

WASHBURN MUNICIPAL AIRPORT ZONING ORDINANCE

AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF THE WASHBURN MUNICIPAL AIRPORT BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEREOF; PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS USED HEREIN; REFERRING TO WASHBURN MUNICIPAL AIRPORT ZONING MAPS , WHICH ARE INCORPORATED IN AND MADE A PART OF THIS ORDINANCE; PROVIDING FOR ENFORCEMENT; ESTABLISHING A BOARD OF ADJUSTMENT; AND IMPOSING PENALTIES.

This Ordinance is adopted pursuant to the authority conferred by North Dakota State Century Code Chapter 2-04. It is hereby found that an obstruction has the potential for endangering the lives and property of users of the Washburn Municipal Airport, and property or occupants of land in its vicinity; that an obstruction may affect approach minimums of the Washburn Municipal Airport; and that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Washburn Municipal Airport and the public investment therein. Accordingly, it is declared:

1. That the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by the Washburn Municipal Airport;
2. That it is necessary and in the best interest of the public health, safety, and general welfare of McLean County that the creation or establishment of obstructions that are a hazard to air navigation be prevented; and
3. That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

It is further declared that the prevention of the creation or establishment of hazards to air navigation; the elimination, removal, alteration or mitigation of hazards to air navigation; or the marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

IT IS HEREBY ORDAINED BY McLean County as follows:

SECTION I SHORT TITLE

This Ordinance shall be known and may be cited as the Washburn Municipal Airport Zoning Ordinance.

SECTION II DEFINITIONS

As used in this Ordinance, unless the context otherwise requires:

1. AIRPORT - Washburn Municipal Airport.
2. AIRPORT ELEVATION - The highest point of Washburn Municipal Airport's usable landing area measured in feet from sea level. *Note: The airport elevation for Washburn Municipal Airport was 1907 feet above mean sea level at the time this zoning ordinance was adopted.*
3. AIRPORT IMAGINARY SURFACES - Those imaginary areas in space which are defined by the Approach Surface, Transitional Surface, Horizontal Surface, and Conical Surface and in which any object extending above these imaginary surfaces is an obstruction.

4. APPROACH SURFACE - A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the Primary Surface. The inner edge of the approach surface is the same width as the Primary Surface and extends to a width of: 1,250 feet for utility runway having only visual approaches. The Approach Surface extends for a horizontal distance of 5,000 feet at a slope of 20 feet outward to each foot upward (20:1) for all utility and visual runways.
5. CONICAL SURFACE - A surface extending 20 feet outward for each one foot upward (20:1) for 4,000 feet beginning at the edge of the horizontal surface.
6. HAZARD TO AIR NAVIGATION - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
7. HEIGHT - For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the attached EXHIBIT A: WASHBURN MUNICIPAL AIRPORT HEIGHT RESTRICTION MAP, the datum shall be mean sea level elevation unless otherwise specified.
8. HORIZONTAL SURFACE - A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 5,000 feet from the center of each end of the Primary Surface of each visual or utility runway and connecting the adjacent arcs by lines tangent to those arcs.
9. NONCONFORMING USE - Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.
10. OBSTRUCTION - Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section III of this Ordinance.
11. PERSON - An individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.
12. PLACE OF PUBLIC ASSEMBLY - Structure or place which the public may enter for such purposes as deliberation, education, worship, shopping, entertainment, amusement, or similar activity.
13. PRIMARY SURFACE - A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the Primary Surface extends 200 feet beyond each end of that runway. When the runway has no specially prepared hard surface, or planned hard surface, the Primary Surface ends at each end of that runway. The width of the Primary Surface is 250 feet for utility runways having only visual approaches..
14. RUNWAY - A defined area on an airport prepared for landing and takeoff of aircraft along its length.
15. RUNWAY PROTECTION ZONE (RPZ) - An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. It begins 200 feet beyond the end of the area usable for takeoff or landing. The RPZ dimensions are functions of the type of aircraft and operations to be conducted on the runway.
16. STRUCTURE - An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.
17. TRANSITIONAL SURFACES - These surfaces extend seven feet outward for each one foot upward (7:1) beginning on each side of the Primary Surface and extend upward to a height of 150 feet above the airport elevation to where they intersect the horizontal and conical surfaces.

18. TREE - Any object of natural growth.
19. UTILITY RUNWAY - A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.
20. VISUAL RUNWAY - A runway intended solely for the operation of aircraft using visual approach procedures.

SECTION III AIRPORT HEIGHT RESTRICTION ZONES

Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height limit herein established for such zone. The height restriction zones are shown on the attached EXHIBIT A: WASHBURN MUNICIPAL AIRPORT HEIGHT RESTRICTION MAP, consisting of one (1) sheet, which is attached to this Ordinance and made a part hereof. The applicable height restrictions are hereby established for each of the zones in question as follows:

1. Utility Runway Visual Approach Zone - Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
2. Transitional Zones - Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation.
3. Horizontal Zone - The horizontal zone is established for visual approach airports by swinging arcs of 5,000 feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone is at 150 feet above the airport elevation and does not include the approach and transitional zones.
4. Conical Zone - Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending outward to a distance of 4,000 feet and to a height of 350 feet above the airport elevation.

SECTION IV AIRPORT LAND USE ZONES

In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Washburn Municipal Airport. Such zones are shown on the attached EXHIBIT B: WASHBURN MUNICIPAL AIRPORT LAND USE MAP consisting of one (1) sheet, which is attached to this Ordinance and made a part hereof. An area located in more than one (1) of the following zones is considered to be only in the zone with the most restrictive limitations. The various zones and their restrictions are hereby established and defined as follows:

1. Zone 1 - This zone consists of the runway protection zone (RPZ) located within the inner approach area at each runway end. The total area, shape and development criteria used for Zone 1 are consistent with the existing RPZ's shown on the FAA approved ALP and comply with the RPZ design standards in FAA Advisory Circular 150/5300-13. Zone 1 prohibits residences, places of public assembly, and development that is not necessary for aeronautical purposes.

2. Zone 2 - This zone is 700 feet in width and extends out from the runway ends a distance of 2,500 feet. Zone 2 restrictions are as follows:
 - a. No new residential buildings.
 - b. No new buildings with more than two above ground floors.
 - c. Commercial and industrial development is acceptable for uses involving low densities of people per acre (average of no more than 40 people per acre).
 - d. Schools, hospitals, churches, and other places of public assembly are not acceptable uses.
3. Zone 3 - This zone is representative of the traffic pattern flown by small aircraft that use Washburn Municipal Airport. Zone 3 extends to the perimeter of the Horizontal Surface to ensure the zone encompasses the traffic pattern flown by small aircraft. Zone 3 requires no specific restrictions on residential or other forms of development; however, schools, hospitals, churches, and other places of public assembly are not acceptable uses.
4. Zone 4 - This zone extends from the perimeter of the Horizontal Surface to the perimeter of the Conical Surface. Since the Conical Surface extends outward from the Horizontal Surface a distance of 4,000 feet, Zone 4 extends outward from Zone 3 a distance of 4,000 feet. Zone 4 is primarily in place to provide airspace protection and requires no specific restrictions on residential or other forms of development.

Additional prohibited uses in the above-mentioned zones include landfills, transfer stations, sewage ponds, sludge disposal, water reservoir, commercial feed lots, slaughter houses, waterfowl production, wildlife refuge/sanctuary, and fish processing. Lakes or ponds intended to attract or harbor waterfowl are prohibited, unless it is an integral part of the site's storm drainage system which is required by the local jurisdiction.

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

SECTION V NONCONFORMING USES

1. Regulations Not Retroactive - The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which as begun prior to the effective date of this Ordinance, and is diligently prosecuted.
2. Marking and Lighting - Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the McLean County Planning and Zoning Committee to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction.

SECTION VI NOTIFICATION OF PROPOSED CONSTRUCTION OR ALTERATION

Federal Regulation Title 14 Part 77 establishes standards and notification requirements for objects affecting

navigable airspace. Notification allows the FAA to identify potential aeronautical hazards in advance thus preventing or minimizing the adverse impacts to the safe and efficient use of navigable airspace. Any person/organization who intends to sponsor any of the following construction or alterations must notify the Administrator of the FAA:

1. Any construction or alteration exceeding 200 ft above ground level.
2. Any construction or alteration within 20,000 ft of a public use or military airport which exceeds a 100:1 surface from any point on the runway of each airport with at least one runway more than 3,200 ft.

Persons failing to comply with the provisions of FAR Part 77 are subject to Civil Penalty under Section 902 of the Federal Aviation Act of 1958, as amended and pursuant to 49 U.S.C. Section 46301(a).

Enforcement of Federal Regulation Title 14 Part 77 does not rest with McLean County; this section serves as a reminder to persons proposing construction or alteration near Washburn Municipal Airport of their potential responsibility to notify the FAA.

A sponsor planning on constructing any objects that are within the outlined above criteria is expected to follow the federal requirements. At the time of the ordinance in 2010 the process is through submitting a 7460 Form - NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION with the Federal Aviation Administration and the decision of record should be brought to the zoning board prior. Any changes of this federal process are expected to be followed by the sponsor of the object for construction.

SECTION VII ENFORCEMENT

It shall be the duty of the McLean County Planning and Zoning Commission to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Planning and Zoning Commission upon a form published for that purpose. Applications required by this Ordinance to be submitted to the Planning and Zoning Commission shall be promptly considered and granted or denied. Application for action by the Board of Adjustment shall be forthwith transmitted by the Planning and Zoning Commission.

SECTION VIII BOARD OF ADJUSTMENT

1. The McLean County Board of County Commissioners shall act as the Board of Adjustment and shall have and exercise the following powers: (1) to hear and decide appeals from any order, requirement, decision, or determination made by the McLean County Planning and Zoning Commission in the enforcement of this Ordinance; (2) to hear and decide special exceptions to the terms of this Ordinance upon which such Board of Adjustment under such regulations may be required to pass; and (3) to hear and decide specific variances.
2. The Board of Adjustment shall make written findings of facts and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this Ordinance.
3. The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the Planning and Zoning Commission or decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect variation to this Ordinance.

SECTION IX PERMITS

1. Future Uses - Except as specifically provided in a, b, and c hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with Section VII, 4.
 - a. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than one hundred feet of vertical height above the ground, except when because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
 - b. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than one hundred feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones. Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in Section IV.
2. Existing Uses - No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
3. Nonconforming Uses Abandoned or Destroyed - Whenever the Planning and Zoning Commission determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.
4. Variances - Any person desiring to use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment/Board of County Commissioners for a variance from such regulations with the exception that no variance shall be granted to any person desiring to erect or increase the height or any structure, or permit the growth of any tree not in accordance with the height restrictions prescribed in this ordinance. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances may be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted will not be contrary to the public interest, will not have an adverse affect upon navigable airspace, will do substantial justice, and will be in accordance with the spirit of this Ordinance. Additionally, no application for variance to the requirements of this Ordinance may be considered by the Board of Adjustment unless a copy of the application has been furnished to the Washburn Municipal Airport Authority for advice as to the aeronautical effects of the variance. If the Washburn Municipal Airport Authority does not respond to the application within 30 days after receipt, the Board of Adjustment may act on its own to grant or deny said application.

Obstruction Marking and Lighting – In granting any permit or variance under this section, the Planning and Zoning Commission or Board of Adjustment may, if it deems such action advisable to effectuate the purpose of this ordinance and be reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the Washburn Municipal Airport Authority, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

SECTION X APPEALS

1. Any person aggrieved, or any taxpayer affected, by any decision of the Planning and Zoning Commission made in the administration of the Ordinance, may appeal to the Board of Adjustment.
2. All appeals from the decision of the Planning and Zoning Commission must be taken within 30 days, by filing with the Planning and Zoning Commission a notice of appeal specifying the grounds for the appeal. The Planning and Zoning Commission shall transmit to the Board of Adjustment all of the papers constituting the record upon which the action appealed from was taken.
3. An appeal shall stay all proceedings in furtherance of the action appealed from unless the McLean County Planning and Zoning Commission certifies to the Board of Adjustment, after notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the McLean County Planning and Zoning Commission cause imminent peril to life or property. In such case, proceedings shall not be stayed except by the order of the Board of Adjustment on notice to the McLean County Planning and Zoning Commission and on due cause shown.
4. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
5. The Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as may be appropriate under the circumstances.

SECTION XI JUDICIAL REVIEW

Any person aggrieved, or taxpayer affected, by any decision of the Board of Adjustment, or any governing body of a political subdivision or any airport zoning board which is of the opinion that a decision of the Board of Adjustment is illegal, may appeal to the District Court in the manner provided by law.

SECTION XII PENALTIES

Each violation of this Ordinance or of any regulations, orders, or rulings promulgated or made pursuant to this Ordinance, constitutes a Class B Misdemeanor.

In addition, the political subdivision or agency adopting zoning regulations under this Chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of this ordinance, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the Court shall adjudge to the Plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order to fully effectuate the purposes of this ordinance and of the regulations adopted and orders and rulings made.

SECTION XIII CONFLICTING REGULATIONS

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

SECTION XIV SEVERABILITY

If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION XV EFFECTIVE DATE

WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public health, public safety, and general welfare, and this Ordinance shall be in full force and effect from and after its passage by McLean County and publication and posting as required by law. Approved by the McLean County Planning and Zoning Commission on the 19th day of July, 2010; approved and adopted by the McLean County Board of County Commissioners this 22nd day of July, 2010.

EXHIBIT A: WASHBURN MUNICIPAL AIRPORT HEIGHT RESTRICTION MAP

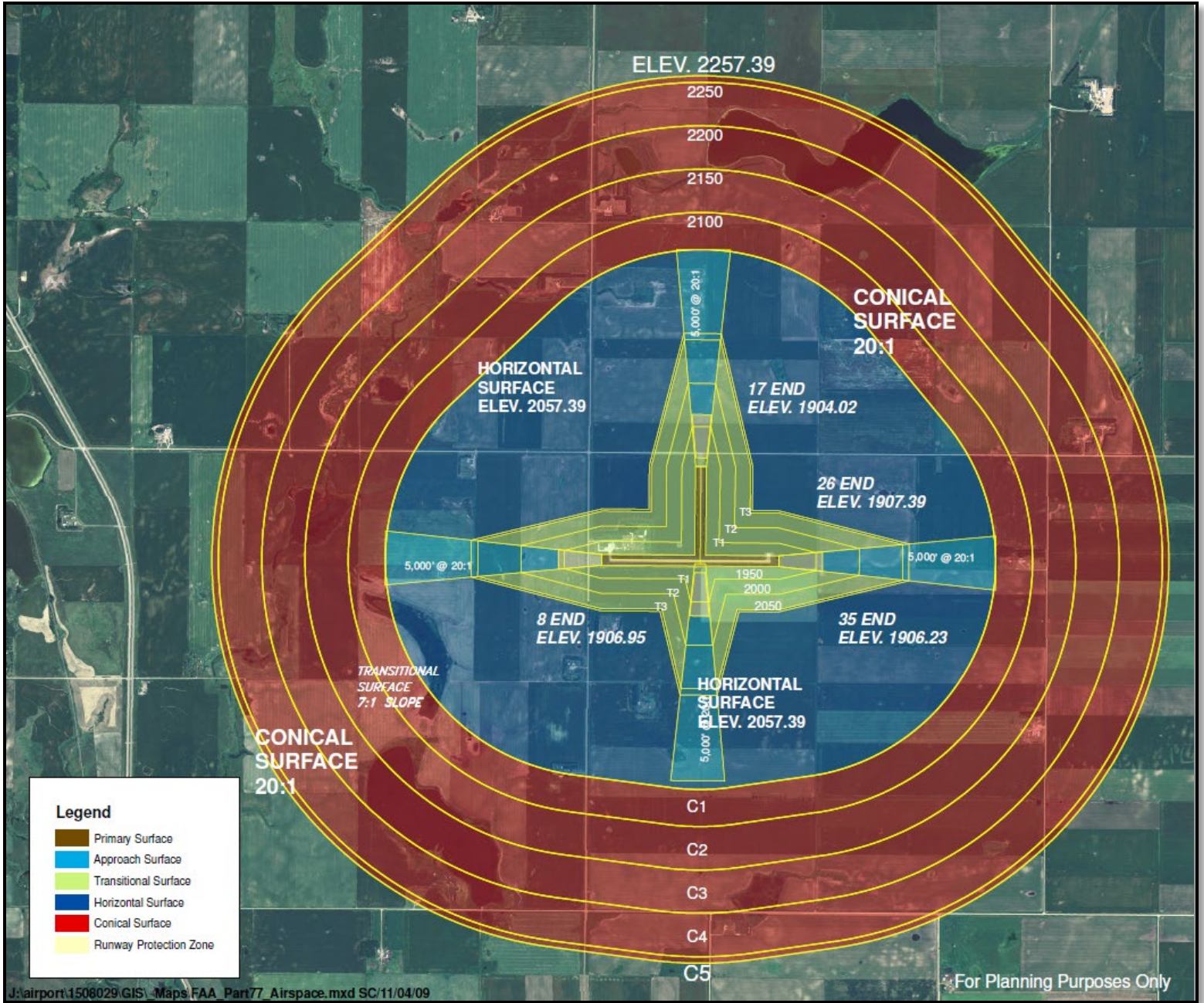


EXHIBIT B: WASHBURN MUNICIPAL AIRPORT LAND USE MAP

