

Learning More About: The Legal Framework for Compatibility Planning

Introduction

The legal framework on which airport land use compatibility planning is conducted is provided by a variety of federal and state laws and regulation and legal decisions. Some of these laws and regulations must be followed by airports when they receive grant money from the Federal Aviation Administration. Mostly, though, the tools only provide guidance. In Washington State the responsibility for ensuring compatibility between an airport and surrounding land uses rests with local jurisdictions in coordination with the airport operator. Local jurisdictions include jurisdictions in which the airport is located, as well as other jurisdictions into which the airports influence area extends.

Summarized in this section are the major laws, regulations, and state Growth Management Hearings Board decisions that have an important bearing on airport land use compatibility and the issues discussed earlier in this chapter.

State Laws and Regulations

The Revised Code of Washington (RCW) is a compilation of all permanent state laws. The following list highlights some of the laws affecting airports and development around them.

Aeronautics Laws (RCW Title 14)

Laws pertaining to aeronautics are mostly gathered under Title 14.

- ◆ **RCW 14.07 and 14.08 Municipal Airports Act.** Adopted in 1941 and amended 1945, the act provides for the acquisition and sponsorship of airports by Washington cities, towns, counties, port districts, and airport districts.
- ◆ **RCW 14.12 Airport Zoning Act.** This act establishes definitions and criteria, and allows local jurisdictions to adopt zoning controls to protect critical airspace from buildings, structures, or other airspace obstructions. The law provides direction and guidance to cities and counties on how to manage airport hazards.

Planning Enabling Act (RCW Chapter 36.70)

Washington's Planning Enabling Act is a set of state laws that describe planning authorities and responsibilities for towns, cities and counties. Sections particularly applicable to airport land use compatibility planning include the following.

- ◆ **RCW 36.70.320 Comprehensive Plan.** Under this section, counties are required to prepare a "comprehensive plan for the orderly physical development of the county, or any portion thereof..." RCW 35A.63.060 establishes similar comprehensive planning requirements for cities

and towns. The two required elements of comprehensive plans are a land use element and a circulation element (RCW 36.70.330). Other elements are optional (RCW 36.70.350).

- ◆ **RCW 36.70.547 General Aviation Airports.** This section mandates that:

“Every county, city, and town in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport.”

Plans may only be adopted following formal consultation with aviation stakeholders, including WSDOT Aviation. WSDOT Aviation is tasked with providing technical assistance to local agencies preparing plans and regulations consistent with this section. All proposed and adopted plans and regulations shall be filed with the aviation division of the department of transportation within a reasonable time after release for public consideration and comment.

Growth Management Act (RCW Chapter 36.70A)

Adopted in 1990, the Growth Management Act (GMA) was enacted in response to rapid population growth and concerns with suburban sprawl, environmental protection, quality of life, and related issues. The act expands the Planning Enabling Act requirements for comprehensive planning in the state’s most populous and rapidly growing counties. Twenty-nine counties are either required to fully plan under the GMA or have chosen to do so. These counties make up about 95 percent of the state’s population. The remaining ten counties have limited planning requirements under the act.

Several sections are important to airports.

- ◆ **RCW 36.70A.070 Comprehensive plans – Mandatory elements.** This section lists eight elements that must be included in comprehensive plans. Most of the elements potentially affect airports in that they guide the development that may occur in nearby areas. The land use element is particularly significant to land use compatibility matters and the rural element also may be consequential to some airports. The transportation element requires an inventory of facilities and services needs, including general aviation airports, “to define existing capital facilities and travel levels as a basis for future planning.”

For airports located near the edge of urban areas, airport land use compatibility should be considered in determining the location of the urban growth boundary.

- ◆ **RCW 36.70A.110 Comprehensive plans – Urban growth areas.** Each county that is required or chooses to plan under the GMA must designate an urban growth area or areas within which urban growth is to be encouraged and outside of which growth can occur only if it is not urban in nature. Urban growth area boundaries must be reviewed at least every 10 years and adjusted as necessary to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period (RCW 36.70A.130).
- ◆ **RCW 36.70A.140 Comprehensive plans – Ensure public participation.** Each county and city that is required or chooses to plan under RCW [36.70A.040](#) shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, in-

formation services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW [36.70A.300](#) declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

- ◆ **RCW 36.70A.200 Siting of essential public facilities – Limitation on liability.** This section deals with essential public facilities that are typically difficult to site. Airports are explicitly identified as an example of this type of facility. Others include: state education facilities, state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities. Counties and cities planning under GMA must have a process for identifying and siting essential public facilities. No local comprehensive plan or development regulation may preclude the siting of essential public facilities.
- ◆ **RCW 36.70A.210 Countywide planning policies.** Recognizing that counties are regional governments within their boundaries and that cities are primary providers of urban governmental services within urban growth areas, this section establishes requirements for adoption of countywide planning policies. Such policies are to serve as a countywide framework from which county and city comprehensive plans are developed and adopted and made consistent with each other. Specific topics to be covered by the policies are listed.

Although airport land use compatibility is not explicitly listed as a topic for countywide planning policies, the statutes allow topics other than those listed to be addressed.

Findings of the Washington State Growth Management Hearings Boards

The following four decisions are ones most directly relevant to airport land use compatibility matters. The implications are noted here along with a brief indication of the topic addressed by the decision.

- ◆ ***Stephen Pruitt and Steven Van Cleve v. Town of Eatonville – Central Puget Sound Growth Management Hearings Board (CPSGMHB Case No. 06-3-0016, December 18, 2006).*** Legitimized WSDOT's role in defining the compatibility policies that need to be incorporated into a community's comprehensive plan. Guidelines developed by WSDOT could include minimum standards that would be given great weight by growth management hearing boards. However, these guidelines would be recommendations, and not regulatory in nature.
- ◆ ***State of Washington Department of Corrections and Department of Social and Health Services v. City of Tacoma – Central Puget Sound Growth Management Hearings Board (CPSGMHB Case No. 00-3-0007, November 20, 2000).*** Expansion of essential public facilities must also be accommodated by local agencies. A community's comprehensive plan therefore must support planned expansion of any airport that lies within the area covered by the plan. Guidance for expansion of airport facilities, volume of traffic and changes in aircraft fleet mix can be taken from an airport's master plan. Where a current airport master plan does not exist, the required facility planning can be done as a component of development of the comprehensive plan.

- ◆ ***Port of Seattle v. City of Des Moines*—Central Puget Sound Growth Management Hearings Board (CPSGMHB Case No. 97-3-0014, August 13, 1997).** The requirement to accommodate expansion of essential public services includes necessary supporting facilities and services. While this is likely to be most important at larger commercial service airports, it clearly establishes that comprehensive plans must facilitate all elements necessary for an airport to function. At commercial airports this could include such off-airport facilities as: rental car facilities, airport shuttle businesses, air freight consolidators, and airline catering companies.
- ◆ ***Hapsmith et al v. City of Auburn*—Central Puget Sound Growth Management Hearings Board (CPSGMHB Case No. 95-3-0075c, May 10, 1996).** Although this decision specifically addresses mitigations for a new essential public facility, it suggests that the external impacts of these uses need to be addressed. Compatibility policies contained in comprehensive plans can be viewed as a form of mitigation in that they are intended to minimize the noise and safety effects of airports. This case does not provide any guidance on the substance of mitigation. However, it does legitimize including mitigation of impacts as one more reason to include compatibility policies in comprehensive plans.

Additional decisions of interest include these:

- ◆ Local jurisdiction required to consult with airport prior to adoption of comprehensive plan amendments having an effect on the airport.
- ◆ *Son Vida II v. Kittitas County* (EWGMHB Case No. 01-1-0017; March 14, 2002)
- ◆ *NFRD v. City of Yakima* (EWGMHB Case No. 02-1-0009; December 5, 2002)
- ◆ *McHugh v. Spokane County* (EWGMHB Case No. 05-1-0004; December 16, 2005)
- ◆ High-density residential zones adjacent to airports are inappropriate/incompatible uses; jurisdictions must preclude uses non-compatible with an airport to comply with GMA.
- ◆ *CCARE v. Anacortes* (WWGMHB Case No. 01-2-0019; December 12, 2001)
- ◆ *Klein v. San Juan County* (WWGMHB Case No. 02-2-0008; October 18, 2002)
- ◆ *Futurewise v. Whatcom County* (WWGMHB Case No. 05-2-0013 September 20, 2005)

Federal Laws and Regulations

Federal airport land use compatibility policies are concerned mostly with noise issues. Several statutes deal specifically with aircraft noise. These statutes are implemented through regulations and policies of individual federal agencies, in particular the Federal Aviation Administration (FAA). Federal guidance with regard to airport land use safety compatibility is primarily limited to FAA regulations concerning airport design and the protection of airport airspace.

Statutes

Three statutes are of particular relevance to airport land use compatibility planning in that they both support and, at the same time, limit the actions that airports and communities can take to mitigate noise impacts. It is important to note, however, that these statutes only apply to airports in the federal system of airports (NPIAS).

- ◆ **Aviation Safety and Noise Abatement Act of 1979 (ASNA).** Among the stated purposes of this act is “to provide assistance to airport operators to prepare and carry out noise compatibility programs.” The law establishes funding for noise compatibility planning and sets the re-

quirements by which airport operators can apply for funding. The law does not require any airport to develop a noise compatibility program; the decision to do so is the choice of each individual airport proprietor. Regulations implementing the act are set forth in Federal Aviation Regulations Part 150.

- ◆ **Airport and Airway Improvement Act of 1982 (AAIA).** This act established the Airport Improvement Program (AIP) through which federal funds are made available for airport improvements and noise compatibility planning. The act has been amended several times, but remains in effect as of late 2009. Land use compatibility provisions of the act are implemented primarily by means of the assurances that airports must provide in order to receive federal airport improvement grants.
- ◆ **Airport Noise and Capacity Act of 1990 (ANCA).** In adopting this legislation, Congress' stated intention was to try to balance local needs for airport noise abatement with national needs for an effective air transportation system. To accomplish this objective, the act did two things: (1) it directed the FAA to establish a national program to review noise and access restrictions on aircraft operations imposed by airport proprietors; and (2) it established requirements for the phase-out of most older model, comparatively louder, "Stage 2" airline aircraft from the nation's airline fleet by January 2000. These two requirements are implemented by Federal Aviation Regulations Part 161 and 91, respectively.

Federal Aviation Administration Policies

The most significant FAA policies having a bearing on airport land use compatibility are found in Federal Aviation Regulations and, secondarily, in certain Advisory Circulars.

- ◆ **Federal Aviation Regulations Part 36, Noise Standards: Aircraft Type and Airworthiness Certification.** This part of the Federal Aviation Regulations sets the noise limits that all newly produced aircraft must meet as part of their airworthiness certification.
- ◆ **Federal Aviation Regulations Part 91, General Operating and Flight Rules.** This part of the Federal Aviation Regulations sets many of the rules by which aircraft flights within the United States are to be conducted. Rules governing noise limits are set forth in Subpart I. This FAR implements the requirements set forth in the Airport Noise and Capacity Act of 1990.
- ◆ **Federal Aviation Regulations Part 150, Airport Noise Compatibility Planning.** As a means of implementing the Aviation Safety and Noise Abatement Act of 1979, the FAA adopted these regulations establishing a voluntary program that airports can utilize to conduct airport noise compatibility planning. Part 150 prescribes a system for measuring airport noise impacts and presents guidelines for identifying incompatible land uses. Airports that choose to undertake a Part 150 study are eligible for federal funding both for the study itself and for implementation of approved components of the local program. Completion of a Part 150 study is a prerequisite to FAA funding of many noise abatement implementation measures.

The FAR Part 150, Airport Noise Compatibility Planning requirements does not apply to most airports within Washington State. First, an airport must be in the NPIAS to participate. Even among those airports that are eligible, FAR Part 150 studies are generally valuable only for airline and busy general aviation facilities.



See Advisory Circular 150/5020-1, *Noise Control and Compatible Planning for Airports* at: http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/

- ◆ **Federal Aviation Regulations Part 161, Notice and Approval of Airport Noise and Access Restrictions.** This part of the federal regulations implements the Airport Noise and Capacity Act of 1990. It codifies the analysis and notification requirements for airport proprietors proposing aircraft noise and access restrictions on Stage 2 or Stage 3 aircraft weighing 75,000 pounds or more. Among other things, an extensive cost-benefit analysis of proposed restrictions is required. The analysis requirements are closely tied to the process set forth in FAR Part 150 and are more stringent with respect to the quieter, Stage 3 aircraft than for Stage 2.

When notified of a proposed construction, the FAA conducts an aeronautical study to determine whether the object would constitute an airspace hazard. Simply because an object (or the ground) would exceed an airport's airspace surfaces established in accordance with FAR Part 77 criteria does not mean that the object would be considered a hazard. Various factors, including the extent to which an object is shielded by nearby taller objects, are taken into account. The FAA may recommend marking and lighting of obstructions.

- ◆ **Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace.** FAR Part 77 establishes standards for determining obstructions to navigable airspace and the effects of such obstructions on the safe and efficient use of that airspace. The regulations require that the FAA be notified of proposed construction or alteration of objects—whether permanent, temporary, or of natural growth—if those objects would be of a height that would exceed the FAR Part 77 criteria. The height limits are defined in terms of imaginary surfaces in the airspace extending about two to three miles around airport runways and approximately 9.5 miles from the ends of runways having a precision instrument approach.
- ◆ **FAA Advisory Circular 150/5300-13, Airport Design.** The primary function of this Advisory Circular is to establish standards for dimensions and other features of airport runways, taxiways, and other aircraft operating areas. Also included are standards for runway protection zones (RPZs), trapezoidal-shaped areas located immediately beyond the runway ends. The FAA strongly encourages airports to own this property and its acquisition is eligible for FAA grants. When not airport-owned, the airport or community should still greatly restrict the land uses there.

Other Federal Agencies

- ◆ **U.S. Environmental Protection Agency (EPA).** A report published in 1974 by the EPA Office of Noise Abatement and Control continues to be a source of useful background information. Entitled *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*, this report is better known as the “Levels Document.” The document does not constitute EPA regulations or standards. Rather, it is intended to “provide state and local governments as well as the federal government and the private sector with an informational point of departure for the purposes of decision-making.”
- ◆ **Department of Housing and Urban Development (HUD).** HUD guidelines for the acceptability of residential land use are set forth in the Code of Federal Regulations Title 24, Part 51, “Environmental Criteria and Standards.”
- ◆ **Department of Defense Air Installations Compatibility Use Zones (AICUZ) Program.** The AICUZ Program was established by the DOD in response to growing incompatible urban development around military airfields. DOD Instruction Number 4165.57 (November 8, 1977) provides the overall guidance for the program and mandates preparation of an AICUZ plan for each installation. Each of the military services has its own individual guidelines for implement-

ing the basic instructions. AICUZ plans prepared for individual military airfields serve as recommendations to local land use jurisdictions, but have no regulatory function.

- ♦ **Department of Defense Joint Land Use Study (JLUS) Program.** In 1985, congress authorized the DOD to make available community planning assistance grants (*Title 10 U.S.C. Section 2391*) to state and local government to help better understand and incorporate the AICUZ technical data into local planning programs. The Office of Economic Adjustment (OEA) manages the JLUS program. A JLUS is a cooperative land use planning effort between the affected local government and the military installation. The JLUS presents a rationale, justification, and a policy framework to support the adoption and implementation of recommended compatible development criteria. These measures are designed to prevent urban encroachment; safeguard the military mission; and protect the public health, safety, and welfare.



See also, AOPA's Guide to Airport Noise and Land Use Compatibility http://www.aopa.org/asn/land_use/