



Report to the Planning and Zoning Commission

Prepared by the Maricopa County Planning and Development Department



Case: TA2009012 – Military Airport and Ancillary Military Facility
Overlay Zoning District

Meeting Date: November 5, 2009

Agenda Item: 4

Supervisor Districts: All

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Zoning Ordinance for property in the High Noise or Accident Potential Zone of Luke AFB, Luke Aux. Airfield #1, and Gila Bend AFB to comply with Arizona Revised Statutes and as ordered by the Superior Court of Arizona pursuant to case no. CV 2008-019301

Recommendation: **Initiate and Approve**

Background:

1. In 2004 the State Legislature modified ARS §28-8481 to require political subdivisions to adopt and enforce zoning regulations for property in the high noise or accident potential zone (HNAPZ) of military airports and ancillary military facilities. This change was made to help ensure that development is compatible with the high noise and accident potential generated by military airport and ancillary military facility operations that have or may have an adverse effect on public health and safety. For Maricopa County, this means that in addition to amending its comprehensive plan to comply with new land use planning requirements, it must also adopt new zoning requirements that restrict the types of land uses that are allowed near these military facilities. These new zoning restrictions apply to the state-statute defined HNAPZ of Luke AFB, the Auxiliary Airfield #1 (Aux.#1) in Surprise, and the auxiliary airfield south of Gila Bend (GBAF). The HNAPZ includes areas within the 65, 70, 75, 80, and 85 Ldn noise contours, and the crash zone, Accident Potential Zone #1, and Accident Potential Zone #2 that extend off the ends of these facilities' runways.
2. A dispute between Maricopa County and the Arizona Attorney General (AG) over interpretation of this new law ensued following its 2004 approval. This dispute culminated in an October, 2008 court filing by the AG for a Preliminary Injunction and Summary Judgment against Maricopa County in which the AG requested that the court order Maricopa County to comply with ARS §28-8481. Maricopa County subsequently filed a countersuit claiming this new law was invalid on several counts.
3. In February 2009, the Superior Court of Arizona granted the State's petition for Preliminary Injunction and Summary Judgment against Maricopa County. Since that time, the State and Maricopa County have disputed the contents of the final form of order. This dispute led to oral arguments before the same court in September, 2009 which resulted in a court-signed form of Judgment (see attached). With the form of judgment now complete, Maricopa County has 120 days to comply and, therefore, is initiating this TA to amend Maricopa County's zoning ordinance to effect the necessary changes.
4. Pursuant to state law, the AG is responsible for determining a political subdivision's compliance with this law according to the land use chart found in ARS §28-8481(J). This land use chart identifies those uses that are specifically allowed and those that are specifically prohibited based on location within the HNAPZ. This chart also forms the basis for the amended zoning ordinance.

Plan Amendment Summary:

5. This TA establishes an overlay zoning district for areas within the HNAPZ of Luke AFB and the two ancillary military facilities. Known as the *Military Airport and Ancillary Military Facility Overlay Zoning District*, this overlay will help Maricopa County comply with state statute and the court order.
6. As noted in paragraph #4, the key component of this amendment is the land use chart outlined in Section 1010.6.1 of this zoning district overlay. This chart identifies the uses that are and are not allowed as part of this overlay district and is identical to the chart in state law. By replicating this chart in the ordinance, staff and county counsel believe that the county is compliant with state law and the court order for permitted land uses.
7. In order to limit uses to only those approved by state law, the overlay district replaces the zone change process with a procedure known as the *Military Compatibility Permit* (MCP). Unlike a Zone Change where many uses are allowed based on the zoning district, the MCP is similar to a special use permit (SUP) in that only specific use(s) are allowed. The result is that Maricopa County will control land uses in the HNAPZ and, therefore, be able to ensure consistency with state law.
8. Staff anticipates that most requested uses will not be listed on the land use chart. In such instances, state law does allow Maricopa County and Luke AFB to mutually agree that specific uses not listed are in fact compatible and consistent with the high noise or accident potential of the military airport or ancillary military facility. In order to make this determination, applicants will be required to obtain a *Use Compatibility and Consistency Determination* (UCCD) from Luke AFB. The UCCD is a separate application form that staff will send to Luke AFB for consideration. If Luke AFB determines that the specific use(s) is/are compatible and consistent, then the applicant may file for an MCP. Conversely, if Luke AFB determines that the specific use(s) is/are not compatible and consistent, then an application for MCP will not be accepted or processed.
9. Maricopa County and Luke AFB have tentatively agreed that certain ancillary uses are considered compatible and consistent with the high noise or accident potential of the military airport or ancillary military facility, and therefore do not require a UCCD. These include non-habitable accessory uses to an existing and properly permitted primary use that do not exceed 30 feet in height. This agreement will allow applicants to avoid the UCCD process for ancillary, accessory, and other minor non-residential uses such as sheds, corrals, pools, fences, and other similar accessory uses.
10. Similar to an SUP, the MCP requires approval of a Plan of Development prior to construction. But unlike the SUP process which requires concurrent submittal of

the plan of development, this overlay zoning district's regulations allow applicants to submit the plan of development either concurrently with or separately from the MCP application. This process gives applicants flexibility during the entitlement process, but still allows Maricopa County to evaluate site design and layout.

11. Also similar to the SUP process, the MCP process allows applicants to request development standards different than that of the underlying zoning district. However, pursuant to state law the overlay district regulations prohibit the Commission from recommending, or the Board of Supervisors (BOS) from approving, a variation of development standards without a specific finding that military airport or ancillary military facility compatibility is preserved. This restriction also applies to the Board of Adjustment in the discharge of its powers and duties. Finally, the overlay district prohibits the BOS from approving an MCP unless it finds the proposed use(s) on a specific property is/are compatible and consistent with the high noise or accident potential of the military airport or ancillary military facility.
12. The MCP application process is also similar to that of an SUP with respect to public participation requirements. Public notice, including site postings, mail notification, and public hearing announcements, will follow Maricopa County's standard procedures for zoning change and SUP applications. This will allow Maricopa County to achieve consistency in public notification procedures and allow for broad public participation in the MCP decision-making process.
13. Besides establishing the Military Airport and Ancillary Military Facility Overlay Zoning District, this TA also repeals the existing Westside Military Airbase Overlay Zoning District which has been in place since the early 1990s. The standards included in the Westside overlay district violate current state law and are therefore being replaced by those in the new overlay district.

Recommendation:

14. Staff recommends the Commission motion to **initiate and recommend approval** of **TA2009012** to the Board of Supervisors as proposed.

Planner: Matt Holm, AICP, Principal Planner
Reviewed by: Darren V. Gerard, AICP, Deputy Director

Attachments: Text of Military Airport and Ancillary Military Facility Overlay Zoning District, and modifications to Chapter 3, Chapter 10, and Chapter 16 of the Maricopa County Zoning Ordinance (23 pages)
Superior Court of Arizona final Form of Judgment (4 pages)