



Appendix E
IMPLEMENTATION DOCUMENTATION

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This appendix provides copies of the regulations and statutes enacted by the State of Texas regarding the regulation of land use around airports. In addition, also included are a copy of guidelines, prepared by the Texas Department of Transportation, for implementation of the various land use regulations.

Also included in this appendix are a number of noise and aviation easements or releases used by a variety of airports around the country in their residential acoustical treatment programs. The airports included are:

- Baltimore/Washington International Airport
- Burbank-Glendale-Pasadena Airport
- Cleveland Hopkins International Airport
- General Mitchell International Airport
- James M. Cox-Dayton International Airport
- John Wayne Airport

While the details of the easements differ, their general thrust is similar. In exchange for acoustical treatment, the homeowner waives his or her right to sue the airport operator for damages alleged to be caused by aircraft lawfully using the airport. This includes nuisances caused by airport noise.

§ 42.044. Creation of Industrial District in Extraterritorial Jurisdiction

(a) In this section, "industrial district" has the meaning customarily given to the term but also includes any area in which tourist-related businesses and facilities are located.

(b) The governing body of a municipality may designate any part of its extraterritorial jurisdiction as an industrial district and may treat the designated area in a manner considered by the governing body to be in the best interests of the municipality.

(c) The governing body may make written contracts with owners of land in the industrial district:

(1) to guarantee the continuation of the extraterritorial status of the district and its immunity from annexation by the municipality for a period not to exceed 15 years; and

(2) with other lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities.

(d) The parties to a contract may renew or extend it for successive periods not to exceed 15 years each. In the event any owner of land in an industrial district is offered an opportunity to renew or extend a contract, then all owners of land in that industrial district must be offered an opportunity to renew or extend a contract subject to the provisions of Subsection (c).

(e) A municipality may provide for adequate fire-fighting services in the industrial district by:

(1) directly furnishing fire-fighting services that are to be paid for by the property owners of the district;

(2) contracting for fire-fighting services, whether or not all or a part of the services are to be paid for by the property owners of the district; or

(3) contracting with the property owners of the district to have them provide for their own fire-fighting services.

(f) A property owner who provides for his own fire-fighting services under this section may not be required to pay any part of the cost of the fire-fighting services provided by the municipality to other property owners in the district.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 975, § 1, eff. Aug. 30, 1993.

§ 42.045. Creation of Political Subdivision in Industrial District

(a) A political subdivision, one purpose of which is to provide services of a governmental or proprietary nature, may not be created in an industrial district designated under Section 42.044 by a municipality unless the municipality gives its written consent by ordinance or resolution. The municipality shall give or deny consent within 60 days after the date the municipality receives a written request for consent. Failure to give or deny consent in the allotted period constitutes the municipality's consent to the initiation of the creation proceedings.

(b) If the consent is obtained, the creation proceedings must be initiated within six months after the date of the consent and must be finally completed within 18 months after the date of the consent. Failure to comply with either time requirement terminates the consent for the proceedings.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

**SUBTITLE C. REGULATORY AUTHORITY APPLYING TO MORE THAN ONE
TYPE OF LOCAL GOVERNMENT**

**CHAPTER 241. MUNICIPAL AND COUNTY ZONING AUTHORITY AROUND
AIRPORTS**

SUBCHAPTER A. GENERAL PROVISIONS

§ 241.001. Short Title

This chapter may be cited as the Airport Zoning Act.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.002. Legislative Findings

The legislature finds that:

- (1) an airport hazard endangers the lives and property of users of the airport and of occupants of land in the vicinity of the airport;
- (2) an airport hazard that is an obstruction reduces the size of the area available for the landing, taking off, and maneuvering of aircraft, tending to destroy or impair the utility of the airport and the public investment in the airport;
- (3) the creation of an airport hazard is a public nuisance and an injury to the community served by the airport affected by the hazard;
- (4) it is necessary in the interest of the public health, public safety, and general welfare to prevent the creation of an airport hazard;
- (5) the creation of an airport hazard should be prevented, to the extent legally possible, by the exercise of the police power without compensation; and
- (6) the prevention of the creation of an airport hazard and the elimination, the removal, the alteration, the mitigation, or the marking and lighting of an airport hazard are public purposes for which a political subdivision may raise and spend public funds and acquire land or interests in land.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.003. Definitions

In this chapter:

- (1) "Airport" means an area of land or water, publicly or privately owned, designed and set aside for the landing and taking off of aircraft and used or to be used in the interest of the public for that purpose. The term includes an area with installations relating to flights, including installations, facilities, and bases of operations for tracking flights or acquiring data concerning flights.

(2) "Airport hazard" means a structure or object of natural growth that obstructs the air space required for the taking off, landing, and flight of aircraft or that interferes with visual, radar, radio, or other systems for tracking, acquiring data relating to, monitoring, or controlling aircraft.

(3) "Airport hazard area" means an area of land or water on which an airport hazard could exist.

(4) "Airport zoning regulation" means an airport hazard area zoning regulation and an airport compatible land use zoning regulation adopted under this chapter.

(5) "Centerline" means a line extending through the midpoint of each end of a runway.

(6) "Compatible land use" means a use of land adjacent to an airport that does not endanger the health, safety, or welfare of the owners, occupants, or users of the land because of levels of noise or vibrations or the risk of personal injury or property damage created by the operations of the airport, including the taking off and landing of aircraft.

(7) "Controlled compatible land use area" means an area of land located outside airport boundaries and within a rectangle bounded by lines located no farther than 1-1/2 statute miles from the centerline of an instrument or primary runway and lines located no farther than five statute miles from each end of the paved surface of an instrument or primary runway.

(8) "Instrument runway" means an existing or planned runway of at least 3,200 feet for which an instrument landing procedure published by a defense agency of the federal government or the Federal Aviation Administration exists or is planned.

(9) "Obstruction" means a structure, growth, or other object, including a mobile object, that exceeds a limiting height established by federal regulations or by an airport hazard area zoning regulation.

(10) "Political subdivision" means a municipality or county.

(11) "Primary runway" means an existing or planned paved runway, as shown in the official airport layout plan (ALP) of the airport, of at least 3,200 feet on which a majority of the approaches to and departures from the airport occur.

(12) "Runway" means a defined area of an airport prepared for the landing and taking off of aircraft along its length.

(13) "Structure" means an object constructed or installed by one or more persons and includes a building, tower, smokestack, and overhead transmission line.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.004. Airport Used in Interest of Public

For the purposes of this chapter, an airport is used in the interest of the public if:

(1) the owner of the airport, by contract, license, or otherwise, permits the airport to be used by the public to an extent that the airport fulfills an essential community purpose; or

(2) the airport is used by the state or an agency of the state or by the United States for national defense purposes or for any federal program relating to flight.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.005. Adoption of Regulation Includes Amendment or Other Change

A reference in this chapter to the adoption of an airport zoning regulation includes the amendment, repeal, or other change of a regulation. A reference to the adoption of an airport zoning regulation also includes the amendment of an airport zoning regulation existing on the date the law codified by this chapter took effect, which was September 5, 1947.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

SUBCHAPTER B. ADOPTION OF AIRPORT ZONING REGULATIONS

§ 241.011. Airport Hazard Area Zoning Regulations

(a) To prevent the creation of an airport hazard, a political subdivision in which an airport hazard area is located may adopt, administer, and enforce, under its police power, airport hazard area zoning regulations for the airport hazard area.

(b) The airport hazard area zoning regulations may divide an airport hazard area into zones and for each zone:

(1) specify the land uses permitted;

(2) regulate the type of structures; and

(3) restrict the height of structures and objects of natural growth to prevent the creation of an obstruction to flight operations or air navigation.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.012. Airport Compatible Land Use Zoning Regulations

(a) A political subdivision may adopt, administer, and enforce, under its police power, airport compatible land use zoning regulations for the part of a controlled compatible land use area located within the political subdivision if the airport is:

(1) used in the interest of the public to the benefit of the political subdivision; or

(2) located within the political subdivision and owned or operated by a federal defense agency or by the state.

(b) The political subdivision by ordinance or resolution may implement, in connection with airport compatible land use zoning regulations, any federal law or rules controlling the use of land located

adjacent to or in the immediate vicinity of the airport.

(c) The airport compatible land use zoning regulations must include a statement that the airport fulfills an essential community purpose.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.013. Extraterritorial Zoning in Political Subdivisions With Population of More Than 45,000

(a) A political subdivision with a population of more than 45,000 in which an airport used in the interest of the public to the benefit of the political subdivision is located may adopt, administer, and enforce:

(1) airport hazard area zoning regulations applicable to an airport hazard area relating to the airport and located outside the political subdivision; and

(2) airport compatible land use zoning regulations applicable to a controlled compatible land use area relating to the airport and located outside the political subdivision.

(b) The political subdivision has the same power to adopt, administer, and enforce airport hazard area zoning regulations or airport compatible land use zoning regulations under this section as that given a political subdivision by Sections 241.011 and 241.012.

(c) The airport hazard area zoning regulations or airport compatible land use zoning regulations must include a statement that the airport fulfills an essential community purpose.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 98, §§ 1, 2, eff. Aug. 26, 1991.

§ 241.014. Joint Airport Zoning Board

(a) A political subdivision to whose benefit an airport is used in the interest of the public or in which an airport owned or operated by a defense agency of the federal government or the state is located may create a joint airport zoning board with another political subdivision in which an airport hazard area or a controlled compatible land use area relating to the airport is located. The political subdivisions must act by resolution or ordinance in creating the joint board.

(b) The joint airport zoning board has the same power to adopt, administer, and enforce airport hazard area zoning regulations or airport compatible land use zoning regulations under this section as that given a political subdivision by Sections 241.011 and 241.012.

(c) The joint airport zoning board must consist of two members appointed by each of the political subdivisions creating the board and, in addition, a chairman elected by a majority of the appointed members.

(d) If an agency of the state owns and operates an airport located within an airport hazard area or controlled compatible land use area governed by a joint airport zoning board, the agency is entitled

to have two members on the board.

(e) The joint airport zoning board for an airport that is owned or operated by a defense agency of the federal government and that is closed by the federal government may provide that zoning regulations adopted by the board continue in effect until the fourth anniversary of the date the airport is closed.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 352, § 1, eff. May 27, 1997.

Amended by Acts 1999, 76th Leg., ch. 1176, § 1, eff. June 18, 1999.

§ 241.015. Incorporation of Airport Zoning Regulation Into Comprehensive Zoning Ordinance

A political subdivision may incorporate an airport zoning regulation in a comprehensive zoning ordinance and administer and enforce it in connection with the administration and enforcement of the comprehensive zoning ordinance if:

- (1) the two zoning regulations apply, in whole or in part, to the same area; and
- (2) the comprehensive zoning ordinance includes, among other matters, a regulation on the height of buildings.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.016. Airport Zoning Commission

(a) Before an airport zoning regulation may be adopted, a political subdivision acting unilaterally under Section 241.013 must appoint an airport zoning commission. If the political subdivision has a planning commission or comprehensive zoning commission, that commission may be designated as the airport zoning commission.

(b) The commission shall recommend the boundaries of the zones to be established and the regulations for these zones.

(c) The commission shall make a preliminary report and hold public hearings on the report before submitting a final report.

(d) Before the 15th day before the date of a hearing under Subsection (c), notice of the hearing shall be published in an official newspaper or a newspaper of general circulation in each political subdivision in which the airport hazard area or controlled compatible land use area to be zoned is located.

(e) A joint airport zoning board created under Section 241.014 is not required to appoint a commission under this section.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 697, § 1, eff. Sept. 1, 1995.

§ 241.017. Procedural Limitations Applying to Adoption of Zoning Regulations

(a) The governing body of a political subdivision may not hold a public hearing or take other action concerning an airport zoning regulation until it receives the final report of the airport zoning commission.

(b) An airport zoning regulation may not be adopted except by action of the governing body of the political subdivision or a joint airport zoning board after the political subdivision or joint airport zoning board holds a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard.

(c) Before the 15th day before the date of a hearing under Subsection (b), notice of the hearing must be published in an official newspaper or a newspaper of general circulation in each political subdivision in which the area to be zoned is located.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 697, § 2, eff. Sept. 1, 1995.

§ 241.018. Reasonableness of Airport Zoning Regulations

(a) An airport zoning regulation must be reasonable and may impose a requirement or restriction only if the requirement or restriction is reasonably necessary to achieve the purposes of this chapter.

(b) In determining which airport zoning regulations to adopt, the governing body of a political subdivision or a joint airport zoning board shall consider, among other things:

- (1) the character of the flying operations expected to be conducted at the airport;
- (2) the nature of the terrain within the airport hazard area;
- (3) the character of the neighborhood; and
- (4) the current and possible uses of the property to be zoned.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.019. Nonconforming Uses and Structures

Except as provided by Section 241.035, airport zoning regulations may not require:

- (1) changes in nonconforming land use existing on the date of the adoption of the regulations;
- (2) the removal, lowering, or other change of a structure that does not conform to the regulations on the date of their adoption, including all phases or elements of a multiphase structure, regardless of whether actual construction has commenced, that received a determination of no hazard by the Federal Aviation Administration under 14 C.F.R., Part 77, before the regulations were adopted;
- (3) the removal, lowering, or other change of an object of natural growth that does not conform to

the regulations on the date of their adoption; or

(4) any other interference in the continuation of a use that does not conform to the regulations on the date of their adoption.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 241.020. Permits

(a) Airport zoning regulations may require that a permit be obtained before:

- (1) a new structure is constructed;
- (2) an existing structure is substantially changed or repaired;
- (3) a new use is established; or
- (4) an existing use is substantially changed.

(b) Airport zoning regulations must provide that a permit be obtained from the administrative agency authorized to administer and enforce the regulations before:

- (1) a nonconforming structure may be replaced, rebuilt, or substantially changed or repaired; or
- (2) a nonconforming object of natural growth may be replaced, substantially changed, allowed to grow higher, or replanted.

(c) A permit may not allow:

- (1) the establishment of an airport hazard;
- (2) a nonconforming use to be made;
- (3) a nonconforming structure or object of natural growth to become higher than it was at the time of the adoption of the airport zoning regulations relating to the structure or object of natural growth or at the time of the application for the permit; or
- (4) a nonconforming structure, object of natural growth, or use to become a greater hazard to air navigation than it was at the time of the adoption of the airport zoning regulations relating to the structure, object of natural growth, or use or at the time of the application for the permit.

(d) Except as provided by Subsection (c), an application for a permit shall be granted.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

CHAPTER THREE

AIRPORT COMPATIBLE LAND USE

ZONING

This chapter of the Guidelines provides specific information on how to develop an airport compatible land use zoning ordinance under provisions of the Texas Airport Zoning Act. The discussion assumes that you have read Chapter Two and are familiar with noise measurement techniques and the principles of overlay zoning previously explained. Chapter Four addresses height hazard zoning. Since many of the procedures for height hazard zoning and compatible land use zoning are similar, there may be some repetition in the two chapters. The procedures for adoption and administration of both types of zoning are covered in Chapter Five of these Guidelines.

TEXAS AIRPORT ZONING ACT

Successful implementation of airport compatible land use zoning requires a clear understanding of the Texas Airport Zoning Act. (A copy of the Act can be found in Appendix A.)

The following paragraphs will help clarify the applicability of the various sections of the Act.

When Is Compatible Zoning Applicable?

Compatible use ordinances can be adopted for airports that are owned by cities, towns, and counties, the federal government, the state of Texas, and for airports that are privately owned. The criterion for eligibility, as stated in the statutes, is that the "airport fulfills an essential community purpose." In addition to publicly owned airports, then, military and privately owned airports that serve the public can be protected under the Texas Airport Zoning Act.

The area around these airports that can be zoned for compatible land uses is called the "controlled area" or "controlled compatible land use area." The area eligible to be zoned around each primary and instrument runway is illustrated in Figure 3-1. It extends for five miles from the end of a runway and for 1.5 miles on each side of the runway centerline.

A primary runway is the one on which a majority of the airport's operations take place. An instrument runway is a runway for which there is an existing or planned instrument approach. The runway must be at least 3,200 feet in length to have a controlled area. Future runways may be zoned if they are identified on the airport layout plan (ALP). The ALP and information on primary and instrument runways can be found in the airport's master plan document.

Participants in the Zoning Process

Airport compatible land use zoning ordinances prepared for controlled areas near a population center can be expected to arouse the interest of the individuals and organizations that will be affected. Each of the interested parties should be involved as much as possible in the zoning process. The process includes not just the formal actions of adopting the ordinance but also its preparation. Though the impetus for the zoning ordinance is likely to come from the airport operator, the airport board and manager play largely an advisory role in the adoption of the ordinance. Nonetheless, it is important for the airport staff to work closely with the others involved. The majority of the participants may have little understanding of airport operations and will benefit from the patient explanations of the airport staff. Similarly, the members of the aviation community may not be familiar with the details of planning and zoning. A cooperative effort among the airport staff (including any consultants to the airport board) and the officials of each participating political subdivision is essential.

The importance of involving the land owners and residents of the area to be zoned also cannot be overemphasized. They need to understand why the zoning is necessary, what process is being used to assess noise impacts, and how the zoning will affect their property. The support of property owners and residents can increase the likelihood that the zoning ordinance will be adopted. Communication with these people should begin early in the process and continue on a regular basis.

The Texas Airport Zoning Act requires that an Airport Zoning Commission be created to oversee the preparation of the airport compatible use ordinance. (For commission details see Chapter Five.) The commission is appointed by the Joint Board or the political subdivision that will adopt the ordinance. The Airport Zoning Commission could be the existing planning commission of a political subdivision or a commission appointed solely for the purposes of the ordinance. In the latter case, an opportunity exists to appoint a representative of each interest group to the Commission. This would provide a forum for differences between parties to be resolved. Providing an opportunity for participation in the zoning process is especially important if a political subdivision has elected to unilaterally zone parts of the controlled area which are in a neighboring jurisdiction.

PREPARATION OF THE AIRPORT COMPATIBLE

LAND USE ZONING ORDINANCE

The airport compatible land use zoning ordinance consists of the ordinance text and the overlay district map. The text describes the uses that are not permissible in the overlay zone and the procedures for administering the ordinance. A model ordinance is included in the appendixes. The districting map, which is actually made part of the ordinance, shows the overlay boundaries. The map is a critical component of the ordinance and consumes much of the effort in the ordinance's development.

Prerequisites For Preparing The Ordinance Map

The overlay zones of the ordinance map are defined by the airport's noise exposure contours. The noise contour maps must be reasonable and technically accurate. The noise contour map prepared as part of the airport master plan could be used. The Texas Department of Transportation recommends, however, that a FAR Part 150 Airport Land Use Compatibility study be undertaken before noise contours are used for zoning.

If the data in the most current airport master plan are out of date, the noise contours prepared using this data should not be used. Check to see if area population projections in the master plan are consistent with current data and projections. Also examine the forecasts of air carrier enplanements and total operations. If existing levels of enplanements, operations, and aircraft mix differ significantly from the master plan forecast, the differences should be reconciled. A good way of updating the parts of a master plan that are critical for noise exposure mapping is with the Part 150 study. The Part 150 study reviews existing forecasts and prepares new ones if necessary. The study then develops a compatibility program that considers reconfiguration of the airport facilities and noise abatement procedures, along with possible land use restrictions. Noise contours prepared in the Part 150 study therefore reflect the levels of noise modified by a total compatibility program.

Political acceptance of the zoning also can be enhanced with a Part 150 study. The study allows those groups likely to be affected by a compatible use ordinance to be involved in the planning process at an early date. Interested parties can see how the noise contours are

developed and can provide input into the total compatibility program. A Part 150 study advisory committee might evolve into the airport zoning commission or at least report to that commission when it is formed. To provide a firm political and legal basis for subsequent zoning, the governing body of the political subdivision owning the airport should formally accept the noise contours and compatibility plan prepared in the Part 150 Study before adopting and implementing an airport zoning ordinance.

Preparation Of The Noise Exposure Map

As was explained in Chapter Two, noise contour maps are prepared with a computer. Consulting firms hired to do airport master plans and Part 150 studies have access to the program which makes the calculations and "draws" the maps. The program is called the Integrated Noise Model (INM). It contains a database containing the noise levels of most aircraft types in use today. The consultant provides the model information on the characteristics of the airport being studied: airport altitude, mean temperature, runway configuration, type of aircraft, arrival and departure tracks and procedures, and touch-and-go operations (practice landings immediately followed by takeoff). The ordinance map and compatible use districts should be based on the present or forecast level of operations that produces the largest (in terms of area covered) set of noise contours.

The INM calculates an aircraft's distance from points on the ground as it travels along the flight path. The level of aircraft generated sound reaching each point can then be determined. The noise from each aircraft operation is accumulated at each point on the ground using the L_{dn} methodology. Noise exposure calculations can be displayed graphically with the use of an x, y coordinate grid. The runway configuration is first placed on the grid (Figure 3-2). Points for which noise exposure is to be calculated are identified with coordinates which the INM relates to the coordinates of a runway. Points on the grid with common L_{dn} values are connected with a line, creating the contour for that exposure level. The smoothness of the contour line can be adjusted with the computer program. For zoning purposes a smooth line is desirable. This need should be reviewed with the consultant preparing the contours. Generally the INM will be requested to generate 65, 70, and 75 L_{dn} contours. These are the contours used for zoning. Additional contours, such as the 60 L_{dn} contour can be requested. They are not required for Part 150 studies, however, and the Federal Aviation Administration may not participate in the additional (though not significant) cost of preparing these contours. The

noise exposure contours are then overlaid on a base map of the airport area containing (1) the airport boundaries, (2) the controlled area, and (3) the boundaries of all political subdivisions in the controlled area. Figure 3-3 illustrates how the noise contours for a two-runway, transport airport might appear relative to the controlled area and airport boundaries.

The Airport Zoning Act states that airport compatible land use **regulations may be established outside airport boundaries and within the controlled area**. It is important to note here that **the controlled area serves only as an outer boundary to the regulations**. As discussed in Chapter Two and in the following sections of this chapter, boundaries of the actual compatible land use districts should be consistent with noise contours.

The scale of the grid and the base map must be the same. The base map should show the runway configuration, the airport boundary, the boundaries of political subdivisions, and the controlled area for each eligible runway. The base map used for the airport's height zoning ordinance can also be used for the compatible use ordinance. The height zoning maps are usually overlaid on a U.S.G.S. 7.5 minute topographic map. These maps have a scale of 1" = 2000' which is the smallest scale that should be used for the ordinance map. For zoning uses, these maps can be photographically enlarged to 1" = 1000'. It is better to prepare separate maps for hazard and compatible land use zoning to avoid confusion where noise contours overlap height limitation zonal boundaries. Be aware that for runways with non-precision instrument approaches, the length of the controlled area will be greater than the longest dimension of the airport hazard area.

Figure 3-4 illustrates all elements described above as they would appear on an actual U.S.G.S. map. This figure also shows the airport overlay zones (discussed in the following section) bounded by the noise contours. Note that the area within the controlled area and outside the 65 L_{dn} contour is identified as Airport Overlay Zone 1 (AO-1). As can be seen in Figure 3-5, however, no land use regulations are applied in AO-1.

Preparation Of The Ordinance Text

An airport compatible land use zoning ordinance may be incorporated into an existing municipal zoning ordinance or it may stand as an independent ordinance. Ordinances that are to be adopted unilaterally may be consolidated with the comprehensive zoning

ordinance of the city doing the zoning. Alternatively, it could be consolidated with an airport height hazard ordinance previously adopted by the city. Where the ordinance is adopted by a Joint Airport Zoning Board, it will remain independent of municipal ordinances, except again, it can be consolidated with the height hazard ordinance for the same airport. The model ordinance contained in Appendix E is formatted as an independent ordinance.

Preface - Whether independent or consolidated, the ordinance must be preceded with a citation of the enabling statute and a "declaration of purpose." The statute specifically requires the ordinance to state that the airport for which the zoning is being adopted "fulfills an essential community purpose." The "Definition" section of the ordinance should identify the instrument and primary runways to be used for determining the control area.

Districts - The ordinance should define the controlled area using the eligible runway(s) as reference points. Recall that the maximum controlled area extends along the centerline of an eligible runway for five miles beyond each runway end and 1.5 miles on each side of the extended centerline. The ordinance divides the controlled area into airport overlay (AO) zones as follows:

Airport Overlay Zone 1 - AO-1: that area within the controlled area and outside the 65 L_{dn} noise contour line.

Airport Overlay Zone 2 - AO-2: that area within the controlled area and between the 65 and 70 L_{dn} noise contour lines.

Airport Overlay Zone 3 - AO-3: that area within the controlled area and between the 70 and 75 L_{dn} noise contour lines.

Airport Overlay Zone 4 - AO-4: that area within the controlled area and between the 75 and 80 L_{dn} noise contour lines.

Airport Overlay Zone 5 - AO-5: that area within the controlled area and between the 80 and 85 L_{dn} noise contour lines.

Airport Overlay Zone 6 - AO-6: that area within the controlled area and within the 85 L_{dn} noise contour line.

Though six zones have been identified here, most ordinances will contain fewer. At all but the largest airports, zones AO-5 and AO-6 will likely fall on the airport's primary surfaces where no structures are permitted. The number of zones in an ordinance should reflect the actual conditions at the airport being zoned. The model ordinance in Appendix E and illustrated in Figure 3-4 contains only four overlay zones. Note that zone AO-1 is within the controlled compatible land use area but not within the 65 L_{dn} contour. In effect, no restrictions are placed on this area. The statute does not require that the entire controlled area be zoned. Zone AO-1 should be included in the ordinance to give notice of possible future zoning should airport operating conditions change.

Permitted Uses - Permitted uses in each of the zones are those permitted by any underlying comprehensive zoning in effect, with the exception of those uses specifically prohibited by the compatible use ordinance. The prohibited uses are identified by incorporating in the ordinance a noise compatibility table based on Figure 2-6 in the previous chapter. Several modifications must be made to this table and the "Notes" for it to be included in the zoning ordinance.

1. The first note to Figure 2-6 indicates that communities have the option of **prohibiting** residential use or **restricting** residential use by requiring construction with noise level reduction (acoustical construction) features. Before preparing the ordinance one of the options must be chosen. Note 1, therefore, should not be included in the ordinance. The Texas Department of Transportation recommends that exclusive residential uses, including mobile home parks, be prohibited in Airport Overlay Zones 2 through 6. Where the prohibition of residential uses is not feasible, noise level reductions (NLR) of 25 and 30 should be required for AO-2 and AO-3 respectively. Residential use still would be prohibited in AOs 4-6.
2. The ordinance must contain a reference for NLR measures that are considered appropriate for achieving the specified levels of noise reduction. The reference can be another ordinance or a part of the municipal building code where such measures may be specified. If these specifications cannot be referenced in an existing document, the reference should be added to the ordinance or to another public document such as the local building code. Appendix D contains examples of building codes specifying

noise level reduction. A community desiring to incorporate NLR measures into their building codes should employ a qualified acoustical consultant to develop those measures. The examples in Appendix D are not standards and should not be considered as applicable to communities other than those in which they were originally adopted.

3. Transient lodgings are appropriate uses in the airport environs provided they are constructed properly. The TxDOT recommends that NLR's of 25, 30, and 35 be used for transient lodgings in AO's 2-4 respectively.
4. Each of the remaining notes should be rewritten as requirements. For example, Note 2 (renumber as Note 1) should read: "Measures to achieve NLR of 25 shall be incorporated into the design and construction of portions of these buildings..."

Other Modifications - Other changes should be made to Figure 2-6 before it is used in the ordinance. The headings to the columns should be changed to identify the appropriate airport overlay zone such as:

AO-2
L_{dn} 65-70

The land use labels used in Figure 2-6 should be made consistent with the labels used in the local comprehensive zoning ordinance. The use labels in Figure 2-6 are accompanied by a Standard Land Use Coding Manual (SLUCM) number. Questions concerning the character of uses identified in Figure 2-6 can be resolved by referring to the manual. The source of the definitions should be referenced, e.g., "Land use definitions as contained in Ordinance 1234, City of Y, Texas."

An example of a modified Figure 2-6 for use in an Airport Compatible Land Use Zoning ordinance is shown in Figure 3-5. The table does not have to be incorporated exactly as illustrated. Communities may adopt more restrictive standards. The Texas Department of Transportation recommends using the compatibility standards found in Figure 2-6. The table as illustrated is based on studies conducted by the Federal Aviation Administration. There is documented evidence that the uses shown in the table represent compatible uses at the noted noise levels. Restrictions based on the table, therefore, can be considered

reasonable. Political subdivisions or Joint Airport Zoning Boards using alternative standards must be prepared to validate the basis for the alternative.

The Relationship Between Airport Overlay And Comprehensive Zoning

Overlay vs. Comprehensive Zoning - These Guidelines recommend that overlay zones be used to implement the airport compatible land use provisions of the Texas Airport Zoning Act. The overlay zoning technique is similar to that which has been successfully used for airport height hazard zoning. Where the controlled area includes more than one jurisdiction, the airport overlay zoning approach is preferable to relying on each political subdivision to amend its comprehensive ordinance to include airport compatibility measures. Each community would not be required to implement the detailed redistricting described in the following paragraph. Overlay zoning also makes it possible to effectively control land uses in those jurisdictions without zoning ordinances.

Comprehensive Zoning for Airport Compatible Use - The land use compatibility objective of the airport overlay zone could also be achieved through redistricting under each community's comprehensive zoning authority. Zones with prohibited uses would have to be redistricted to permitted uses. New zoning districts should be created to distinguish between similar zones without the airport compatible use restrictions. For example, assuming something like C-1, C-2, C-3, etc., commercial districts in the existing ordinance, new districts such as AC-1 (Airport Commercial), etc., would be necessary. Use of the airport overlay scheme eliminates the need to create new districts. However, if the controlled compatible land use area to be zoned is within the airport-owning political subdivision, use of the existing comprehensive zoning ordinance to achieve compatibility is a reasonable alternative.

Ordinance Conflicts - The effect of airport land use compatibility overlay zones may be to "rezone" the land underlying them. This effect is due to the provision of the Texas Airport Zoning Act whereby airport zoning supersedes underlying comprehensive zoning. Where there is no underlying comprehensive zoning, or where the uses prohibited by the compatible use ordinance also are prohibited by the underlying comprehensive ordinance, the ordinances are consistent. However, where the underlying zoning permits only uses that are prohibited by the overlay ordinance, the ordinances are in conflict and the underlying zoning must be amended to permit an economic use of the property. A lawful, economic use of property must be permitted or the property must be condemned. Existing

uses that are prohibited by the airport overlay zoning may be continued as nonconforming uses.

The change to the underlying comprehensive zoning ordinance is made by the political subdivision that enacted the ordinance, not by the Joint Airport Zoning Board which adopted the airport overlay zoning. Changes should be made within the context of the comprehensive land use planning process to the extent possible. In isolated situations where rezoning to a compatible use would be unreasonable, property owners can seek variances from the overlay ordinance through the designated Board of Adjustment.

Use Prohibitions vs. Use Restrictions - The TxDOT recommends that where uses are incompatible with aircraft noise they should be prohibited. This is especially true of residential uses for which noise level reduction measures are dependent on windows remaining closed at all times. There will be situations, nonetheless, where the prohibition of residential uses will not be possible. These situations include extensive preexisting residential development within the airport overlay zones and circumstances that make the prohibition of residential uses clearly unreasonable. There also may be occasions when the community's inclination is not to prohibit residential uses. In this case, prior to permitting residential development, the need for additional residential development and the absence of viable alternative development options should be determined.

Where residential uses must be allowed, measures to achieve outdoor to indoor noise level reduction of at least 25 dB (AO-2) and 30 dB (AO-3) should be incorporated into building codes and be considered in individual approvals. Normal construction can be expected to provide a NLR of 15 dB and normally assumes mechanical ventilation and closed windows year round. NLR criteria will not eliminate outdoor noise problems. However, building location, site planning, and the design and use of berms and barriers can help mitigate outdoor noise exposure, particularly from ground level sources. Measures that reduce noise at a site should be used wherever practical in preference to measures which protect only interior spaces.

Ordinance Administration

The remainder of the ordinance describes the manner in which it will be administered. In most respects the ordinance will be administered like any other zoning ordinance. There will be provisions for permits, variances, and the treatment of nonconforming uses. Where an ordinance is adopted by a Joint Airport Zoning Board, the Board must decide

who will administer the ordinance. There must be a designated administrator and enforcement authority. A Board of Adjustment must also be designated.

The administrator (or administrative agency) will be responsible for issuing or denying use permits in accordance with the ordinance. The Board of Adjustment must hear appeals of the administrator's decisions and decide whether to grant variances. It is recommended that the existing zoning administrative agency and board of adjustment of one of the cities participating in the joint board be appointed to assume these same functions for the airport zoning ordinance. Alternatively, the joint board may name its own administrative officer (such as the county clerk) and its own Board of Adjustment.

Assistance with the Preparation of Ordinances

While most communities are familiar with the comprehensive zoning process, there are, as explained in this chapter, a number of features unique to airport compatible land use zoning. Communities are encouraged to seek the assistance of the Federal Aviation Administration and the Texas Department of Transportation before initiating the zoning process. The FAA can provide technical and financial assistance in preparing or updating airport master plans and noise studies that are necessary inputs to the zoning process.

Once the overlay district map has been prepared by the airport sponsor or their consultant, the TxDOT, on request, will draft the ordinance and a set of procedural forms for ordinance adoption. The procedures for adoption and administration of the ordinance are described in detail in Chapter Five of these Guidelines. It is important that they be followed precisely in conformance with the Texas practice of municipal law. The guidance of a municipal attorney or legal counsel should be sought. Again, the TxDOT staff is available to provide assistance during any stage of the zoning process.

**Easement Used by State of Maryland
and the Maryland Department of Transportation
for Residential Sound Insulation Program
at Baltimore/Washington International Airport**

DEED OF EASEMENT

THIS DEED OF EASEMENT made this _____ day of _____, 19___, by and between _____ and _____, of Anne Arundel County, hereinafter referred to as Grantors, and the STATE OF MARYLAND to the use of the MARYLAND DEPARTMENT OF TRANSPORTATION, MARYLAND AVIATION ADMINISTRATION, hereinafter referred to as Grantee.

WITNESSETH:

WHEREAS, Grantee is charged with the operation, administration, improvement, regulation and protection of state-owned airports; and

WHEREAS, the Baltimore/Washington International Airport is a state-owned airport located in Anne Arundel County; and

WHEREAS, certain real property owned by Grantors, as more particularly described hereafter, is located within the Baltimore/Washington International Airport Noise Zone as established by Grantee pursuant to authority vested in it by Code (1977), Transportation, Section 5-806; and

WHEREAS, Grantee is empowered to acquire interests in land for noise compatibility purposes in any Noise Zone surrounding a state-owned airport pursuant to the Annotated Code of Maryland, Transportation Article, Section 5-823, and the parties are desirous of entering into this Deed of Easement for their mutual benefit, protection, welfare, and necessity; and

WHEREAS, the General Assembly of Maryland in Chapters 579 and 580 of the Laws of 1987 directed Grantee to undertake an ongoing program to grant certain relief regarding aviation noise to property owners residing near Baltimore/Washington International Airport in return for which the property owners must convey to Grantee an aviation easement; and

WHEREAS, Grantors have elected to participate in the aforementioned program, and Grantee has agreed to provide Grantors noise insulation assistance or assistance in selling the within described property.

NOW, THEREFORE, for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable considerations, receipt of which are hereby acknowledged, Grantors hereby grant and convey unto Grantee, its successors and assigns, for the use and benefit of the public, an easement on, over and upon a parcel of real property located in Anne Arundel County, Maryland, and more particularly described as follows: Lot No. _____, Block _____, as shown on the Plat of Glen Burnie Park, Section _____ which Plat is recorded among the Land Records of Anne Arundel County in Plat Book No. _____, folio _____. Improvements thereon being known and designated as _____.

BEING the same lot of ground which by Deed dated _____ and recorded among the Land Records of Anne Arundel County in Liber _____, folio _____, was granted and conveyed by, _____ unto the Grantors herein.

THE EASEMENT herein granted on, over and upon the above described real property encompasses the air space above the surface of Grantors' property having the same boundaries as the above described property and extending from the surface upwards to the limits of the atmosphere of the earth.

TO HAVE AND TO HOLD said easement unto the said Grantee, and its successors and assigns, until said Airport shall be abandoned and shall cease to be used for public airport purposes.

THIS EASEMENT shall run with the land and be appurtenant to and for the benefit of all of the real property comprising and known as the Baltimore/Washington International (Airport) and such other additional property or interest therein as shall be subsequently acquired or designated from time to time by Grantee or its successors as constituting a part of the Airport, and the easement shall be in gross for the benefit of Grantee and all other persons and entities who directly or indirectly use the easement as a result of any type of use of the property and facilities constituting the Airport, including aviation ground and flight operations.

THIS EASEMENT grants the privilege of passage of all lawful flight operations and all noise resulting directly or indirectly therefrom within the described air space, and the right to cause all noise that may enter the described air space which result directly or indirectly from the operations of the Airport, now and in the future, including but not limited to, ground and flight operations of aircraft at, over, on or in the vicinity of the Airport, and regardless of whether arriving, departing or enroute, while recognizing that the quantity of such operations may increase in the future. Except as provided herein, this easement shall neither enlarge nor diminish any rights of either party existing prior to the date of this easement and as now or may hereafter be provided by law.

The privilege to allow noise from flight operations of aircraft upon the within described property hereby granted extends only to noise up to and including, but

not higher than 75 Ldn, as the term "Ldn" is defined in the Code of Maryland Regulations (COMAR) 11.03.03 (as amended through February 2, 1977), and which Ldn shall be calculated annually by the Maryland Aviation Administration. To the degree that aircraft noise now or at any time hereafter does not exceed 75 Ldn in any period of twelve consecutive months, this easement shall remain in full force and effect. For the purpose of computing the Ldn affecting the subject property, noise levels resulting from temporary increased use of certain runways because of construction or repair of others, or for other causes beyond the control of Grantee (e.g. unusual weather or wind conditions), shall not be included in the data used to compute the Ldn for purposes of this provision of this Deed of Easement.

Further, Grantors and their successors in interest with regard to the within described property shall be ineligible to receive any remuneration or other compensation or benefit under any governmental program of the State of Maryland designed to allay, abate, or compensate for, the effects of aircraft noise and emissions in connection with the operation of Baltimore/Washington International Airport.

All of the uses provided for in this easement shall be without any liability of Grantee or of any other person or entity entitled to the benefits of this easement for damage to property or physical or emotional injury to persons, discomfort or interference with television, radio or other types or kinds of electrical reception, transmissions or activities in the easement. This grant expressly does not exclude claims by the Grantors or those claiming under them for physical or personal injury caused by any air traffic utilizing the easement which does actual physical damage to the property or persons located therein by crashing into or otherwise coming into direct physical contact with the property or persons located therein.

In addition, this grant expressly does not exclude claims by the Grantors or those claiming under them for physical or personal injury caused by any substance, vapor, element, article or other thing, the damage or injury from which could not have been ascertained or readily ascertainable by accepted and current testing methods as of the date of the execution of this Easement. The parties acknowledge that it is their intention that this paragraph be interpreted so that damages or injuries which result from causes known or ascertainable by accepted scientific methods as of the date of the execution of this Easement shall be excluded from liability, and that Grantors do not hereby waive any right to pursue relief against Grantee for those damages or injuries which result from causal connections that may only be determined by future advances in science, medicine or other technologies.

The Grantors for their heirs, successors, and assigns, do hereby covenant that they are lawfully seized of an indefeasible estate in the herein described property; and they have the right to grant and convey the estate, interest and easement herein conveyed; and that they will specially warrant and defend unto the Grantee and its assigns, forever, the quiet and peaceable use and enjoyment of the herein granted easement.

IN WITNESS WHEREOF, the said Grantors do hereunto set their hands and seals the day and year first above written.

WITNESS:

GRANTORS:

WITNESS:

STATE OF MARYLAND, _____ COUNTY, to wit;

I HEREBY CERTIFY, that on this ____ day of _____, 19____, before me, the subscriber a Notary Public of the State and County aforesaid, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and who acknowledged the foregoing easement to be _____ his/her act, for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF I hereunto set my hand and official seal

My Commission Expires:

Notary Public

(SEAL)

STATE OF MARYLAND, _____ COUNTY, to wit;

I HEREBY CERTIFY, that on this ____ day of _____, 19____, before me, the subscriber a Notary Public of the State and County aforesaid, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and who acknowledged the foregoing easement to be _____ his/her act, for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF I hereunto set my hand and official seal

My Commission Expires:

Notary Public

(SEAL)

THIS IS TO CERTIFY, that the within instrument was prepared by the undersigned attorney, duly admitted to practice before the Court of Appeals of Maryland, or by an employee of such attorney.

Assistant Attorney General

Mail to: Maryland Aviation Administration
Real Estate Division
P.O. Box 8766
BWI Airport, MD 21240-0766

**Easement Used by Burbank-Glendale-Pasadena Airport Authority
for Acoustical Treatment Program
at Burbank-Glendale-Pasadena Airport**

Recording Requested By And
When Recorded Return To:

Burbank-Glendale-Pasadena Airport Authority
2627 Hollywood Way
Burbank, CA 91505
Attn: Director, Engineering and Planning

Public Agency - Official Business
Document Entitled to Free Recording
Government Code Section 6103

**EASEMENT DEED AND AGREEMENT
(Aviation Rights)**

This EASEMENT DEED AND AGREEMENT ("Avigation Easement Agreement") is executed and delivered as of this ____ day of _____, 199__, by _____ and

_____ (collectively, "Grantor") and the **BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY**, a public entity formed under a joint exercise of powers agreement among the cities of Burbank, Glendale and Pasadena, California, pursuant to the California Joint Exercise of Powers Act ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the owner in fee simple of that certain real property (the "Property"), legally described in Exhibit A attached hereto, the street address of which is _____, California.

B. Grantee is the owner and operator of the Burbank-Glendale-Pasadena Airport (the Burbank-Glendale-Pasadena Airport, together with any future configuration or modification thereof being hereinafter referred to as the "Airport"), which as presently configured is more particularly described in Exhibit B attached hereto. The locations of the Property and the Airport are shown and depicted on the area map attached as Exhibit C.

C. Grantor is a voluntary participant in a publicly funded program for the acoustical treatment and insulation of residences. Under this program, Grantee will contract and pay for the installation of improvements and modifications to Grantor's Property in order to reduce interior noise levels generated by aircraft landing and taking off from the Airport.

It is an express condition of participation in this program that Grantor execute and deliver this Easement Deed and Agreement, which is intended to benefit Grantee and all users of the Airport and which is also intended to be binding on Grantor and all future owners or occupants of the Property.

1. GRANT OF AVIGATION EASEMENT

Grantor, individually and for the heirs, successors and assigns of Grantor, hereby grants to Grantee, its successors and assigns, for the use and benefit of Grantee, the tenants, invitees and licensees of Grantee, and all users of the Airport, the permanent non-exclusive easements, rights and servitudes (the "Avigation Easement") described in Sections 1.1 and 1.2.

1.1. Passage of Aircraft. The Avigation Easement shall include the free and unobstructed rights of use and passage by Aircraft in and through the airspace above and within the vicinity of the Property, with such rights of use and passage by Aircraft to be unlimited as to frequency, type of Aircraft and proximity to the surface of the Property, so long as the exercise of such rights is not in violation of then applicable federal laws governing flight operations (the "Passage of Aircraft"). The Avigation Easement shall not include or authorize Aircraft landing, explosion, crash, falling objects or other occurrences causing direct physical injury to persons or direct physical damage to property.

1.2. Noise and Other Effects of Aircraft Operation. The Avigation Easement shall include the right to cause within, and to enter or penetrate into or transmit through, any improved or unimproved portion of the Property, or any air space above the ground surface of the Property, such noise, sounds, vibrations, air currents, electronic interference and aircraft engine exhaust and emissions that may result from or be related to the taking-off, landing or flight of Aircraft to, from or over the Airport or the flight of Aircraft over the Property (the "Noise and Other Effects of Aircraft Operation").

1.3. Definition of Aircraft. As used herein, the term "Aircraft" shall mean any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

1.4. Preservation of Existing Rights; Intended Application. It is expressly intended by Grantor and Grantee that (I) the Avigation Easement shall not supersede or impair any existing prescriptive or other easements, rights or

interests of Grantee in or applicable to the Property, all of which easements, rights and any remedies related thereto Grantee expressly reserves; (ii) the Avigation Easement shall apply to the Passage of Aircraft and to Noise and Other Effects of Aircraft Operation that would otherwise be objectionable or would otherwise constitute a trespass, a permanent or continuing nuisance, personal injury or taking or damage to the Property; and (iii) as to Grantee and its tenants, the Avigation Easement shall be appurtenant to the Airport and, as to all others, the Avigation Easement shall be in gross.

2. COVENANTS

2.1. Waiver and Covenant Not to Sue. Grantor, for itself and its successors and assigns, does hereby fully waive and release, and covenants not to assert or bring any right or cause of action which it might now have, or which it may have in the future, against Grantee, its successors and assigns, or against the tenants, licensees or users of the Airport, caused by or relating to the use of the Avigation Easement or the exercise of rights under this Avigation Easement Agreement. Nothing in this Avigation Easement Agreement shall preclude Grantor or its successors and assigns from seeking mitigation for any Noise or Other Effects of Aircraft Operation in, at, on, above or about any other property owned by Grantor; however, nothing herein shall be construed as creating any right in Grantor or any obligations or duty in Grantee to provide any such mitigation.

2.2. Interference With Air Navigation. In furtherance of the easements and rights herein granted, Grantor hereby covenants, for itself and its successors and assigns, at all times hereafter, that it will not take any action, cause or allow any electronic emissions, or construct any obstruction on the Property which would conflict or interfere with or infringe Grantee's rights hereunder.

2.3. Changes. The rights, easements, benefits, waivers, covenants and agreements granted hereunder, including the Avigation Easement, shall continue notwithstanding any increase or other change in the boundaries, volume of operations, noise, or pattern of air traffic at the Airport. The Avigation Easement and this Avigation Easement Agreement may not be modified, amended, terminated or abandoned except by execution and delivery of an instrument executed and acknowledged by Grantee, and Grantor agrees that, in the absence of such an instrument, no conduct by Grantee or increase, diminution or change in use of the Avigation Easement shall constitute either an overburdening of the Avigation Easement or a termination or abandonment of the Avigation Easement.

2.4. Homeowner Participation Agreement. Grantor and the successors and assigns of Grantor shall perform fully the covenants and obligations of Grantor under that certain "Residential Acoustical Treatment Program Homeowners Participation Agreement" between Grantor and Grantee of even date herewith, all of the provisions of which are hereby incorporated hereby by reference

as if set forth in full, it being the intent of the parties that the covenants and obligations of the Grantor under said Agreement shall be enforceable covenants running with the land in accordance with Section 2.5 hereof.

2.5. Covenants Binding On and Benefitting Successive Owners and Assigns. The parties intend that all waivers, restrictions, covenants and agreements set forth herein relate to the use, repair, maintenance or improvement of the Property or the Airport, or some part thereof, and shall run with the land of Grantor and Grantee, and any grantee, successor or assign of Grantor who acquires any estate or interest in or right to use the Property shall be bound hereby for the benefit of the Airport and for the benefit of any grantee, successor or assign of Grantee, including, without limitation, the tenants and licensees of Grantee, and all users of the Airport.

2.6. Attorneys' Fees. Should Grantor or Grantee or any of their respective successors or assigns retain counsel to enforce any of the provisions herein or protect their interests in any matter arising under this Avigation Easement Agreement, or to recover damages by reason of any alleged breach of any provision of this Avigation Easement Agreement, the losing party in any action pursued in a court of competent jurisdiction shall pay to the prevailing party all costs, damages, and expenses incurred by the prevailing party, including, but not limited to, attorneys' fees and costs incurred in connection therewith.

IN WITNESS WHEREOF, the parties have executed and delivered this Avigation Easement Agreement as of the date first set forth above.

"GRANTOR"

"GRANTEE"

BURBANK-GLENDALE-

PASADENA

AIRPORT AUTHORITY

By: _____
Its: President

**Easement Used by City of Cleveland
for Residential Sound Insulation Program
at Cleveland Hopkins International Airport**

**AVIGATION EASEMENT AND COVENANTS
RUNNING WITH THE LAND**

WHEREAS, [Homeowner] herein called the "Grantor", without regard for number, being the owner in fee of a certain parcel of real property more particularly described as follows:

[INSERT LEGAL DESCRIPTION]

NOW, THEREFORE, the Grantor, for Grantor, Grantor's heirs, administrators, executors, successors and assigns, does hereby grant, bargain, sell and convey unto the City of Cleveland, acting by and through its Department of Port Control, division of Cleveland Hopkins International Airport, hereinafter called the "Grantee" for Grantee and Grantee's successors and assigns, and for the use and benefit of the public, a perpetual and assignable right-of-way and easement, for the free and unobstructed passage of all aircraft, notwithstanding the owner or operator of such, in, through and across all of the air space above Grantor's property subject to such rights, terms, and conditions as contained herein.

Said air space being 156 ft. above Grantor's property. "Aircraft" is defined for the purpose of this instrument as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air or space regardless of the form of propulsion which powers said aircraft in flight. It is understood and agreed that the following covenants and agreements shall run with the land.

a. The Grantor, its successors in interest and assigns, shall:

(a) waive, remise and release any right or cause of action which Grantor may now have or may have in the future against the Grantee, on account of or arising out of noise, vibrations, fumes, dust, fuel, particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on Cleveland Hopkins International Airport or in or near the air space above Grantor's real property;

(b) not allow any structure, object, tree, or other vegetation to remain on Grantor's property which encroaches upon or extends into the prohibited air spaces and right-of-way;

(c) use, permit or suffer the use of, Grantor's property in such a manner as to create electrical interferences with radio communication to or from any aircraft or between any airport installation and any aircraft, or as to make it difficult for aircraft pilots to distinguish between airport lights or as to impair visibility in the vicinity of any airport, or to otherwise endanger the landing, take off, or maneuvering of aircraft;

(d) not permit the construction of any facility or improvement which attracts or results in the concentration of birds which would interfere with the safe operation of aircraft in;

(e) not cause or permit any change in the current land use that will reduce the compatibility of the noise compatibility program measures upon which federal funds have been expended.

II. The Grantee shall have:

(a) the continuing right to cause or allow in all of the air space above the surface of the Grantor's property such noise, fumes, vibrations, dust, fuel particles and all other effects that may be caused by or result from the operation of aircraft, whether or not said aircraft overfly or intrude into the easement area above described, and

(b) the right of entry, ingress and egress on Grantor's property for the purpose of:

(i) keeping Grantor's property clear of any and all obstructions which encroach upon or extend into the easement area and right-of-way and which is not adequately alleviated by Grantor upon notification;

(ii) removing, cutting or lowering bushes, trees or other vegetation, demolishing buildings or other structures or eliminating any obstruction whatsoever which extends into the easement area and right-of-way and which obstruction is not adequately eliminated by Grantor upon notification;

(iii) removing any facility or improvement on Grantor's property which attracts or results in the concentration of birds and which obstruction is not adequately eliminated by Grantor upon notification; and

(iv) eliminating electrical interferences on Grantor's property which are not adequately alleviated by Grantor upon notification.

RESERVING unto the Grantor, its successors in interest and assigns, the right to use and occupy Grantor's property for all purposes which do not interfere with or abridge the rights hereby granted thereto unto the Grantee, its successors and assigns until said Cleveland Hopkins International Airport shall be abandoned and shall cease to be used for public airport purposes.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day
of _____, 19__.

Signed and acknowledged
in the presence of:

WITNESSES

GRANTOR

Witness 1

By: _____

Witness 2

Witness 1

By: _____

Witness 2

**Easement Used by County of Milwaukee
for Residential Sound Insulation Program
at General Mitchell International Airport**

** SAMPLE DOCUMENT - MAY BE MODIFIED IN FUTURE **

AVIGATION EASEMENT
General Mitchell International Airport
Parcel No. _____

THIS AVIGATION EASEMENT (this "Agreement") is made and effective this ____ day of _____, 1998, by and between MILWAUKEE COUNTY, a municipal corporation organized and existing under the laws of the State of Wisconsin (hereinafter referred to as the "County"), and

_____ and _____,
husband and wife (hereinafter referred to as the "Homeowner").

W I T N E S S E T H :

WHEREAS, the Homeowner is the sole record owner in fee simple of certain real property located in the City of _____, County of Milwaukee, State of Wisconsin, and more particularly described on Exhibit A, which is attached hereto and hereby incorporated herein (the "Property"); and

WHEREAS, the County is the owner and operator of the General Mitchell International Airport (the "Airport"), situated in the County of Milwaukee, State of Wisconsin, and in close proximity to the Property; and

WHEREAS, the County desires to obtain and preserve for the use and benefit of the public a right of free and unobstructed flight for aircraft landing upon, taking off from, or maneuvering about the Airport; and

WHEREAS, the Homeowner has heretofore agreed, and desires hereby, to grant to the County an avigation easement over, across and through the Property for such free and unobstructed flight of aircraft landing upon, taking off from, or maneuvering about the Airport.

NOW, THEREFORE, in consideration of the terms, covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Homeowner agrees as follows:

1. Airspace. The airspace through which the easement and right-of-way are herein granted shall be that airspace located directly over and across the

Property which lies at or above one hundred (100) feet above ground level (the "Airspace").

2. Grant of Easement for Passage of Aircraft. The Homeowner does hereby grant, bargain, sell, alien, convey, confirm, transfer and set over unto the County, its representatives, agents, licensees and employees for the use and benefit of the public, an easement and right-of-way for the free and unobstructed passage of aircraft in and through the Airspace, together with the right to cause in the Airspace such noise, vibrations, dust and fumes as may be inherent in the operation of such aircraft, now known or hereinafter used, for navigation of or flight in the Airspace and for use of the Airspace for landing on, taking off from, or maneuvering about the Airport.

3. Restrictions on Structures. The Homeowner does hereby expressly agree to restrict the height of structures, objects of natural growth and other obstructions of any kind or nature whatsoever on the Property to a height of not more than one hundred (100) feet above ground level. The Homeowner does hereby grant and convey to the County a continuing right and easement to take such action necessary to prevent the erection or growth of any structure, tree or other object into the Airspace, and to remove from the Airspace any and all structures, trees or other objects that may extend into the Airspace, together with the right of ingress to, egress from, and passage over the Property for such purposes. In addition to, and in no way limiting the generality of the foregoing, if any trees on the Property extend into the Airspace, the Homeowner does hereby grant unto the County the permission to reduce the height of such trees by cutting the tops of the trees.

4. Restrictions on Use. The Homeowner shall not hereafter use or permit or suffer the use of the Property in such a manner as to (i) interfere with the operation, development or maintenance of the Airport, (ii) create electrical interference with radio communication between the Airport and aircraft, or otherwise interfere with the operation of air navigation and communication facilities serving the Airport, (iii) make it difficult for pilots to distinguish between airport lights and other lights, (iv) result in glare in the eyes of pilots using the Airport, (v) impair the visibility in the vicinity of the Airport, or (vi) otherwise endanger the landing, taking off or maneuvering of aircraft.

5. Release. The Homeowner hereby releases the County from any and all claims, liability or causes of action against the County that the Homeowner has now or may have in the future on account of noise emanating upon the Property which may now or hereafter be incident to the non-negligent operation of aircraft landing on, taking off from, or maneuvering about the Airport.

6. Taxes and Assessments. The County shall not, by reason of this Agreement, be obligated to pay any real estate taxes or special assessments levied against the Property.

7. Successors and Assigns. This Agreement, including the easement and right-of-way granted hereby and each and every term, covenant and condition hereof, shall be binding upon the Homeowner and its heirs, personal representatives, successors and assigns, including without limitation each and every record owner from time to time of the Property or any other person having an interest therein, shall run with the land and shall inure to the benefit of the County and its successors and assigns.

8. Waiver. No waiver of, acquiescence in, or consent to any breach of any term, covenant or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further or succeeding breach of the same or any other term, covenant or condition hereof.

9. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

10. Amendment. This Agreement shall not be modified or amended, except by a writing executed and delivered by the Homeowner and the County or their respective heirs, personal representatives, successors and assigns.

11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the Homeowner has executed this Agreement as of the day and year first above written.

HOMEOWNER:

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 1998, _____
and _____, to me
known to be the persons who executed the foregoing instrument and acknowledged
the same.

Name: _____
Notary Public, State of Wisconsin
County of Milwaukee
My Commission: _____

This instrument was drafted by Kelly B. Reilly of Foley & Lardner, 777 East
Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367.

**Easement Used by City of Dayton, Ohio
for Residential Sound Insulation Program
at James M. Cox-Dayton International Airport**

DEED OF EASEMENT

THIS DEED OF EASEMENT made this _____ day of _____ by and between _____ of _____, Ohio, hereinafter referred to as the "Grantors", and the City of Dayton, State of Ohio, acting through its Division of Airports, hereinafter referred to as the "Grantee."

WITNESSETH:

WHEREAS, "Grantee" is charged with the operation, administration, improvement, regulation, and protection of City-owned airports; and

WHEREAS, James M. Cox-Dayton International Airport is a City-owned airport located in Vandalia, Ohio, hereinafter referred to as the "Airport"; and

WHEREAS, certain real estate is owned by "Grantors", in fee simple, more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof, and referred to hereinafter as the "Property"; last recorded deed on _____ in Volume _____ page _____ in _____ County, Ohio; and

WHEREAS, "Grantee" is undertaking a residential noise mitigation program to grant certain relief regarding aviation noise to property owners residing near the "Airport" and whose property lies within certain noise zones more commonly referred to as those areas between DNL 70 dB and DNL 75 as shown upon the official 1987 noise contour map of the airport, in return for which the "Grantors" must convey to "Grantee" an aviation and noise easement; and

WHEREAS, "Grantee" has agreed to provide "Grantor" noise insulation, more particularly described in Exhibit "B", attached hereto and by this reference made a part hereof, and "Grantor" has elected to participate in this program, and the parties are desirous of entering into this Deed of Easement for their mutual benefit, protection, welfare, and necessity.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged by the parties signatures below, "Grantors" hereby grant and convey unto "Grantee", its successors and assigns, for the use and benefit of the public, an easement on, over, and upon the "Property", more particularly described as follows:

1) THE EASEMENT herein granted on, over, and upon the above-described real property encompasses the air space above the surface of "Grantors" property having

the same boundaries as the above-described property and extending from the surface upwards to the limits of the atmosphere of the earth.

- 2) TO HAVE AND TO HOLD said easement unto the said "Grantee", and its successors and assigns, until said Airport shall be abandoned and shall cease to be used for public airport purposes.
- 3) THIS EASEMENT shall run with the land and be appurtenant to and for the benefit of all of the real property comprising and known as the James M. Cox-Dayton International Airport and such other additional property or interest therein as shall be subsequently acquired or designated from time to time by "Grantee" or its successors as constituting a part of the "Airport", and the easement shall be in gross for the benefit of "Grantee" and all other persons and entities who directly or indirectly use the easement as a result of any type of use of the property and facilities constituting the Airport, including aviation ground and flight operations.
- 4) THE EASEMENT grants the privilege of passage of all lawful flight operations and all noise resulting directly or indirectly therefrom within the prescribed air space, and the right to cause all noise that may enter the described air space which result directly or indirectly from the operations of the Airport, now and in the future, including but not limited to, ground and flight operations of aircraft at, over, on, or in the vicinity of the Airport, and regardless of whether arriving, departing, or enroute, while recognizing that the quantity of such operations may increase in the future. Except as provided herein, this easement shall neither enlarge nor diminish any rights of either party existing prior to the date of this easement and as now or may hereafter be provided by law.
- 5) All of the uses provided for in this easement shall be without the liability of "Grantee" or of any other person or entity entitled to the benefits of this easement for damage to property or physical or emotional injury to persons, animals, or any other living thing, the diminution in value of any personal or real property, and discomfort or interference with the audio portion of television and/or radio by, from, or arising from, the normal operation of aircraft. This grant expressly does not exclude claims by the "Grantor" or those claiming under it for physical or personal injury caused by any air traffic utilizing the easement which does actual physical damage to the property or persons located therein by crashing into or otherwise coming into direct physical contact with the property or persons located therein.

This hereinbefore mentioned exclusion includes any damage caused by the detachment of any physical thing from an aircraft which may impact upon the "Property" or persons upon that "Property."
- 6) The "Grantors" for their heirs, successors, and assigns, do hereby covenant that they are lawfully seized of an indefeasible estate in the herein described property; and they have the right to grant and convey the estate, interest, and easement herein conveyed; and that they will specially warrant and defend unto the

“Grantee” and its assigns, forever, the quiet and peaceable use and enjoyment of the herein granted easement.

IN WITNESS WHEREOF, the “Grantors” have hereunto set their hands and seals this _____ day of _____, 19___. Signed, sealed, and delivered in the presence of:

Witness

Owner

Witness

Owner

Witness

Owner

STATE OF OHIO
COUNTY OF _____

In _____ on the _____ day of _____, 19__ before me personally appeared _____ to me known and known by me to be the parties executing the foregoing instrument, and they acknowledged said instrument, by them executed, to be their free act and deed.

Notary Public

**Easement Used by County of Orange, State of California,
for Residential Sound Insulation Program
at John Wayne Airport**

Recorded at request of, and return to:
County of Orange/John Wayne Airport
Attn: Janet L. Howard
3160 Airway Avenue
Costa Mesa, CA 92626

This is to certify that this document is presented for record by John Wayne Airport under Government Code, Section 6103 and is also exempt from payment of documentary transfer tax.

___ Incorporated, City of _____
___ Unincorporated

BY: _____

Project/Parcel No.: GA 1121-4-
Project: JWA/Acoustical Insulation
Program

GRANT OF AVIGATION EASEMENT

For valuable consideration, receipt of which is acknowledged by execution of this grant of an avigation easement:

_____, hereinafter referred to as "GRANTOR",
does hereby grant perpetual easement and right of way, as herein described.

1.0 RECITALS

This easement is granted in satisfaction of the agreement between GRANTOR and GRANTEE herein, as referenced in that certain Memorandum of Contract recorded on _____, 19____, as Instrument No. _____, in the Office of the County Recorder of said Orange County.

1.1 DESCRIPTION OF SERVIENT TENEMENT

_____ (is) (are) the owner(s) of the fee simple estate in and to that certain real property situated in the County of Orange, State of California, commonly described as _____, and more particularly described as follows ("the subject property"):

(See Exhibit A for Legal Description attached hereto and by reference made a part hereof)

The subject property is located within the vicinity of John Wayne Airport, Orange County.

1.2 DESCRIPTION OF DOMINANT TENEMENT

The County of Orange ("the County"), a political subdivision of the State of California possessing lawful political authority under the laws and Constitution of the State of California, including the power of eminent domain, is the owner and proprietor of that certain real property located in the County of Orange, California, commonly known as John Wayne Airport, Orange County ("JWA").

JWA is a federally certified commercial air carrier Airport regularly serving commercial aviation and general aviation operators utilizing the federal airways and airspace in their operations to and from JWA.

1.3 INTENT OF GRANTOR

It is the intent of GRANTOR to grant to the County a perpetual air and flight easement on, upon, over, across, above and to all the airspace which overlies the subject property ("the easement area") for the operation of aircraft to and from JWA in a manner consistent with applicable operation and safety regulations of the Federal Aviation Administration as they now exist, and as they may hereinafter be amended, thereby relinquishing certain rights GRANTOR possesses in the easement area, as described more particularly below. It is not the intent of GRANTOR by this grant of avigation easement to authorize the County, or any other person, to cause or permit the impact or deposit upon the subject property of physical objects which are a part of, or carried in, aircraft operating to or from JWA.

1.4 INTENT OF GRANTEE

It is the intent of GRANTEE in accepting this grant of avigation easement, to acquire from GRANTOR certain rights in respect of the subject property which will permit and facilitate the safe and efficient operation of aircraft to and from JWA, including disturbances which may be caused to the subject property and persons occupying, or otherwise present upon it, within the limits of the easement as defined in this grant.

2.0 GRANT OF AVIGATION EASEMENT

GRANTOR hereby grants to the County of Orange, its successors and assigns, a perpetual air and flight easement ("the easement"), commonly referred to as an avigation easement, on, upon, over, across, above and to all the airspace which overlies the subject property as described below.

2.1 DESCRIPTION OF AVIGATION EASEMENT

The easement conveys to the GRANTEE, its licensees, permittees, successors and assigns, and all other persons lawfully operating aircraft at, to and from JWA, the use of such airspace above the surface of the subject property to permit the imposition upon the subject property, from its surface upward, of all noise, vibration, discomfort, inconvenience, interference with the use and enjoyment of the subject property, and any consequent or related reduction of market value of the subject property due to the lawful operation of aircraft, including any future change or increase in the boundaries, volume or pattern of aircraft traffic, by all existing and future types of aircraft, up to and including a full calendar year annual Community Noise Equivalent Level ("CNEL") of _____ dB CNEL. For purposes of this easement, CNEL is defined by that certain methodology contained in regulations of the California Department of Transportation, Title 21 of the California Code of Regulations, Section 5000, et seq (commonly known as "the California Noise Standards"), as those regulations existed on the date upon which GRANTOR executed this grant of avigation easement.

Nothing herein authorizes the GRANTEE, or any other person, to cause or permit the impact or deposit upon the subject property of physical objects which are a part of, or carried in, aircraft operating to or from JWA.

2.2 DURATION OF EASEMENT

This easement constitutes a perpetual and enforceable restriction, and is binding upon GRANTOR, their successors, assigns and all persons authorized by them to occupy or enter upon the subject property. This easement is appurtenant to, for the benefit of, and runs with the land in respect of that certain property commonly known as JWA.

Dated _____

Signed in the presence of:

Subscribing Witness
