

AVON PARK AIR FORCE RANGE JOINT LAND USE STUDY

ANSWERS TO COMMUNITY MEETING QUESTIONS

Questions taken from the property owner workshop on October 11, 2010 are denoted in **bold font**, with the answers and detailed explanation following each question.

1. **Is local decision-making impacted by a Joint Land Use Study (JLUS)?**

YES. Local decision-making would be impacted due to State legislation requiring compatibility with the Avon Park Air Force Range, with the Range representatives being able to use the JLUS to evaluate and comment on proposed comprehensive plan amendments, rezonings, conditional uses and other development approvals, and land development code changes, and the Department of Community Affairs' ability to use this study to deny local comprehensive plan amendments.

DETAILED EXPLANATION: In e-mail messages and conversations with Osceola County Community Development staff, staff of the Central Florida Regional Planning Council (CFRPC) has stated that the recommendations in the JLUS are not binding on either the participating jurisdictions or the Avon Park Air Force Range ("The Range"). In an e-mail dated October 22, 2010, CFRPC staff stated that the County can implement all, part or none of the JLUS recommendations. A similar answer was provided by CFRPC staff during a teleconference on November 10, 2010. County staff has reviewed the Federal law that is the basis of the JLUS program (Title 10 U.S.C. Section 2391) as well as Department of Defense documents ("Compatible Civilian Development Near Military Installations, July 2005" and "Joint Land Use Study Program Guidance Manual, November 2006") and have found nothing to indicate the JLUS program is meant to provide anything other than technical and financial support to states and local governments. Staff has not found anything indicating that by participating in the JLUS process the County committed itself to adopting recommendations in the JLUS.

Nevertheless, local decision making would be impacted by the requirements of Chapter 163, Florida Statutes (F.S.), regarding compatibility between land uses and military installations.

Section 163.3175, F.S., requires coordination between local governments and military installations regarding land use decisions and changes to the local comprehensive plan. This section of the Statutes requires appointing a non-voting representative of a military installation to a local government's land use or/and zoning board and providing the installation with the opportunity to review and comment on proposed plan amendments and land development code changes which, if approved, would affect the intensity, density or use of land adjacent to or in close proximity to the military installation. The installation may provide comments on the potential impact the proposed changes could have on the mission of the installation. Section 163.3175, F.S. also contains a provision that would allow the Range commander or designee to provide comments on proposed

comprehensive plan amendments or land development code changes based upon whether such changes would be incompatible with the findings of a JLUS if one has been completed for the area.

Previously, Rule 9J-11.006(1), Florida Administrative Code (F.A.C.) required all local governments to transmit comprehensive plan amendments to the Range for agency review if the amendment would affect the intensity, density of use of land adjacent to or in close proximity to a military installation. Based upon revisions to Florida Statutes, Osceola County adopted Policy 1.7.3 of the Future Land Use Element of the Comprehensive Plan requiring the County to provide applications for comprehensive plan map amendments, land development code changes, zoning map amendments, and conditional use applications to the Range for comment during the County's review process. The Range could conceivably provide comments on those applications that would influence the recommendations of the Technical Review Staff and/or the Planning Commission as well as the decisions of the Board of County Commissioners. Additionally, Section 163.3175, F.S., requires the County to forward comments from the Range regarding Comprehensive Plan amendments to the Department of Community Affairs (DCA), and those comments could influence whether DCA staff finds a proposed amendment compliant. Comprehensive plan amendments and development approvals could be found not in compliance or could be denied due to compatibility issues with the Range. As an interested party, the APAFR could comment directly to DCA to object to a County action.

Section 163.3177 (6) (a) requires the Future Land Use Element address the compatibility of uses on land adjacent to or closely proximate to military installations. By statute, Osceola County has until June 30, 2012 to amend the Future Land Uses Element of the Comprehensive Plan to address this requirement.

2. Do Florida Statutes or Administrative Rules define “compatibility”? The simple answer is “YES”.

DETAILED EXPLANATION: Rule 9J-5.003(23), Florida Administrative Code, states the following:

“Compatibility” means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or conditions.

This definition of compatibility is not referenced in the JLUS. With open-ended language in the JLUS, the APAFR can claim non-compatibility because of a lack of specific guidelines.

3. Is a change in base operations required before performing a JLUS or introducing a MIPA? The simple answer is “NO”.

DETAILED EXPLANATION: We posed this question to CFRPC staff in an e-mail dated October 18, 2010. In an e-mail dated October 22, 2010, CFRPC staff stated that selection of a military installation for a JLUS "...is based on the presence of existing incompatibilities or the potential for them to develop in the near future." In a conference call on November 10, 2010, CFRPC staff elaborated that the Federal Department of Defense (DoD) routinely identifies areas in the U.S. where they perceive existing or potential land use conflicts with military installations. The DoD nominates those bases for a JLUS. Grants are then made available by the DoD to state or local governments to perform a JLUS for that specific installation.

Regarding the introduction of a MIPA, a JLUS is not necessary for any local government to adopt what is known as a zone of influence of a military installation. Also known in different jurisdictions as "Military Airport Zones", "Airfield Influence Planning Districts", "Military Influence Zones", or "Encroachment Protection Zones", these areas can be based upon the results of an Air Installation Compatible Use Zone (AICUZ) Study. Funded by the DoD and performed by the military installation with the participation of surrounding communities, an AICUZ study analyzes the effects of aircraft noise, aircraft accident potential, and land use development on adjacent properties, addresses the relationship between noise exposure and accident potential to existing land uses, and identifies clear zones, accident potential zones and noise zones adjacent to an airfield. Information from an AICUZ has been used in other joint land use studies to justify recommendations regarding structure heights, compatibility of uses, creation of Military Air Zones/MIPAs/Airfield Influence Planning Areas, real estate disclosure, sound attenuation, etc. A JLUS study for Jacksonville/Duval County has yet to be completed; however, both the City of Jacksonville/Duval County Comprehensive Plan and Code of Ordinances have Military Influence Zones based upon an AICUZ.

Funding for a noise study of the Range's military operations was secured by the Highlands County Economic Development Commission. This noise study does not provide the depth of analysis of either an AICUZ or an R/AICUZ.

Major changes to Range operations would require the completion of an Environmental Impact Statement by the Department of Defense. Public hearing would be required as part of that process. Scoping meetings to give the public the opportunity to provide input would be required, and the public would have the opportunity to comment on any draft environmental impact statement.

4. **Would there ever be instances where areas designated as a MIPA III would be changed to a MIPA II or a MIPA II changed to a MIPA I? The simple answer to this question is "YES".**

DETAILED EXPLANATION: A change in military operations could change impacts to areas surrounding a military installation and require a revision to a JLUS. An Eglin Air Force Base JLUS for Santa Rosa County was completed in 2003, and the County adopted Military Airport Zones (MAZs) based upon that study. Since 2003, three new Air Force

missions and an Army Special Forces group were relocated to Eglin Air Force Base. As the military operations for Eglin Air Force Range were changing substantially, a new JLUS for Eglin Air Force Base was completed in June 2009. Based upon the 2009 JLUS, Santa Rosa County amended its Land Development Code to add a new MAZ and expand the area of an existing MAZ.

- 5. Are you aware of a definition of “proximate” per FL Statute 163? Though there is no definition of “proximate” in State Statutes, Section 163.3175, F.S. has been amended to specifically include Osceola County as a jurisdiction required to be compatible with the Avon Park Air Force Range.**

DETAILED EXPLANATION: No definition of “proximate” per Florida Statute 163 exists. When Section 163.3175, F.S. was amended in 2010, a provision (Section 163.3175 (2)) was included specifically listing major military installations within the State that “...have a greater potential for experiencing compatibility and coordination issues than others”. The provision lists 15 military installations along with the “...specific local governments in proximity to and in association with...” those specific installations. Section 163.3175 (2) also states that the provisions in Section 163.3177 (6) (a) relating to compatibility of land development with military installations apply to those local governments. Osceola County, Highlands County, Okeechobee County, Polk County, and the cities of Avon Park, Sebring and Frostproof are listed in Section 163.3175 (2) (a) as associated with the Avon Park Air Force Range.

- 6. If a rural /conservation subdivision is proposed within the MIPA II at a maximum of one unit per five acres, would this be considered as consistent with the JLUS? Staff of the CFRPC has provided an interpretation that conservation subdivisions within the MIPA II are consistent with the JLUS.**

DETAILED EXPLANATION: We posed this question to staff of the CFRPC in an e-mail dated October 18, 2010. In an e-mail dated October 22, 2010, CFRPC staff replied that a rural/conservation subdivision within the MIPA II at one unit per five acres would be consistent with the JLUS recommendations. The JLUS does not address prohibiting rural/conservation subdivisions within the MIPA II. However, Table 6-3 specifically limits residential uses in MIPAs I and II.

- 7. Can the County recognize low flight and night flight areas without requiring the restrictions proposed within the MIPA II as presented in the JLUS? The simple answer to this question is “YES”.**

DETAILED EXPLANATION: Included in the Evaluation and Appraisal Report-based Comprehensive Plan Amendments adopted by the BOCC in August, 2010, the three military operations areas (MOAs) where low level flight and night training occur were portrayed in Transportation Map 10: “Air Transportation Facilities & Special Planning Areas 2025” as found in the Transportation Element of the Osceola County

Comprehensive Plan. This map is part of the Transportation Map Series of the Comprehensive Plan that was found non-compliant by the DCA; however, the non-compliance finding was not based upon the location of the MOAs in Transportation Map 10.

8. **Has the Range taken measures to be compatible to surrounding uses? According to the JLUS, the Range has created management units that are meant to buffer surrounding uses from air-to-ground operations.**

DETAILED EXPLANATION: Located within the Range are areas known as management units that are primarily used for hunting, grazing, production and harvesting of timber, protection and management of threatened species and their habitat, and protection of wetlands and other outstanding natural areas. Within the JLUS, the management units are actually referred to as part of a safety buffer zone primarily for air-to-ground operations. Management areas have also been used for ground operations and training such as survival training and search and rescue operations. Figures 1-2 and 1-3 of the JLUS indicate the locations of training areas and management units on the Range.

An inactive runway is located on the western portion of the Range. The Air Force is currently working with the FAA to recertify the runway. If the runway is recertified, there is a recommendation in the JLUS that the Range seek funding for preparation of a Range/Air Installation Compatibility Use Zone (R/AICUZ) Study. A R/AICUZ study includes a plan to determine those areas adjacent to the Range which would be significantly influenced by the operations of the Range and its airstrip. The Study would identify noise contours and accident potential zones. Actions to be taken by the Range to minimize the noise effects of aircraft operations, as well as recommendations for achieving compatibility with existing land uses, would be included. A R/AICUZ study would involve participation with adjacent communities and public meetings. Those areas would then be designated as the R/AICUZ for the Range. Land within the R/AICUZ would be classified according to its potential impact from noise and accident potential.

8. **There were a number of uses that were proposed for prohibition in both the MIPAs I and II. How was it determined which uses were recommended for prohibition? CFRPC staff referenced studies that were performed prior to the JLUS as the sources for determining which uses were recommended for prohibition.**

DETAILED EXPLANATION: This question refers to Table 6-3, “MIPA and Land Use Compatibility Chart”, which is located on page 6-37 of the JLUS. Table 6-3 lists several uses and classifies them by MIPA as follows:

- Potential uses and related structure are not normally compatible and should be prohibited;
- Potential use and related structures are generally compatible with noted restrictions; and

- Potential uses and related structures are normally compatible with specific requirements as noted herein such as lighting, real estate disclosure, etc.

Staff of the CFRPC responded to this question in an e-mail message dated October 22, 2010 by citing a number of studies completed by either the U.S. Department of Transportation or the DoD. The most recent of those studies is the Avon Park Air Force Range Land Use Proof of Concept completed in 2008. The Proof of Concept establishes Areas of Military Influence (AMIs) which would later be used in the JLUS to establish the boundaries of the MIPAs. Section 1.3 of the Proof of Concept document identified the following AMIs:

- AMI 1-includes areas of overflight within three nautical miles of the range;
- AMI 2-includes areas of noise exposure greater than 65 decibel (dB)day/night average noise level (DNL) for aircraft noise and greater than 115 peak decibels (dBP) for blast noise; and
- AMI 3-includes land under restricted airspace and Military Operation Areas (MOAs) from the surface to 4,000 feet mean sea level (MSL).

MIPA I corresponds with AMI 1 and AMI 2. MIPA II corresponds with AMI 3.

Within the Proof of Concept are two tables addressing land use compatibility. Table 4-5 “Suggested Land Use Compatibility In Noise Zones” is based upon a 2005 noise study for the Range performed by Wyle Laboratories. Table 4-6 “Suggested Land Use Compatibility In Area of Military Influence Zones” is based upon Table 4-5 and the implication that land uses in low overflight areas could be subject to potential risks from crashes and other operational accidents. Table 4-6 suggested the compatibility of land uses with each of the AMIs. Although the Proof of Concept is not specifically referenced within the JLUS, similar arguments regarding compatibility of land uses with Range operations are advanced in the JLUS as well as concerns for how smoke and dust generated from ground and air operations could impact quality of life for those living and working near the Range.

It should be noted that according to CFRPC staff, the 2005 Wyle Laboratories noise study was performed because the DoD anticipated creating a Navy Impact Area for High Explosive air-to-ground training at the Range. Per CFRPC staff, the 2005 noise study is considered obsolete since the Navy Impact Area was never developed and no Navy operations were moved to the Range. From a local government perspective, it is difficult to assess the compatibility of land uses with current military operations if the affects of the noise generated by those operations are not assessed with up-to-date information. Funding from Enterprise Florida, Inc. for a noise study of Range operations was recently secured by the Highlands County Economic Development Commission. Recommendations in the JLUS regarding compatibility of uses and the location of the MIPAs could change based upon the findings of the noise study.

In summary, it appears the proposed prohibitions were intended to minimize public exposure to potential safety hazards from low-level aircraft overflight as well as from

noise associated with weapons detonation. In a meeting on December 16, 2010, staff of the CFRPC stated that the table is generalized and many of the prohibitions could be open to interpretation. An example given was that residential uses accessory to agricultural uses would not be prohibited within the MIPA-I. CFRPC staff also discussed the desire to prohibit uses where large crowds could congregate. The example given by CFRPC staff was of a cemetery, which on Table 6-3 is listed in both MIPAs I and II as an incompatible use. Per CFRPC staff, a cemetery by itself would not be prohibited, but a chapel associated with a cemetery would be as it is a place where large groups of people could congregate. However, neither the text within the JLUS nor on Table 6-3 addresses the flexibility interpreted by CFRPC staff.

As discussed previous in Question #2, Rule 9J-5.003(23), Florida Administrative Code, states the following:

“Compatibility” means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or conditions.

Although Chapter 163, F.S. allows the JLUS to be used by military installations to determine whether a proposed comprehensive plan amendment is incompatible with military operations, there is no discussion within the JLUS as to whether the definition of compatibility as it appears in the Florida Administrative Code was used as a criteria for creating **Table 6-3**.

9. What would be the impact on processing plants, biofuel plants, solar farms and wind farms? The JLUS does not specifically prohibit processing plants, biofuel plants, solar farms and wind farms, but it is silent on allowing agricultural support and accessory uses.

DETAILED EXPLANATION: Presently, almost all of the areas within the proposed MIPAs I and II are zoned Agricultural Development and Conservation (AC). Processing plants are allowed as conditional uses within the AC zoning district as long as they are associated with an agricultural use. Development standards for processing plants may be required to comply with any lighting and height requirements established within the JLUS. It should be noted that requests for conditional uses would be forwarded to the Range for review and comment. Any written objections provided to the County by the Range would become part of the public record, and a representative of the Range could raise their objections during the public hearing process.

Renewable energy production facilities are not specifically identified within the JLUS as incompatible uses proposed for prohibition. Recently, the Future Land Use Element of the Osceola County Comprehensive Plan was amended to allow the location of renewable energy production facilities outside of the Urban Growth Boundary only if the facility was located on five or more acres. The Comprehensive Plan also states that renewable

energy production facilities shall comply with lighting and height requirements of the Federal Aviation Administration and/or the Avon Park Air Force Range Joint Land Use Study. There may be an emphasis to place renewable energy production facilities outside of the Urban Growth Boundary, possibly within the areas of the County covered by the MOAs, due to funding from the Federal Rural Energy for America Program.

10. What would be the impact on communications towers? The JLUS does not specifically prohibit communications towers within the MIPAs I and II.

DETAILED EXPLANATION: Communication towers are not specifically identified within the JLUS as an incompatible use proposed for prohibition. Within the AC zoning district, a communications tower would be allowed as a Conditional Use. Chapter 9 of the Land Development Code restricts the maximum height of communication towers to 1,000 feet; however, the actual height of a communications tower could be subject to compliance with Federal Aviation Administration requirements and/or height requirements established in the JLUS.

11. What would be the impacts on vehicle lighting for 24 hour operations? In reviewing the JLUS, there are no recommendations addressing vehicular lighting.

DETAILED EXPLANATION: Agricultural and farming uses are identified in the JLUS as compatible with the Range's military operations. Most farming and agricultural uses are permitted within the AC zoning district. The use of vehicles for 24 hour farming and agricultural uses would not appear to be subject to review and comment by the Range unless they are part of a conditional use application.

12. Of the other jurisdictions involved with the Avon Park JLUS, what has been their response? The simple answer is they have not responded yet.

DETAILED EXPLANATION: Listed below are summaries of teleconferences between Osceola County staff and the other counties subject to the JLUS.

POLK COUNTY

Staff of Polk County Growth Management provided the following comments during a December 23, 2010 teleconference:

- After review of the final JLUS is completed, they will establish their positions on the Study;
- CFRPC staff will be making a presentation to the Polk County BOCC in January and will request a resolution acknowledging receipt of the JLUS. Polk County may clarify whether a letter from staff to the CFRPC would be sufficient;
- A joint workshop between its County Commission and Planning Commission to discuss the JLUS is scheduled for March;

- As part of its EAR-based amendment process, Polk County amended their comprehensive plan to include military compatibility policies required by Chapter 163, F.S. These amendments were adopted before the JLUS was completed;
- The Polk County Planning Commission already includes a non-voting representative of the Range on its Planning and Zoning Board;
- Polk County includes special-area overlay districts within its Future Land Use Element. They may look at a new overlay district to implement the JLUS; and
- Per the Polk County Attorney, an ordinance requiring disclosure of the Range and potential impacts on adjacent real estate would be difficult to enforce.

CFRPC staff did present the JLUS to the Polk County BOCC on February 1, 2011. A joint work session of the Polk County BOCC and the Polk County Planning Commission to discuss the JLUS' recommendations is scheduled for March 28, 2011.

HIGHLANDS COUNTY

Staff of the Highlands County Planning Department provided the following comments during a January 4, 2011 teleconference:

- Their staff is reviewing the JLUS. There is concern about the proposed use prohibitions and restrictions. Their current strategy is to develop solutions to the JLUS recommendations before going forward with presentations to the public and to their BOCC;
- Their staff has issues with the proposed loss of entitlements around the Range. The County and the Range share 20 miles of common boundaries and there are a number of ranches in proximity to the Range;
- One of Highland County's strategies is to buy easements on land in proximity to the Range. They would purchase development rights. Ranchers and farmers can continue to use and maintain their land for agricultural uses;
- Highlands County received a three-year \$500,000 grant from Enterprise Florida, Inc. to use as seed money to buy the easements;
- Highlands County adopted military compatibility policies in their comprehensive plan several years ago. As part of their EAR-based amendment process, they updated those policies to reference the JLUS and to address changes in Chapter 163, F.S. Highland County's plan amendment package was found non-compliant by DCA;
- Staff anticipated the proposed restriction/prohibitions of uses within the MIPAs I and II, as well as noise and low flight patterns, would be raised as issues associated with the JLUS; and
- CFRPC staff has not contacted Highlands County regarding a JLUS presentation to their County Commission.

OKEECHOBEE COUNTY

Staff of the Okeechobee County Planning Department provided the following comments during a January 6, 2011 teleconference:

- Most of the area in the proposed MIPA I is part of the Kissimmee Prairie State Preserve and would not be affected by limitations of uses;
- A detailed staff review of the JLUS has yet to occur;
- Adoption of military compatibility policies is not going to occur unless DCA compels them to. Okeechobee County will be addressing EAR-based amendments in the near future;
- They are not intending to amend their Land Development Code to prohibit uses in proximity to the Range. As Okeechobee County does not receive economic benefits from the Range, staff did not see a fair trade-off for prohibiting uses; and
- CFRPC staff has not contacted Okeechobee County regarding a JLUS presentation to their County Commissioners.

13. Would communications systems be affected by the JLUS? No analysis of radio frequencies used by the Range is included within the JLUS. This issue has been discussed with CFRPC staff and no answer has been provided.

14. What is the proposed maximum height within the MIPA I? Per the JLUS, the object height limits proposed in the MIPA I could range from the surface to the tree line.

DETAILED EXPLANATION: On Page 6-35 of the JLUS, it is stated that object heights in the MIPA I "...should be limited to the surface, or be very low such as 20 feet above the ground or no higher than the tree line." Per the County's Environmental Manager, oaks and pines, both of which can grow to 100 feet in height or higher, are the predominant species of trees found in the vicinity of the Range. Given the information regarding the potential height of oaks and pines, it could be interpreted the maximum height in the MIPA-I could range from surface to 20 feet to over 100 feet. This represents a fairly broad maximum height range. A maximum object height of surface level or 20 feet is inadequate for barns and other agricultural structures. In a January 14, 2011 teleconference with CFRPC staff and one of their consultants, CFRPC staff stated it is up to the local governments to determine the maximum object height in the MIPA-I based upon local conditions; however, the potential impacts on Range activities should be considered.

15. What is the proposed maximum height within the MIPA II? Per the JLUS, the recommended height in the MIPA II is 400 feet. This is 100 feet less than the airspace floor of the Avon East MOA.

16. What kinds of lighting restrictions are proposed? Per the JLUS, outdoor lighting within the MIPAs I and II should not be confused with airfield approach lighting, and it should not create glare or reflections that interfere with pilots' night vision.

DETAILED ANSWER: In areas in the vicinity of military flight or ground operations, the JLUS suggests lighting restrictions similar to those adopted by Santa Rosa County, Florida. Under the Santa Rosa County restrictions, the following lighting is prohibited within the County's Military Airport Zone:

- Light patterns common to military aviation;
- Lights to create sky glow (except when used for safety, security and utility);
- Luminous tube lighting on building exterior or roof;
- Internally lit awnings; and
- External illumination signs.

Presently, Section 14.71 in the Osceola County Land Development Code requires that external site lighting be designed to prevent direct view of light sources from adjacent property boundaries. Direct view of a light source may be permitted as long as a means of reducing intensity of the light beyond its source is included within an overall site lighting plan. Section 14.71 does not address the prohibition of the types of lighting cited within the JLUS as potentially conflicting with night flight operations; however, the types of uses allowed in the AC zoning district do not appear to create the lighting conflicts referenced within the JLUS. In fact, the JLUS has not specifically addressed appropriate lighting standards in rural areas for agricultural uses.