

Airport Affected Area - Statutory Requirements

The "Airport Compatibility Act" was adopted by the Montana Legislature in the 2005 Legislative session. The legislators found that tall trees and structures, and certain types of development located in the vicinity of airports endangers the lives and property of users of the airport and occupants of land in the vicinity of the airport. To mitigate the effects of airport operations on the public's health, safety, and general welfare, the legislature requires local governments to delineate an "Airport Affected Area" (AAA) and to develop compatible noise, height, and land use regulations to control airport hazards. The AAA "may not be less that 10,000 feet from the thresholds of each runway or less than 1 mile wide on each side of each runway".

AAA Regulations - contents:

AAA regulations must be "reasonable, be designed to promote the public health, safety, and general welfare" and at a minimum give consideration to the following:

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| | The safety of airport users and persons and property in the vicinity of the airport |
| | the character of the flying operations conducted or expected to be conducted at the airport |
| | the nature of the terrain |
| | the future development of the airport |
| | federal aviation administration recommendations for the aeronautical surfaces necessary for safe flying |

AAA regulations may:

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| | Designate the airport or airports that are subject to the regulations, with a description of existing and future runways and approaches |
| | Define the terms used in the regulations based on the definitions provided in Title 67 and 14 CFR, part 77 |
| | Describe the airport affected area by referencing maps and describing existing airport hazards and natural terrain that intrude into the airport affected area |
| | Designate and describe zones within the airport affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs, as well as the notice requirements and obstructions standards provided in 14 CFR, part 77 |
| | Show the contours for decibel levels of 65 YDNL or greater on the maps that designate an airport affected area, if a study has been conducted pursuant to 14 CFR, part 150, and require that information to be considered by anyone who builds within the airport affected area |
| | Specify permitted and conditional uses within each zone of the airport affected area by addressing: |
| | Incompatible land uses, such as uses for residences, schools, hospitals, day-care centers, or other concentrations of people indoors or outdoors |
| | The land uses that are considered incompatible with certain noise levels, as provided in 14 CFR, part 150 |

	Bird attractants such as solid waste disposal sites and lagoons
	Sources of electromagnetic radiation that may interfere with electronic navigational aids
	Lights other than navigational aids that glare upward or shine on or in the direction of the airport
	The national transportation safety board's accident investigation data in the vicinity of airports and specific accident data for a particular airport, if that information is available
	Define nonconforming uses, measures to be taken to mitigate the nonconforming uses, and the expiration of the uses in accordance with this chapter
	Provide for an inventory of existing land uses, structures, and trees within the airport affected area
	Expand on the permit system provided pursuant to 67-7-212 for changes to existing land uses, including changes that affect structures or trees, and for new land uses, structures, or trees
	Subject to the provisions of 67-7-303, provide a variance procedure from the literal application of the regulations, including the conditions for granting a variance
	Establish or designate local boards, commissions, or agents to administer and adjudicate interpretations of the regulations
Non-Conforming Uses:	
	All regulations adopted under this chapter must be reasonable and may not require the removal or alteration of any structure or tree or require cessation or alteration of a use that is lawfully in existence when the regulations become effective
	Those structures, trees, or uses must be treated as prior nonconforming structures, trees, or uses that may remain or continue, but regulations may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage
	For the purposes of this section, "substantial damage" has occurred when 80% or more of a structure or tree is deteriorated or decayed or has been torn down or destroyed
	The regulations may require that trees in place at the time that the regulations take effect be maintained by the political subdivision, at its expense, at heights attained at that time
	The regulations may require the owner of structures or trees to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard
	Land in existing residential subdivisions or platted for residential subdivision at the time that regulations are adopted may continue to be used for residential purposes, subject to notification provided to property owners that the lots are within an adopted airport affected area

Permit System

The regulations adopted pursuant to this chapter must provide for a permit system for erecting new structures or trees, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures or replacing existing trees within the airport affected area

A permit may not be granted that would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport affected area and the regulations adopted to protect the airport affected area

A permit granted pursuant to this chapter may require the owner of a structure or tree to allow the governing body, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard

Enforcement

The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to this chapter. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government

Appeals

The governing body that designated the airport affected area shall act as an airport appeals board or appoint an airport appeals board that functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. If the governing body appoints an airport appeals board, the board must have at least three members

The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or an airport appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or an airport appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits

If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the airport appeals board, in which case the terms of the members for the purposes of this chapter are concurrent with their terms as members of the board of adjustment

Variances

A person intending to erect or increase the height of a structure, permit the growth of a tree, or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to this chapter may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations

	<p>If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the airport appeals board, if one exists</p>
	<p>A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest</p>
	<p>A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures</p>
	<p>A variance granted under this section may require the owner of a structure or tree to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard</p>
	<p>A person who builds a structure pursuant to a variance from the airport affected area regulations or who takes or buys property in an airport affected area for which a variance has been granted is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise, vibrations, and fumes being projected over the property</p>
	<p>A person using a structure built pursuant to a variance may not collect damages from a governing body or local government or from an airport authority, airport operator, or airport owner for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal airport operations</p>
<p>Penalties</p>	
	<p>A person who violates the provisions of this chapter or the regulations adopted under 67-7-203 is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500, pursuant to 45-2-104</p>