

City of Conway

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RHONDA WHARTON

FAULKNER COUNTY CIRCUIT CLERK

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by

[Signature]

D. C.



City of Conway, Arkansas
Ordinance No. O-11-35

AN ORDINANCE ADOPTING BY REFERENCE THE CITY OF CONWAY AIRPORT HEIGHT AND LAND USE ZONING OVERLAY DISTRICT; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES:

WHEREAS, "The Airport Zoning Enabling Act," Act 116, Acts of Arkansas, 1941 (as amended) gives the City of Conway the authority for establishing restrictions around Airports for the health and safety of the public. It is hereby found that an obstruction to navigable airspace has the potential for endangering the lives of property and users of the Conway Municipal Airport, and property or occupants of land in its vicinity; that such obstruction may affect existing and future instrument approach minimums of the Conway Municipal Airport; and that such obstructions may reduce the size of areas available for landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Conway Municipal airport and the public investment therein.

WHEREAS, certain agricultural crops, constructed water impoundments and other land use practices may create bird and waterfowl attractants in the vicinity of the Airport. Birds and waterfowl in the vicinity of the runway may create a safety hazard for aircraft using the Conway Municipal Airport. Therefore, the City of Conway desires to establish land use controls to minimize the potential for creating new bird or waterfowl attractants in the vicinity of the a Conway Municipal Airport. Preexisting land uses may be exempt from these bird and waterfowl attract controls if uses can be documented prior to the effective date of this ordinance. This land use restricting may extend beyond the City Limits of Conway into the unincorporated lands of Faulkner County as provided in Arkansas State Code ACA 14-56-413.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

SECTION 1. The City of Conway Airport Height and Land Use Overlay District is hereby adopted by reference which was approved following notice as required by law, such ordinance consisting of the text and graphics, of which not less than three (3) copies have been and now are filed in the office of the Clerk of the City of Conway, Arkansas.

SECTION 2. All ordinances in conflict herewith are repealed to the extent of the conflict.

SECTION 3. That this ordinance is necessary for the protection of the public peace, health and safety, and an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED this 10th day of May, 2011.

Approved:

[Signature of Tab Townsell]

Mayor Tab Townsell

Attest:

[Signature of Michael O. Garrett]

Michael O. Garrett
City Clerk/Treasurer



City of Conway, Arkansas

Adopted by Reference Ordinance No. O-11- 35

CITY OF CONWAY AIRPORT HEIGHT AND LAND USE ZONING OVERLAY DISTRICT

A ZONING OVERLAY DISTRICT TO LIMIT HEIGHT OF OBJECTS AND OTHER LAND USE CONTROLS IN THE VICINITY OF THE CONWAY MUNICIPAL AIRPORT.

AN OVERLAY DISTRICT REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY IN THE VICINITY OF THE CONWAY MUNICIPAL AIRPORT, BY CREATING APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEROF; PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS USED HERIN; REFERRING TO THE "CONWAY MUNICIPAL AIRPORT HEIGHT ZONING MAP," WHICH IS INCORPORATED IN AND MADE A PART OF THIS OVERLAY DISTRICT; PROVIDING FOR ENFORCEMENT; ESTABLISHING ADMINISTRATIVE RESPONSIBILITY; AND IMPOSING PENALTIES.

WHEREAS, "The Airport Zoning Enabling Act," Act 116, Acts of Arkansas, 1941 (as amended) gives the City of Conway the authority for establishing restriction around Airports for the health and safety of the public. It is hereby found that an obstruction to navigable airspace has the potential for endangering the lives of property and users of the Conway Municipal Airport, and property or occupants of land in its vicinity; that such obstruction may affect existing and future instrument approach minimums of the Conway Municipal Airport; and that such obstructions may reduce the size of areas available for landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Conway 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 Conway Municipal Airport;
- (2) that it is necessary in the interest of the public health, safety and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented;
- (3) that the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation; and
- (4) 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.

WHEREAS, certain agricultural crops, constructed water impoundments and other land use practices may create bird and waterfowl attractants in the vicinity of the Airport. Birds and waterfowl in the vicinity of the runway may create a safety hazard for aircraft using the Conway Municipal Airport. Therefore, the City of Conway desires to establish land use controls to minimize the potential for creating new bird or waterfowl attractants in the vicinity of the a Conway Municipal Airport. Preexisting land uses shall be exempt from these bird and waterfowl attract controls if uses can be documented prior to the effective date of this Overlay District. This land use restricting may extend beyond the City Limits of Conway into the unincorporated lands of Faulkner County as provided in Arkansas State Code ACA 14-56-413.

- means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.
17. PRIMARY SURFACE: An imaginary surface longitudinally centered on a runway. The primary surface extends 200 feet beyond each end of that runway. The width of the primary surface is set forth in Section III of this Overlay District. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway (pavement) centerline.
 18. RUNWAY: An area prepared for landing and takeoff of aircraft along its length.
 19. STRUCTURE: Any object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formations and overhead transmission lines.
 20. CONWAY AIRPORT COMMISSION: A Commission consisting of seven (7) members to be appointed by the Conway City Council to oversee the operations and management of the Conway Municipal Airport. Until a Conway Airport Commission is appointed, the Conway City Council will serve as this body.
 21. TRANSITIONAL SURFACES: These imaginary surfaces extend outward at 90 degree angles to the runway centerline (and the extended runway centerline) at a slope of (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90 degree angles to the extended runway centerline.
 22. TREE: Any object of natural growth.

SECTION III: AIRPORT ZONES

In order to carry out the provision of this Overlay District, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surface, horizontal surface and conical surface as they apply to the Conway Municipal Airport. Such zones are shown on the "Conway Municipal Airport Height Zoning Maps 1 & 2," consisting of two sheets, prepared by Garver, LLC dated March 2011 and subsequent updates thereof, which is attached to this Overlay District and made part hereof. A legal description attached as "Exhibit A" further describes the land area included in the land use restrictions. An area located in more than one of the following zones is considered to be only in the zone with more restrictive height limitation. The various height restriction zones are hereby established and defined as follows.

1. Nonprecision Instrument Approach Zone (Runway 5) - the inner edge of this approach zone coincides with width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 4,000 feet at the horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
2. Precision Instrument Approach Zone (Runway 23) - The inner edge of this approach zone coincided with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
3. Transitional Zones - Area beneath the transitional surfaces.
4. Horizontal Zone - The horizontal zone is established by swinging arcs of 10,000 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 does not include the approach and transitional zones.
5. Conical Zone - The area that commences at the periphery of the horizontal zone and extends outward for a horizontal distance of 4,000 feet.

SECTION V: LAND USE RESTRICTION

In order to minimize the potential for developing bird, waterfowl and wildlife attractants in the vicinity of the Conway Municipal Airport, the following restrictions are placed on lands in Faulkner County and the City of Conway that are within 10,000 feet of the runway (ultimate 7,000 foot planned runway length) located on the Conway Municipal Airport. These land use controls will not prohibit existing and historical land use practices or existing and historical activities on lands from continuing as preexisting non-conforming uses on lands within the area covered by this Overlay District. The area covered by these restrictions lies east of the Arkansas River and is described in detail in Exhibit A attached hereto.

1. The establishment of an artificially flooded area or water impoundment is prohibited. This includes creating dams, levees, depressions, holes or other water retention structures that results in ponding of surface water. Natural streams, lakes, sloughs, swamp areas or waterponded areas that are in existence at the effective date of this Overlay District are exempt from this provision.
2. Causing the flooding of unharvested agricultural crops, flooding of crop land after harvest of the crop or flooding of any lands for the purpose of attracting waterfowl or leading to the attracting of waterfowl is prohibited. Installing devices to prevent the natural runoff of water is prohibited. Pumping water from a well or natural body of water for the purpose of flooding an area of land is prohibited. The practice of flooding agricultural crops during the growing season (April thru September) for crops historically grown on grounds is exempt from this provision.
3. The planting and growing of cereal grains, rice and other bird attractant crops as listed in AC 150/5200-33B is prohibited unless "grandfathered in". The existing properties and lands with established history of growing these crops will be considered a pre-existing condition and their activities "grandfathered in" and not be impacted by this restriction. The usual annual changing of crops due to crop rotation or changing of crops or change in crop due to market conditions will not be deemed as a discontinuing the growing any crops.
4. Cereal grain and rice storage facilities not in existence at the effective date of this Overlay District shall incorporate special provisions to prevent the spilling, scattering and availability of the bird and wildlife access to grains.
5. The scattering or distribution of grain on the ground surface for the purpose of or leading to the attraction of birds and waterfowl is prohibited.
6. Any site grading or reshaping of the land surface be completed in a manner that would prevent trapped or standing water.
7. Prohibit land uses listed in AC 150/5200-33B that are potentially bird, waterfowl or wildlife attractants are prohibited unless "grandfathered in" or unless specific approval is given by FAA for the proposed land use.
8. Prohibit any activity, improvement, change in land use or other actions that results in electrical interference with navigational signals or radio communications between the airport and aircraft is prohibited.
9. Prohibit any activities, improvements or land use changes that make it difficult for pilots to distinguish between airport lights and other lights, result in glare in the eyes of pilots using the airports, impair visibility in the vicinity of the airport or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport.

SECTION VI: NONCONFORMING USES

1. Regulations Not Retroactive - Notwithstanding the provisions of Section VI, paragraph 3 hereof, the regulations prescribed in this Overlay District shall not be construed to prohibit existing and historical land uses and agricultural practices from continuing; prohibit existing and historical crops grown on lands from continuing; prohibit existing and historical activities on lands from continuing; or require removal, lowering, or other change or alteration of any Nonconforming Use, or otherwise interfere with the continuance of a Nonconforming Use.

topographic features, would extend above the height limit prescribed for such transitional 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 Overlay District, except as set forth in Section IV, paragraph 6.

2. Existing Uses- No permit shall be granted that would allow the establishment or creation of an obstruction, or that would allow a Nonconforming Use to become a greater hazard to air navigation than it was on the effective date of this Overlay District (or any duly enacted amendments thereto) or than it is when the application for a permit is made. Except as indicated, all applications for such a permit for existing uses shall be granted.
3. Continuance of Nonconforming Uses- The owner of any Nonconforming Use shall be granted a permit authorizing continuance of such Nonconforming Use, upon application made by him; provided that, if such application is not made within ninety (90) days of the effective date of this Overlay District or any duly enacted amendment thereto the Conway Municipal Airport Commission shall by appropriate action compel the owner of the Nonconforming Use, at his own expense to lower or remove such object to the extent necessary to conform to the regulations. Notwithstanding the foregoing provisions, no permit allowing the continuation of any Nonconforming use shall be granted where such use is at the time a permit is applied for, not in conformity with the regulations in effect immediately prior to the enactment of any ordinance amending this Article, including but not limited to changes in the height zoning map incorporated herein which may from time to time be amended to eliminated or mitigate existing hazards to landing and taking off at the Conway Municipal Airport, to ensure compliance with all applicable federal laws, or for any other lawful reason.
4. Change and Repair of Nonconforming Uses- Before any Nonconforming Use for which a permit has been issued in accordance with Section VII, paragraph 3 hereof, may be altered or repaired, rebuilt, allowed to grow higher or replanted, a permit must be secured from the Conway Municipal Airport Commission authorizing such change or repair. No such permit shall be granted that would permit the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the permit for its continuance was granted.
5. Nonconforming Uses Abandoned or Destroyed- Whenever the Conway Municipal Airport Commission determines that a Nonconforming Use has been abandoned or more than 50 percent (%) torn down or destroyed, whether voluntarily, by act of God or otherwise, or has become more than 50% 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. In such cases of 50% destruction, deterioration or decay, whether application is made for a permit for repair or not, the Conway Municipal Airport Commission shall, by appropriate action, compel the owner of the Nonconforming Use, at his own expense to lower or remove such object to the extent necessary to conform to the applicable height limit.
6. Variances- Any person desiring to erect increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Overlay District, must apply to the Conway Municipal Airport Commission for a variance from such regulations. 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. Variances shall be allowed where it is duly found that a literal application or enforcement of

forthwith transmit to the City Council all 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 unless the Conway Municipal Airport Commission certifies to the City Council, after the 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 Conway Municipal Airport Commission cause imminent peril to life or property. In such case, proceedings shall not be stayed by order of the City Council on notice to the Conway Municipal Airport Commission and on due cause shown.
4. The City Council shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in the interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney.
5. The City Council may, in conformity with the provisions of this Overlay District, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from any may make such order, decision, requirement, decision or determination as may be appropriate under the circumstances.

SECTION XI: JUDICIAL REVIEW

Any person aggrieved, aggrieved, or any taxpayer affected, by any decision of the City Council may, within thirty days thereof, appeal therefrom to the Circuit Court of Faulkner County, as provided in Section 6 of the "Airport Enabling Act", Act 116, Acts of Arkansas, 1941. Appeals from the Circuit Court shall be in accordance with statutes governing such appeals in force and effect at the time an appeal is taken.

SECTION XII: PENALTIES

Each violation of this Overlay District, or of any regulation, order or ruling promulgated hereunder, shall constitute a misdemeanor and be punishable by a fine of not more than 500 dollars, or imprisonment for not more than 180 days, or both; and each day a violation continues to exist shall constitute a separate offense. In addition, the Conway Municipal Airport Commission may institute in any court of competent jurisdiction, an appropriate action or proceeding to prevent, restrain, correct or abate any violation of the regulations of this Overlay District, or any order or ruling made in connection with its administration or enforcement, and the court shall adjudge then 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 fully to carry out and effectuate the purpose of this Overlay District and the orders and rulings made pursuant to the authority herein given.

SECTION XIII: CONFLICTING REGULATIONS

Where there exists a conflict between any of the regulations or limitations prescribed in this Overlay District and any other regulations applicable to the same area, whether the conflict be 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 Overlay District or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of this Overlay District which can be given effect without the invalid provision or application, and to this end, the provisions of this Overlay District are declared to be severable.

SECTION XV: EFFECTIVE DATE

Adopted by the Conway City Council by referring ordinance O-11- ___ April, 26, 2011.

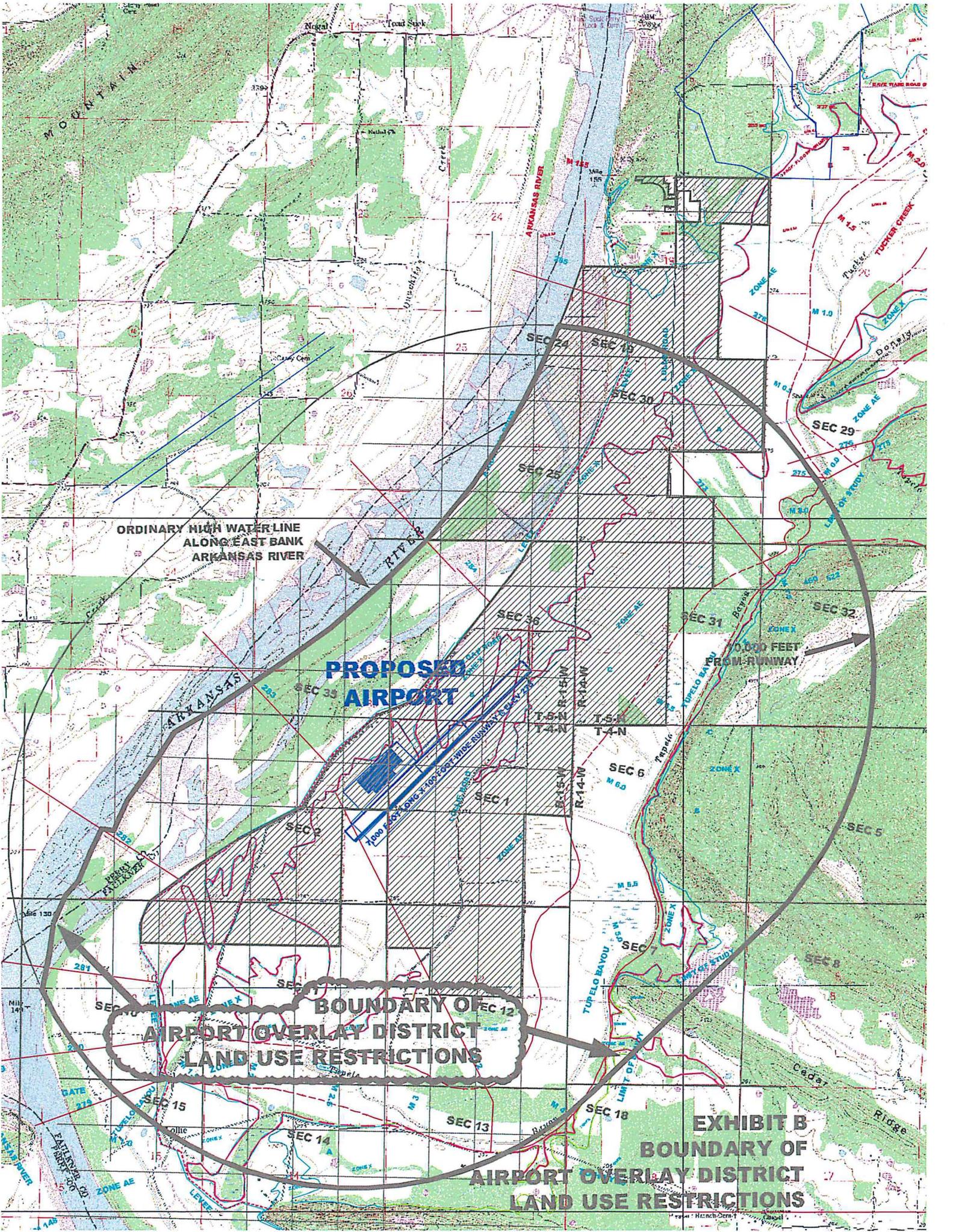
Approved:

EXHIBIT A

CONWAY AIRPORT LAND USE ZONING OVERLAY DISTRICT LEGAL DESCRIPTION

All lands lying within 10,000 feet of the ultimate 7,000 foot long Runway at the City of Conway Municipal Airport as shown on the Conway Municipal Airport Height Zoning Map dated March 2011 and lying east of the ordinary high water line along the easterly bank (left descending bank) of the Arkansas River. The Sections and portions of Sections of lands included in this area are as follows:

Part of S $\frac{1}{2}$, SW $\frac{1}{4}$ Section 19, T-5-N, R-14-W; Part of NE $\frac{1}{4}$ Section 30, T-5-N, R-14-W; the NW $\frac{1}{4}$ Section 30, T-5-N, R-14-W; the S $\frac{1}{2}$ Section 30, T-5-N, R-14-W; Part of SW $\frac{1}{4}$, NW $\frac{1}{4}$ Section 29, T-5-N, R-14-W; Part of SW $\frac{1}{4}$ Section 29, T-5-N, R-14-W; Section 31, T-5-N, R-14-W; the W $\frac{1}{2}$ Section 32, T-5-N, R-14-W; Part of the W $\frac{1}{2}$, NE $\frac{1}{4}$, Section 32, T-5-N, R-14-W; Part of the W $\frac{1}{2}$, SE $\frac{1}{4}$ Section 32, T-5-N, R-14-W; Section 6, T-4-N, R-14-W; Part of the W $\frac{1}{2}$, Section 5, T-4-N, R-14-W; Part of W $\frac{1}{2}$, NE $\frac{1}{4}$, Section 5, T-4-N, R-14-W; The NW $\frac{1}{4}$ Section 7, T-4-N, R-14-W; Part of the NE $\frac{1}{4}$ Section 7, T-4-N, R-14-W; Part of the SW $\frac{1}{4}$ Section 7, T-4-N, R-14-W; Part of the NW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 7, T-4-N, R-14-W; Part of the NW $\frac{1}{4}$, NW $\frac{1}{4}$ Section 18, T-4-N, R-14-W; Part of the N $\frac{1}{2}$, Section 13, T-4-N, R-15-W; Part of the NW $\frac{1}{4}$, SW $\frac{1}{4}$ Section 13, T-4-N, R-15-W; Part of N $\frac{1}{2}$ Section 14, T-4-N, R-15-W, Part of N $\frac{1}{2}$, SE $\frac{1}{4}$ Section 14, T-4-N, R-15-W; Part of NE $\frac{1}{4}$, NW $\frac{1}{4}$ Section 14, T-4-N, R-15-W; Part of the NE $\frac{1}{4}$ Section 15, T-4-N, R-15-W; Part of the NE $\frac{1}{4}$, NW $\frac{1}{4}$ Section 15, T-4-N, R-15-W; Part of SW $\frac{1}{4}$ Section 10, T-4-N, R-15-W; Part of the NW $\frac{1}{4}$ Section 10, T-4-N, R-15-W; the E $\frac{1}{2}$ Section 10, T-4-N, R-15-W; Section 11, T-4-N, R-15-W; Section 12, T-4-N, R-15-W; Section 1, T-4-N, R-15-W; Section 2, T-4-N, R-15-W; Part of the Se $\frac{1}{4}$ Section 3, T-4-N, R-15-W; Part of the E $\frac{1}{2}$, SW $\frac{1}{4}$ Section 3, T-4-N, R-15-W; Part of the SW $\frac{1}{4}$, NE $\frac{1}{4}$, Section 3, T-4-N, R-15-W; Part of the E $\frac{1}{2}$, NE $\frac{1}{4}$, Section 3, T-4-N, R-15-W; Part of SW $\frac{1}{4}$, SW $\frac{1}{4}$ Section 35, T-5-N, R-15-W; Part of the E $\frac{1}{2}$, SW $\frac{1}{4}$ Section 35 T-5-N, R-15-W; Part of the SE $\frac{1}{4}$ Section 35, T-5-N, R-15-W; Part of the S $\frac{1}{2}$, NE $\frac{1}{4}$ Section 35, T-5-N, R-15-W; Part of the NW $\frac{1}{4}$, NE $\frac{1}{4}$ Section 35, T-5-N, R-15-W; The E $\frac{1}{2}$ Section 36, T-5-N, R-15-W; The SW $\frac{1}{4}$ Section 36, T-5-N, R-15-W; Part of the NW $\frac{1}{4}$ Section 36 T-5-N, R-15-W; Part of the S $\frac{1}{2}$, SW $\frac{1}{4}$ Section 25, T-5-N, R-15-W; Part of the NE $\frac{1}{4}$, SW $\frac{1}{4}$ Section 25, T-5-N, R-15-W; The SE $\frac{1}{4}$ Section 25, T-5-N, R-15-W; The E $\frac{1}{2}$, NE $\frac{1}{4}$ Section 25, T-5-N, R-15-W; Part of the W $\frac{1}{2}$, NE $\frac{1}{4}$, Section 25, T-5-N, R-15-W; Part of the SE $\frac{1}{4}$, SE $\frac{1}{4}$ Section 24.



ORDINARY HIGH WATER LINE
ALONG EAST BANK
ARKANSAS RIVER

**PROPOSED
AIRPORT**

**BOUNDARY OF
AIRPORT OVERLAY DISTRICT
LAND USE RESTRICTIONS**

**EXHIBIT B
BOUNDARY OF
AIRPORT OVERLAY DISTRICT
LAND USE RESTRICTIONS**