is a mitigation measure that may be utilized in existing structures. For airports that qualify under the FAA's Part 150 program, noise insulation may be an appropriate course of action. However, it should not be used as a mitigation measure in new residential development. It is important to note that it does not provide for compatibility outside the structure and therefore does not meet the intent of RCW 36.70.547. As discussed before outside activity is a substantial aspect of single family residential development.

Notice of Proposed Construction (FAA Form 7460)

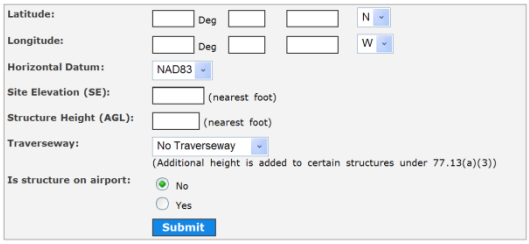
The principal mechanism by which the Federal Aviation Administration monitors obstructions to airports and en route airspace under FAR Part 77 is through the requirement that Notice of Proposed Construction be submitted to the agency. The form used to submit this information is known as FAA Form 7460. The notification requirements are specified in Subpart B of the Part 77 regulations. Specifically, notification is required, with certain exceptions, for any proposed object that would have a height exceeding an imaginary surface extending outward and upward from a runway at a slope of:

- More than 50:1 for a horizontal distance of 10,000 feet at airports where no runway is longer than 3,200 feet; or
- More than 100:1 for a horizontal distance of 20,000 feet at airports having a runway longer than 3,200 feet.

Additionally, any object taller than 200 feet requires FAA notification, regardless of the object's proximity to any airport.

Does your project need to file a 7460?

The FAA's Notice Criteria Tool will assist you in identifying purposed projects that meet the notice criteria.



https://www.oeaaa.faa.gov/oeaaa/external/gisTools/gisAction.jsp?action=showNoNoticeRequiredToolForm

Note that these notification slopes are shallower than those of Subpart B, which are used to identify obstructions. Exceptions to the notification requirements are made for objects in developed communities where the proposed object would be shielded by existing structures or terrain of equal or greater height. Antennas less than 20 feet in height are also exempt unless added to existing antennas.

Also important to understand is that federal law places the burden for FAA notification of development near airports on the proponents of such development, not on the local land use jurisdiction. The role of local jurisdictions is to alert project proponents of the notification requirements.

Other Hazards to Flight

Wildlife Attractants

Among other physical hazards to flight, bird strikes represent the most widespread concern. Measures based upon FAA guidance should be established to prevent creation of known types of conflicts and to enable mitigation of unanticipated problems. Particular attention should be paid to any proposed use that could create an increased attraction for birds and other wildlife. These uses include landfills and certain recreational or agricultural uses that attract large flocks of birds and may pose bird strike hazards to aircraft in flight.

The FAA recommends that uses known to attract birds—sanitary landfills and certain types of crops being primary examples—be kept at least 5,000 feet from runway used only by piston-powered aircraft. For runways used by turbine-powered aircraft, the distance increases to 10,000 feet.

Waterfowl, gulls, and raptors represent 77% of reported bird strikes causing damage to aircraft in the US.

FAA rules and regulations concerning these hazards are found in FAA Order 5200.5A, *Waste Disposal Sites on or Near Airports*, and Advisory Circular 150/5200-33, *Hazardous Wildlife Attractants On or Near Airports*.

Thermal Plumes

An additional, little recognized, physical hazard to aircraft flight are thermal plumes generated by power plants. Invisible unless the heated air turns to steam, the plumes from large facilities can create unstable air at the altitude that airplanes or helicopters fly when near airports. Power plants and other facilities that generate large thermal plumes should be avoided within airport traffic pattern areas.

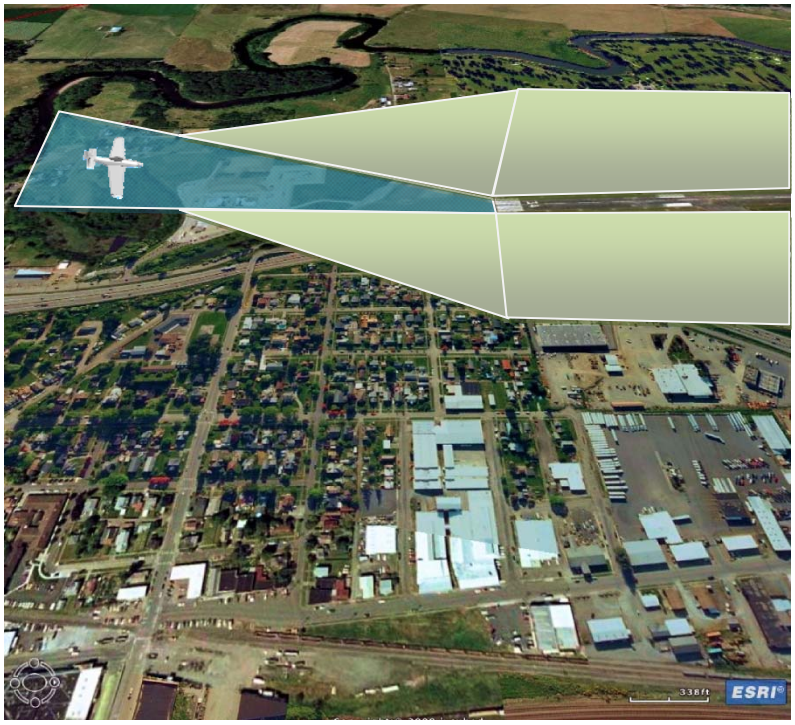
Visual and Electronic Interference

Criteria defining land use characteristics that can cause visual or electronic hazards to flight are more qualitative in nature—the FAA has not set any precise standards. In general, visual hazards to flight include sources of dust, steam, smoke, or glare that can impair pilot visibility, as well as distracting lights that can be confused for airport lights. Electronic hazards are ones that can cause interference with aircraft communications or navigation. While it is not always possible to prevent these types of hazards to flight from occurring, awareness of the potential can often enable reduction or mitigation of the most serious problems.

Avigation Easements

As with any type of easement, an avigation easement is a conveyance of specified property rights from the owner of the property to another party. Avigation easements are recorded with the title to the underlying properties and run with the land—that is, they remain in effect even with sale of the property.

In most cases, avigation easements are owned by the entity owning the airport. The airport may obtain the easement purchase or via dedication.



An avigation easement typically gives the easement owner the right to fly aircraft over the property at a low altitude and to cause noise, vibrations, exhaust particle emissions, and other impacts associated with normal flight. Limits on the heights of structures, trees, and other objects are also usually established by avigation easements. To enforce these limits, an avigation easement may give the easement owner the right to enter the property to remove or reduce the height of objects that exceed the height limits.

In addition to the specific rights that avigation easements convey, another function they serve is as a form of buyer awareness that carries with it a degree of legal protection for the airport. By having an avigation easement on their property, property owners cannot easily argue politically or through litigation that the airport generates unacceptable noise levels or creates other impacts. While useful in this way, avigation easements do nothing to change the fundamental incompatibility of residential and other inappropriate land uses—they do not address the quality of life people experience.

Another important limitation of avigation easements is that they normally do not restrict the underlying use of the property. Thus, the property could still be used for residential or other type of land use that would be incompatible with airport activity in ways other than height. Where airports wish to prohibit specific land uses—or, conversely, only allow specified uses—they sometimes acquire a type of easement sometimes called an *approach protection easement*. In practice, though, approach protection easements are only occasionally used because their cost is usually not much less than for fee title acquisition.

How can *Avigation Easements* be used to promote airport land use compatibility?

Short of fee title property acquisition, airport ownership of an avigation easement is the most certain means of ensuring protection of the runway approaches from too tall objects. For property located close to runway approaches where common structures, trees, and other objects could penetrate the airport airspace, a common practice is to require that the property owner dedicate an avigation easement to the airport as a condition for local approval of property development.

An additional benefit to avigation easements is that they serve as a form of buyer awareness tool as described in the next section. Caution should be exercised, however, in attempting to require avigation easement dedication in locations where buyer awareness is their only purpose. Their most appropriate use is for locations where height limits are substantial or where significant constraints on the development or use of the property are necessary for noise or safety reasons.

Buyer Awareness Tools

Chapter 1 of this *Guidebook* described impacts within the aviation catchment area as one of the four types of impacts needing to be addressed by airport land use compatibility tools. The preferred strategy to avoid these impacts is to promote types of land uses that tend to mask or reduce the intrusiveness of aircraft noise.

Mixed use multi-family residences

To the extent that residential land uses must be located in the aviation catchment area, —because they tend to have comparatively little outdoor living areas, fewer external walls through which aircraft noise can intrude, and relatively high noise levels of their own—are preferable to single-family dwellings. Particularly undesirable are areas consisting of large (about an acre on average) lots. Such developments are dense enough to expose many people to overflight noise, yet sufficiently rural in character that background noise levels are likely to be low.

Ranchette style residential

Where this strategy is impractical, then a second option is to help people with above-average sensitivity to aircraft overflights to avoid living in locations where frequent overflights occur. This strategy involves making people more aware of an airport's proximity and its current and potential aircraft noise impacts on the community before they move to the area. This can be accomplished through buyer awareness tools such as recorded deed notices and/or real estate disclosure statements.

Recorded Deed Notices

This type of device goes by various names including deed notice and overflight acknowledgement. The key point is that the information about airport proximity is recorded on the property deed, but a conveyance of property rights is not involved. County assessors sometimes have concerns over recording of information that does not involve the property description or property rights, but this is usually less of an issue when the notice is applied as a condition for new development approval rather than to existing development.

Disclosure During Real Estate Transactions

Some states have established statutory guidance with regard to disclosure of external impacts on a property such as noise, odors, natural hazards, and proximity to undesirable land uses. Airport proximity and the presence of frequent aircraft overflights may be one of the conditions to be disclosed during the sale or lease of residential property.

Disclosure is an obligation between private parties and normally not something that state or local governments can dictate. Nevertheless, WSDOT Aviation encourages counties, cities, and towns that have airports in their jurisdictions to identify the area within which airport proximity disclosure would be appropriate and to make this information known to real estate agents and others who are regularly involved in facilitating real estate transactions.

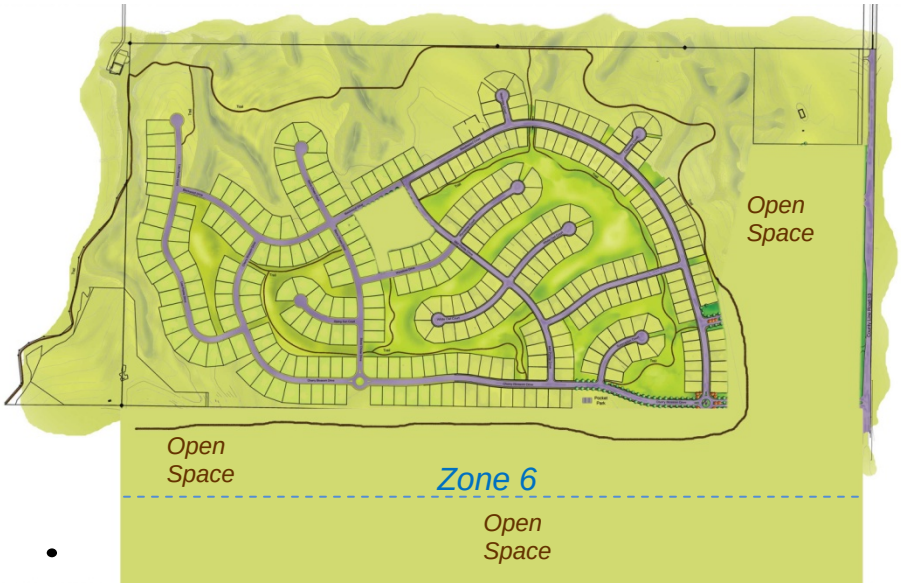
Other Tools for Enhancing Compatibility

Tools for Addressing Specific Airport Land Use Compatibility Issues

The land use compatibility tools described in the first part of this chapter are ones that apply broadly throughout a community and typically are employed during the comprehensive plan update process. The group of tools outlined here may be enabled through the comprehensive plan or zoning ordinance, but are more narrowly focused in their application. Typically, they will come into play with regard to a specific land use development proposal.

Clustering of Development

Clustering is the grouping of a particular development's structures on a portion of available land. This reserves a significant amount of the site as protected open space. Cluster developments are appropriate for all types of development activity. They may be used in conjunction with commercial, industrial, mixed-use, and residential development. The advantage of this land-use technique to the community is that it preserves open space and critical areas. The advantage to the developer is the opportunity to construct at a higher intensity or height and a lower cost of infrastructure and the ability to develop open space for passive uses.



How can *Cluster Development* be used to promote airport land use compatibility?

Clustering has several advantages for airport land use compatibility planning. It can be especially valuable with respect to safety if portions of the remaining undeveloped land are not just free of buildings, but also relatively flat and clear of other large objects such as trees and poles. If large enough—about a football field in size—these "open land" areas can potentially serve as emergency landing spots for small aircraft. For residential uses, clustering the dwellings into multi-family buildings can make them less susceptible to noise intrusion.

One caution to recognize with clustering is that its use should be limited in areas where the potential for aircraft accidents is elevated. Providing open land areas can enhance the prospects for successful near-airport emergency landings when the aircraft is under control while descending. However, many accidents involve aircraft that are out of control and will strike whatever is in their path. Allowing a high concentration of people in the high-risk compatibility zones is not wise.

Transfer of Development Rights

A transfer of development rights (TDR) program is a market-based mechanism that encourages the voluntary transfer of growth from places where a community would like to see less development (referred to as sending areas), to places where a community would like to see more development (referred to as receiving areas). The owner of a site within a sending area retains property ownership, but gives up all or part of the rights to develop the property in the manner that local zoning would have otherwise allowed. The owner of a site within a receiving area may purchase transferable development rights from an owner or owners of property in the sending area, allowing the sending area owners to obtain value for the property and the receiving area owner to develop the receiving property to a greater density or intensity than would have otherwise been permitted.

How can *Transfer of Development Rights* be used to promote airport land use compatibility?

Use a Transfer of Development Rights program to:

- Designate sending areas for residential development rights within the airport influence area. Target aviation environments impacted most by airport operations.
- Keep critical areas clear of all development - residential, commercial, industrial, etc.
- Designate receiving areas for residential development rights outside the airport influence area.
- Increase density and allow greater structure heights adjacent to transit hubs.
- Encourage infill development to maximize preexisting infrastructure such as power, water and sewer.
- Promote compatible commercial and industrial development.
- Promote preservation of open space by sending incompatible activities to appropriate locations.