

PART II

Local Government Role and Authority in Community Land Use Planning and Encroachment Prevention

“A community needs to know that encroachment is an issue and that zoning needs to be put in place to provide safe zones to protect the mission . . . of the military facility.”

C. Talmadge Tobias
City Manager
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Introduction

Under our Federal system of governance, State governments are holders of the vast majority of governmental powers. State governments in turn delegate much of this power to local government. There are over 3,100 counties and 36,000 incorporated cities, towns, boroughs, villages, and hamlets that make up local government in the 50 United States.

Part II examines various levels of local governance; how the responsibilities for guiding and directing future growth and development are carried out; and the tools that are used to accomplish this end. It also examines the nuances between public and private property rights.

Part II will be helpful to the military installation commander and military installation planner who may not be familiar with the operations, protocol, or legal and procedural planning and zoning requirements of local government.

A. Military and Outreach

Increasingly, military representatives are being called upon to work closely with their local host governments. “Outreach” is a term of military reference, suggesting that a military installation commander should reach out to engage and work with those involved in local executive and legislative functions on land use planning, zoning, and similar matters that could affect military base operations or missions.

This *Practical Guide* attempts to provide the land use planning principles, practices, and tools to assist military installation commanders in effectively reaching out to local government, to engage and to work in partnership to understand the context in which local governments operate. In the end, it is the decisions and actions of local government that will determine the shape and form of the urban fabric surrounding military installations.

This *Guide* lays out the various forms of local government, how they function, the points of contact, and the procedural due process constraints that may be legally imposed upon a legislative branch or city/county council (*i.e.*, *ex parte* communications¹ discussed in Part V of the *Guide*). By knowing and understanding the regulatory rules under which local governments operate, a military installation commander and staff are better prepared to engage in a constructive dialog.

Certainly, military installations function in their own right much like local governmental units. Oftentimes, military installation commanders liken their day-to-day responsibilities to those of a city manager or even a mayor. There is, however, a critical difference. In managing a military installation, the decision-making process is authoritative and top down. In contrast, the lines of authority in local government are dependent on local politics and the will of the majority of the seated governing body. This distinction is vital. Local governments are ruled either by consensus or majority vote. Mayors, board chairs, and even city managers can be overruled. A military installation commander must remember that a mayor (or chairperson of a governing body) has only one vote and his/her views may carry limited weight.

It is the decisions and actions of local government that will determine the shape and form of the urban fabric surrounding military installations

In addition, the appointed professional city/county manager reports to a board of elected directors (city/county council, board of commissioners, etc.), which, in turn, is responsible to the electorate and no one else. In contrast, military installation commanders are responsible to their higher military leadership, which governs by direction.

Because most States have open meeting or sunshine laws, decisions of the city/county council are made in open public session with maximum opportunity for the public to participate. A local military installation commander must take advantage of the openness of local government and keep himself/herself fully informed of actions before a local government that might affect base operations. There should be active participation in public meetings and public hearings by the military installation commander or his/her designee so that official comments will become part of the public record of the proceedings. A military installation commander's comments do carry weight and can influence the outcome of an issue pending before the deciding body.

Strategy: *Often, military installation commanders limit their outreach to non-governmental organizations such as the Chamber of Commerce and various service clubs. Although these associations are important to a military installation and can promote better understanding and public relations, interaction with them is not a substitute for establishing lasting working relationships with local elected and appointed officials whose decisions could affect a base's mission and military readiness.*

A military installation commander's comments do carry weight and can influence the outcome of an issue pending before the deciding body

A military installation commander and his/her subordinates should understand the various forms of local governance, study these forms, and determine the offices and individuals with whom he or she should establish relationships to remain fully informed of local developments that might affect the installation.

B. Forms of Local Governments and Local Planning Authorities

Strategy: *There are many forms of local government, each functioning slightly differently, with diverse centers of gravity, budgeting, and decision making. The principal position in the hierarchy also varies in power, prestige, and responsibility. Knowing the forms of local government and the roles of the various elected and appointed public officials will assist the military installation's effectiveness and outreach.*

In general, State constitutions and State laws provide for incorporated municipalities and unincorporated towns and townships as general-purpose local governments. Counties are themselves administrative subdivisions of the State, just as are school districts and other special districts that serve limited purposes.²

The primary forms of local governments are the mayor-council (both strong and weak), the commission (county), the council-manager (cities and counties), and the charter forms. Partisan politics generally play a large role in the strong mayoral, commission, and charter form of local government. Generally, the council-manager form of government is non-partisan.

Cities and towns generally can choose the form of government provided by State statute. In addition to the choice in form of government already provided by State law, cities and counties have the ability to adopt a home rule charter, subject to certain requirements, and provide for their own form of government.³

1. Mayor-Council Form: The office of the mayor may be primarily ceremonial or both ceremonial in stature and executive in responsibility. In weak mayoral forms of government, the mayor's office is seen as representing the elected city or county council, which performs the legislative responsibilities of local government.

The city mayor presides over council meetings; in some cases, mayors may only vote to break ties.

- **Weak Mayoral Form of Government:** In a weak mayoral government, the mayor may either be elected at large or from those elected to the city or county council. In the latter instance, the mayor is equal to a seated council member and has the added duties of presiding over meetings and representing the city or county council in all matters relating to the conduct of government.
- **Strong Mayoral Form of Government:** In a strong mayoral form of government, the mayor oversees the day-to-day executive functions of local government. The mayor's immediate subordinate often is referred to as the chief of staff. The chief of staff normally is responsible for public relations, personnel issues, budget and finance matters, and police and emergency operations. The appointed department heads (i.e., planning, public works, and parks and recreation) serve at the pleasure of the mayor and city council and report to the mayor through the chief of staff.

There are many forms of local government, each functioning slightly differently, with diverse centers of gravity, budgeting, and decision making

2. Commission Form: The commission form is often referred to as the "plural executive" form of government (it is commonly found in counties). It is the oldest and most traditional county organizational structure. However, it may also exist with home rule, city governments. Under the commission form, the county governing body consists of an elected board composed of three to five commissioners, most often based on the population. Commissioners serve as both the legislative and executive body. No single administrator or executive oversees a county's or city's operations under the commission form of government. This is quite different from most municipal forms that have separately elected executive and legislative branches.⁴

In the commission form of government, the chairperson of the board of county commissioners serves as the meeting convener and leader of the board. In some cases, the administrative functions of local government are divided among the commissioners with each commissioner in charge of one or more departments (i.e., public safety, planning, public works, parks and recreation, etc.). In some states, the "judge executive" functions as chair of the board and the chief executive officer in charge of day-to-day government operations.

Strategy: *The military installation commander should reach out to and establish a working relationship with the chief elected official of the jurisdiction(s) in which the installation is located and with the local elected city/county councilperson within the district that surrounds and supports the military installation.*

3. Council/City Manager Form: The office of the city/county manager is most often found in a council-manager form of government where there is an elected city/county council and an appointed professional city/county manager who serves at the pleasure of the council.

The city/county manager oversees the day-to-day operations of government and reports directly to the city/county council. Reporting to the city/county manager are the various department heads. In larger cities and counties, the city manager may appoint one or more deputy city managers to oversee one or more city departments.

The city/county manager is responsible for all administrative and governmental functions. The council adopts the annual budget and work program priorities, passes legislation approves the comprehensive/general plan, and makes land use and zoning decisions. The professional city/county manager is responsible for implementing the policies and directives of the council.

In this form of government, the military installation commander should establish a working reciprocal relationship with the office of city manager/county administrative officer because much of the authority is centralized in this office. The city manager oversees and is responsible for preparing for the mayor and council annual operating and capital budgets, the overall work program, and priorities based on the wishes and instructions of the local elected leadership.

Strategy: *In this particular form of government, the city/county manager can be the most influential point of contact for a military installation commander and command staff. The military installation commander or his/her deputy should develop a working relationship with the city/county manager on all matters involving the local government as they may affect the operations of the military installation.*

4. Charter Form: The charter form of government may provide for any governmental structure, including council/city manager form of government. Counties that have adopted charter forms of government may have a separately elected county executive who, much like a mayors, oversees the administrative function of government, including implementing legislative policies. The county council members may be elected at large or by council districts. Many States have constitutional provisions for home rule. Under most home rule provisions, the residents of a local community write and adopt their own charter that serves as a kind of constitution for the city. While home rule charters go far in restoring the historical independence and autonomy of local communities, citizens cannot adopt charters that offend the State constitution or State laws.⁵

Cities are municipal corporations that operate under charters from the State. Until the last half of the 18th century, the tendency was for the State to grant each municipality a charter

The city/county manager can be the most influential point of contact for a military installation commander and command staff

unique to its needs. During the second half of the last century, as urbanization increased, most States provided for general municipal charters (sometimes with some optional features) so that upon reaching a certain population (typically 10,000), a local community could apply to the State for a charter and become a municipal corporation.

Typically, local communities of different populations receive different types of charters, so that the charters of large cities tend to establish a different form of government than is characteristic of smaller cities, and large cities tend to have more taxing and regulatory authority than do small cities.

A typical charter government separates the executive branch from the legislative branch. It consists of a county executive and a county council. The executive is independently elected from at large and is responsible for the day-to-day executive functions of a city/county government, much like an elected strong mayoral form. The legislative branch (or city/county council) may be elected from at large or by council district, or a combination of both. The powers delegated to a charter form by home rule usually are specific in State statute.

C. Local Authorities

In addition to the elected legislative body of a local jurisdiction and its executive, there are numerous individuals, boards, and commissions who all have important roles to play in the governing scheme.

1. The Office of the City/County Clerk: The city/county clerk is the keeper of all official records associated with the legislative and executive functions of the city/county council, including ordinances and resolutions adopted by the council. The clerk is normally appointed by the council and serves at the pleasure of the council

Strategy: The Public Affairs Office of the local military installation should be in continuous communication with the office of the city/county clerk to ensure the installation is kept informed of actions pending before the city/county council, supporting citizen boards and commissions advising the council, and of upcoming events that might affect the installation and its mission.

2. The Office of the City/County Attorney: The city/county attorney is among the most important council-appointed positions in local government. The city/county attorney advises the council on all legal, personnel, and contractual matters of local government. He or she also represents the city/county on all legal and procedural questions, interprets city/county codes and ordinances, and ensures that all administrative matters are conducted in accordance with the city/county charter, laws, rules, and procedures of local government.

Strategy: The military installation's general counsel should establish close communication with the city/county attorney to work effectively with the office on all matters relating to the relationship between the local government and the military installation. This outreach is particularly important when issues of land use activity in the vicinity of the installation require the attention of the general counsel's office.

3. The Planning Director and the Professional Planning Staff: In larger cities and counties, a professional planning staff provides support to the city council, planning commission, board of appeals, and other city/county established advisory boards (e.g., historic district commission, traffic and transportation commission, etc.).

In smaller localities, there may not be a professional planning staff. In several States, there can be a “regional planning commission,” which provides professional planning services and advice to several counties and municipalities. In addition, independent planning commissions may be constituted as a “special district” with special State-legislated powers, including taxing powers and other related responsibilities.⁶

Strategy: *The local military installation commander or the base planner should be in continuous contact with the local planning director and should follow closely the day-to-day operations of the planning department regarding land use planning and civilian development activity that could affect the operations of the installation. A close professional working relationship can do much to foster a cooperative spirit and awareness of the respective missions and responsibilities of the other.*

4. The Local Planning Commission or Zoning and Planning Board: Like cities and counties, planning agencies vary in form and authority from municipality to municipality, region to region, and State to State. However, a local planning commission or planning and zoning board, and board of zoning appeals are found in most local governments.

Planning commissions most often are made up of nonelected, appointed citizens who meet, confer, and formulate recommendations regarding planning, zoning, and subdivision matters that subsequently are presented to the local legislative body (i.e., commissioners, supervisors, councils) for implementation.

A planning commission prepares, adopts, and recommends a comprehensive/general plan, including sub-geographic area plans, such as sector, neighborhood plans, special planning studies, central business district (CBD) plans, or military influence planning district (MIPD) plans⁷ to the local governing body for legislative approval. Once approved by the local legislative body, the plan becomes the official policy statement of the jurisdiction, serving as the blueprint for the future physical, social, and economic development of the community. A planning commission may also provide recommendations on such items as zoning ordinance text revisions/updates, rezoning applications, planned unit developments, variances from the strict application of requirements, and capital improvement programs. In all instances, a planning commission is advisory to the local governing body. The only exception may be the approval of subdivision plans or plats.

A secondary function of local planning commissions (under the planning and zoning model) is to hold public hearings on requested parcel-specific zoning map amendments or zoning ordinance text amendments, as mandated by the State enabling act and the local planning and zoning ordinance. As an advisory body of appointed citizens, planning commissions rely on established public hearing protocol and the local planning and zoning codes.

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A governing body may or may not follow recommendations of a planning commission. In the end, the city council or board of county commissioners will make the final decision based on *the overall land use plan* and evidence submitted to the public hearing record. Its actions will then set public policy. In this context, the public hearing record is important to establish “standing”⁸ in matters that could involve subsequent challenge or appeal to decisions rendered by the local planning commission or governing body.

Failure to respond often is accepted as approval of a pending development action

In many States, there are requirements that local planning and zoning agencies refer zoning and development applications to other governmental and nongovernmental units, most often associated with utility services. Recent State legislative initiatives in Arizona, California, Georgia, North Carolina, Virginia, and Washington, for instance, extend this requirement to local military installation commanders. An invitation to comment on pending zoning and development applications via these notices should be acted on quickly by the military installation commander. Failure to respond often is accepted as approval of a pending development action.

Generally, at a lesser, more administrative level, the appointed local planning commission has the authority to approve subdivision plans or plats, use permits, and special site development plans so long as the approval is in accordance with the duly adopted and approved land use plan, official zoning map, and/or zoning ordinance. Variances from the rule are permitted subject to review and approval by a separate zoning board of appeals.

5. Zoning Board of Appeals: The zoning board of appeals is a quasi-judicial body of appointed lay people who sit in judgment over applications requesting, for example, a variance from the strict interpretation of the local zoning ordinance or an appeal of an administrative decision or appeals to special use permits, where locally required. The board is normally appointed by the chief elected official with the concurrence of the legislative body. It has two primary functions:

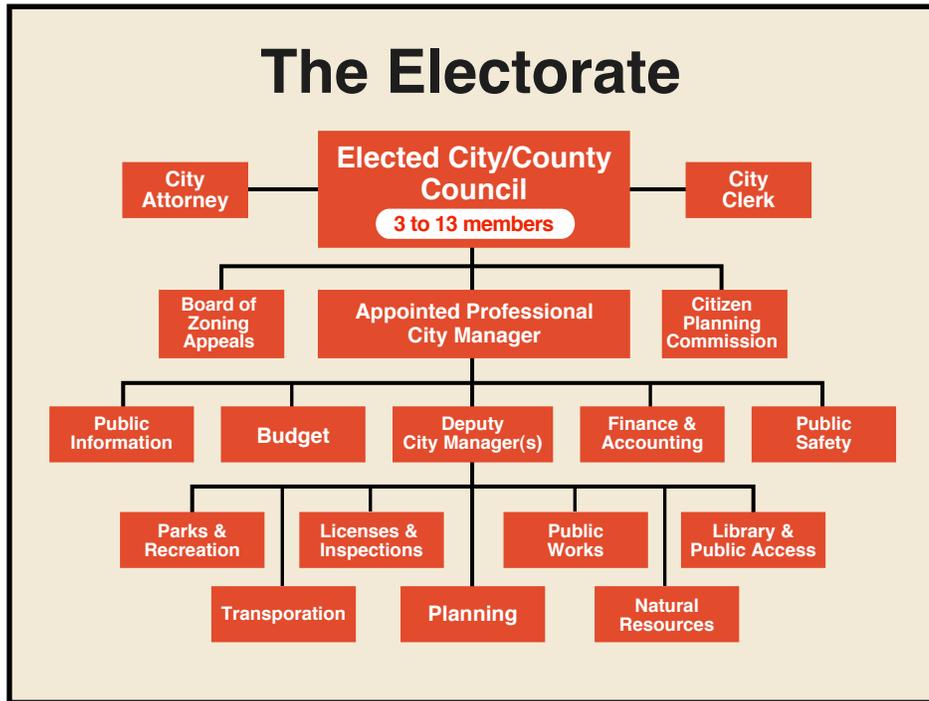
- To grant variances from the otherwise strict application of the rules in cases of hardship. (Normally a hardship cannot be self-imposed.)
- To hear appeals from interpretations of ordinances/laws in cases where, for example, the administrative official responsible for issuing permits may have denied or issued a permit in error.

The local zoning board of appeals is an important body in the administration of land use decisions

The local zoning board of appeals is an important body in the administration of land use decisions. It often is an avenue to appeal a decision of a planning commission or an administrative official. It should not be overlooked as an opportunity to address decisions that may not be favorable to a military installation’s mission. Before an appeal to a decision can be taken before the courts, the appellant must have exhausted all administrative remedies (i.e., appeals to board of appeals, planning commission, or city/county governing body).

Figure II-1

Typical Council-Manager Form of Local Government



Strategy: *The local base command staff should seek to establish standing before a planning commission, local governing body, or board of appeals via the public hearing record (which may be either written or verbally presented by the military installation commander, designated military base planners, or general counsel). This standing will permit the military to not only provide official input to planning and zoning proceedings, but also establish itself as a party of record in the event of subsequent hearings or appeals to decisions made.*

6. City/County Engineer and Permit Office: This is another important administrative function of local government. Every jurisdiction has a professional engineer who serves as the city/county engineer, public works director, and so on. The individual and related departmental staff oversees the basic field operations of local government, including streets and highways construction or repair, storm water drainage and management, solid waste management, public construction projects, water and sewerage facilities management, and so on. It is a position and responsibility that may be closely associated with a local Corps of Engineers office or the base civil engineer. The local public works director closely coordinates responsibilities with the local planning director to ensure that public works are coordinated and consistent with the comprehensive/general plan and developmental policies of the jurisdiction.

It is important for the local military base civil engineer to establish a working relationship with the local public works director

It is important for the local military base civil engineer to establish a working relationship with the local public works director. The significance of this is the absolute necessity to interface on-base engineering and development projects with off-base public works projects. As DoD moves toward privatization of on-base functions, this need for coordination and cooperation becomes an imperative.

The military is no different from any other neighboring property owner according to court decisions⁹ and Department of Defense Directives/Instructions. Military installation commanders may participate in local government proceedings, provide testimony for the record, and attempt to influence the outcome without exposing the military service to challenge. Part V will discuss the “do’s and don’ts” as to the protocols of engagement.

Most local governments possess sufficient powers to manage growth

D. Local Government and Land Use Matters

State law provides the framework for planning and zoning at the State and local governmental levels. Therefore, when considering civilian encroachment issues a military installation commander or representative should be aware of the form of local government; how it operates; and the relevant state planning and zoning laws. In most cases, this will define the powers and scope of local land use controls and the means by which a military installation commander may engage the process in a constructive way.

1. Local Governments and Delegated Police Powers to Regulate Land Use: The authority of local government to undertake and enforce planning and zoning is derived from three sources: the State constitution, State enabling statutes, and/or county or municipal charter. In most States, the authority is delegated through State enabling legislation and municipal charter. Throughout the United States, virtually all incorporated local governments with home rule authority may conduct some form of community planning and zoning and regulate the use of land, building locations, and construction practices under the police powers to protect the public health, safety, and welfare.

- a. The Police Powers:** Most local governments possess sufficient powers to manage growth. Fundamental to the planning process are the “police powers” of a government to legislate and regulate, among other things, land use. These powers are primarily reserved to the States,¹⁰ which, in turn, delegate this authority to local governments.¹¹

In 1924, the Department of Commerce proposed the Standard State Zoning Enabling Act¹² as a model law for States to adopt. It included an “invading offensive uses” concept as the basis for authorizing local governments, principally municipalities, to designate zoning districts in which only compatible uses are allowed and incompatible uses are excluded.

In general, local governments may take action to prevent incompatible land uses from exposing people to nuisances or risky conditions. This land use concept is based on the idea that incompatible land use could have a deleterious effect on the public health, safety, and welfare and pose an unacceptable nuisance for pre-existing landowners.

However, note should be taken regarding the status of “property rights” States and the impact of property rights legislation upon the land use regulatory process.

The law of property rights and government regulation is a complex area with considerable legal precedent. Both local government and private entities need to be increasingly clear about their real needs and expectations when it comes to land use regulations. Over the years courts have defined four situations where a “regulatory taking” may be found to have exceeded the local government police powers. These are:

- Regulations that deny a landowner all “economically viable use of the land” (*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992));
- When a property regulation places burdens on a landowner where there is no reasonable relationship (nexus) to the public general health, safety, and welfare of the community (*Nolan v. California Coastal Commission*, 483 U.S. 825 (1987));
- When a regulation forces a landowner to physically accommodate a non-governmental institution on his/her property (*Loretto v. Teleprompter Manhattan CATV Corporation*, 458 U.S. 419 (1982)); and
- Where government regulation of land use is more intrusive and burdensome on a landowner. For example, requiring a dedication of property rather than simply prohibiting certain types of land use (*Dolan v. City of Tigard*, 512 U.S. 374 (1992)).

DoD Air Installations Compatible Use Zones Program and the Local Planning

Agency:¹³ DoD is actively involved in identifying noise generated from high-performance military aircraft and their operations. The Navy, Marine Corps, and Air Force routinely share this information with local communities through the Air Installations Compatible Use Zones (AICUZ) program. The Army has a complementary informational program called the Operational Noise Management Program (ONMP) oriented to noise generated from test and training ranges and may involve artillery and tracked or wheeled armor conducting maneuvers and field combat training. These programs and the information provided are important to communities that conduct compatible land use planning near military installations. These programs are discussed in detail in Parts IV and V.

Strategy: *When local planners develop local general plans or review development proposals — especially residential — it is important that the local planner be aware of the presence of a nearby active military installation, whether an air base or a ground training facilities. It also is advisable to consult on a regular basis with the local base flight operators, range officers, or environmental planners to understand the nature of the military mission and the type of aircraft and flight tracks or military hardware deployed at an installation and obtain noise level contour data and accident potential maps.*

- b. Land Use Planning Is the Legal Basis for Zoning:** The U.S. Supreme Court has accorded local government constitutional validity when it comes to land use decision making.¹⁴ This validity is based on the notion that a duly adopted and approved comprehensive/general plan is long-range in perspective and will guide incremental public land use decisions in the name of protecting the public health and safety and promoting the general welfare.

The U.S. Supreme Court has accorded local government constitutional validity when it comes to land use decision making

Land is viewed as both a resource and a commodity — that is, as a public asset or a purely private good. Public land use decisions can have economic, social, political, and even environmental consequences for not only the landowner but also the community exercising this authority; these consequences can extend beyond the community's borders.

Local land use planning and zoning can be among the most effective ways to balance growth by promoting compatible land use

- c. Private Land – A Commodity or Resource?** In many State and local governments, public officials are finding themselves at the center of a planning and regulatory predicament. As land becomes scarce, regulatory systems become more complex and the potential for litigation, more likely. However, it may be observed that local land use planning and zoning can be among the most effective ways to balance growth and development demands by promoting compatible land use, especially in the vicinity of military installations.

To be effective, local government leaders, military personnel, and other groups with an interest in the use and stewardship of the land near military installations need to know and understand the framework within which planning and land use regulations (such as zoning and subdivision regulations) operate.

- 2. Community Planning, Zoning, and Subdivision Regulations Are Tools:** These tools of local government¹⁵ are designed to regulate the use of property in a fair and reasonable manner to protect the public health, safety, and welfare while ensuring property rights and promoting community economic development. Through these tools, local government may manage the location, timing, density, and intensity of land use in the public interest.

Part V addresses the tools that are considered valuable in achieving compatible land use near military installations while promoting the growing smarter movement for individual property owners and the general public welfare.

E. The Local Comprehensive/General Plan

- 1. The Plan:** In the typical situation, a local planning commission *adopts* a local comprehensive general plan. It then *recommends* the plan for *approval* by the local governing body. Thus, an *adopted* plan does not have the force or effect of law, but a legislatively *approved* plan enacted by local ordinance does. This comprehensive general plan represents the community's guide to the physical, social, and economic development of the local jurisdiction or a designated sub-geographic area such as a neighborhood planning area, central business district, or a military influence planning district.

It is important for a military installation commander or planner to be aware when a plan or subarea plan is under preparation. When a designated planning area, be it for the entire jurisdiction or a subdistrict, becomes an official "planning policy area," a sector or neighborhood plan covering a sector or neighborhood under that "planning policy area" will be prepared, updated, adopted, and approved as an amendment to the jurisdiction's comprehensive/general plan.

Strategy: *When a plan or subarea plan is under preparation, a military installation commander or representative has a right to participate in and influence the plan preparation and approval process just as any affected property owner would.*

The comprehensive/general plan can be the defining strategy in encroachment prevention

Planning practitioners view a comprehensive/general plan as the policy statement of local government expressing the local government's goals, objectives, policies, and strategies for the future. In this context it serves as the legal basis for the subsequent application of zoning principles and practices; however, it does not take the place of existing zoning, nor does it compel, grant, or deny rezoning requests. Such decisions are made by a separate legislative process conducted under procedural due process rules. The plan is a public policy statement, developed through a process of careful study, public involvement, deliberation, and due process. It is enacted as a legislative act of the local governing body and may have the force and effect of law.

The comprehensive/general plan typically is based on consensus building among all participating interests. It is goal oriented. It can provide the framework and legal foundation for a host of public and private decisions such as capital investments and the location of urban development, public and private schools, libraries, streets, highways, public water and sewerage systems, and other public services in support of planned community development.

A comprehensive/general plan cannot set zoning or enforce building and subdivision code standards. These are separate legislative, quasi-judicial, or administrative functions with their own requirements and protocols.

According to the American Planning Association (APA), 15 States require mandatory comprehensive plans at the local government level. Twenty-five States mandate comprehensive planning, but only if the local governmental units first establish a planning commission. This is a mix between legislative home rule (mandatory) and enabling legislation (optional).¹⁶ For example, Arkansas mandates land use planning for cities but not counties. Kentucky makes county plans optional and city plans mandatory. Each State has its own unique structure; a military installation commander or planner must understand the planning structure of the State and locality with which he or she is dealing to maximize the effectiveness of communications with local government officials. (See Appendix 1.1.)

2. State-Mandated Comprehensive Plan: Mandatory comprehensive planning statutes usually specify the elements required to be contained in such plans. Traditional elements include land use; transportation; housing; park, recreation, and open space; public facilities (schools, parks, and recreation), and water and sewerage conveyance and treatment systems. Some are quite elaborate and include implementation, fiscal impact, and urban design elements in both written and detailed geographic information systems (GIS) mapping or illustrative form.

Others are general and primarily provide written policy direction, leaving much of the implementation and visioning up to interpreting authority such as the seated governing body or regulatory body. Even where planning is not mandated, local governments often adopt and abide by the comprehensive/general plan as a matter of principle and practice.

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The relevancy of this discussion is not only to identify the conventional plan elements, but to recommend to local governments that they consider a new element that addresses the presence and significance of a military installation in a community, referred to in this Guide as a “Military Influence Planning District (MIPD) Element.”

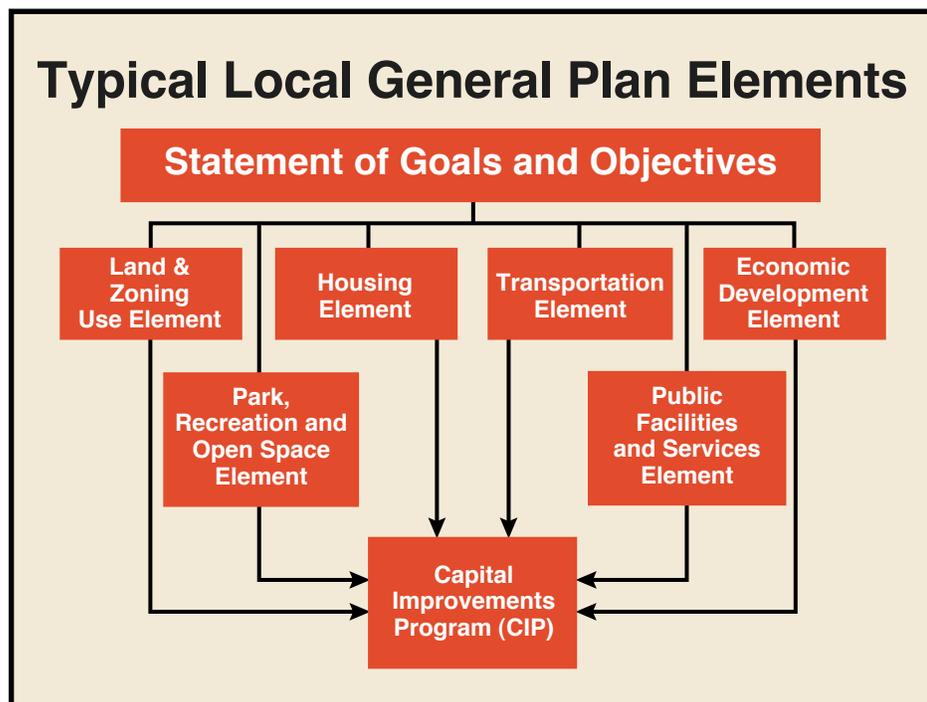
3. Local Comprehensive Plan Elements: There are seven elements typically found in comprehensive plans that have a bearing on the issue of encroachment: statement of purpose, process, goals, and objectives; land use and zoning characteristics and patterns; housing; transportation; economic development; park, recreation, and open space; and public facilities and services.

- a. Statement of Purpose, Process, Goals, and Objectives:** Comprehensive planning is based on an open, publicly engaged process of consensus building that seeks balance among competing interests given limited resources. It is purpose directed and goal oriented, setting measurable plateaus or objectives to be achieved over time (staging). A flexible public participation process allows for and recognizes the need to adjust and to meet changing requirements of all segments of the community. Decisions by a local legislative body can and often will change public policy and the direction of a community’s growth and development.

A flexible public participation process allows for and recognizes the need to adjust and to meet changing requirements of all segments of the community

Figure II-2

General Plan Elements and Relationships



Ever-changing images of the future give credence to the planning process. A vision of the future is only as good as when it was formulated. It is based on environmental awareness, knowledge, and consensus among stakeholders before it is translated into a statement of goals, objectives, policies, and standards that can be assembled, coordinated, and forged into an action plan to achieve both short- and long-term objectives.

- b. Land Use and Zoning Elements:** Ever since the publication of the Standard City Planning Enabling Act of 1928, governmental land use and zoning elements have been the mainstay of the comprehensive plan. These elements examine existing land use patterns and assign corresponding zoning districts to classify the land use in generic residential, industrial, commercial, business, agricultural, and open space. They are the basis for the analysis of existing conditions and issues.

Today, these basic use categories have been further expanded both in number and in type by including elements of urban design and architecture; building bulk, density, and height characteristics; and signing and landscaping requirements, thus categorizing new land uses to reflect urban, suburban, exurban, and rural environments and values.

In 1965, the Standard Land Use Coding Manual (SLUCM)¹⁷ provided a universal land use coding system (not a classification system) that is in use today. The APA, in cooperation with Federal agencies, has developed a Land-Based Classification System (LBCS)¹⁸ to replace the SLUCM. It will take time to convert existing SLUCM classifications to the new LBCS.

Appendix 13 provides a sample of the Land Use Compatibility Zoning Code developed by the FAA based on SLUCM.¹⁹

- c. Housing Element:** This plan policy element is concerned with achieving a balanced and affordable housing supply responsive to all income levels and needs.

The housing element also is closely tied to Federal housing assistance programs such as the Department of Housing and Urban Development (HUD) Community Development Block Grant Program (CDBG) and the Housing Assistance Plan (HAP); and Department of Agriculture's (USDA) Rural Development Program. These Federal programs strive to support low and moderate-income community housing assistance programs in recognition of a need to provide a balanced mix of housing opportunities, types, and affordability for all residents.

- d. Transportation Element:** This plan policy element identifies existing and proposed area-wide transportation systems management and improvement needs and programs to support the movement of goods and people, including the alignment of public streets and highways, transit-ways, bikeways, and so forth to achieve a balanced multimodal system of transportation and, in the process, improve air quality.

Land use and zoning elements have been the mainstay of the comprehensive plan

The multimodal transportation systems element of the plan involves coordinating all transportation components noted above to achieve a balanced, affordable, and complementing transportation system.

The placement or alignment of transportation systems rights-of-way can determine the location, mix, timing, and density of urban growth and development. As such, it is an important tool in influencing land use decisions and in dealing with civilian encroachment.

- e. Economic Development Element:** Fundamentally, this is an economic base and market analysis conducted by a jurisdiction to determine market strengths, weakness, opportunities, and threats (SWOT). It deals with the lifeblood of the community — how the community is to grow, develop, prosper, and expand its economic base and provide jobs, housing, and business opportunities for its residents. All are important to the community’s economic well-being and are fundamental elements of the community’s overall comprehensive/general plan.

The economic development element of a general plan focuses on economic base analysis. Normally included are an assessment of market conditions, industrial and commercial redevelopment opportunities, targeted industry identification, and land banking of important parcels for future growth and development once public services are provided.

It is a balancing act between land, its use, and supply and demand

The objective is to leverage the most appropriate linkages that can create the synergism needed to make a local economy grow and prosper. It represents a forging of partnerships between the public and private sectors to create opportunity for healthy economic growth. In addition, it is a balancing act between land, its use, and supply and demand. The intention is to maximize both direct and indirect economic benefits.

This is an important element of the community’s comprehensive plan that contributes to balancing the locality’s overall goals, objectives, and growth policies.

- f. Park, Recreation, and Open Space (PROS) Element:** No plan would be complete without this element. It ties together the physical features to make a community of balanced, identifiable neighborhoods. It provides viable green amenities, passive and active recreation, and the tranquility of interconnected open spaces to relieve the monotony of urbanization.

The PROS element of the comprehensive/general plan is a very strong land use tool to prevent incompatible development and encroachment upon the operations of a military installation. PROS can provide the buffer and transitional land use area between an active military base and neighboring residential land use. It can provide support for agricultural preservation and open space conservation, protecting critical habitat and endangered species. Fort Bragg, North Carolina, and Naval Air Station Pensacola, Florida, are case studies presented in Part V as to the importance of land conservation for the overall public good.

- g. Public Facilities and Services Element:** Supporting comprehensive planning and economic development are the publicly funded services such as utilities, water and sewer service, streets and highways, public parks and recreation areas, public safety (police, fire, emergency, and health services), education, solid waste management, and the like.

Also known as the capital improvements or the public facilities and services element of the comprehensive/general plan, the local capital improvements program (CIP) represents a coordinated plan of public investment in community growth, development, and the future.

As a community invests through its CIP, it is making long-term financial commitments based on its full faith and credit. The public CIP investment strategy by necessity is closely tied to the elements of the comprehensive/general plan so that the timing of the public's investments can be coordinated with community planning goals and short-term objectives, and is responsive to immediate community needs.

The CIP element, therefore, is an important factor in considering overall community and economic development investment strategies that may or may not contribute to civilian encroachment or the sustainability of a local military installation.

Zoning and land use decisions can play a defining fiscal role in how government allocates limited public resources to influence and direct the timing and location of growth within fiscal, planning, and political constraints.

The CIP can influence the timing, intensity, direction, and nature of growth and development. It is directly tied to the dynamics of a community's development philosophy. Oftentimes it is made without consideration of the presence of a nearby military installation or other related economic development engines that could be impacted by the spread of uncoordinated and incompatible growth and development. In this sense, it is a development-staging tool.

- h. Other Comprehensive Planning Elements:** Although not required by some States, a myriad of other community issues may be addressed in comprehensive/general plans, such as areas of critical concern that are important to the sustainability of a local community.

For example, several States have embraced the concept of "Areas of Critical State Concern or Interest." (See Parts III & V) The concept is based on identifying significant and important assets to a regional and local government (e.g., agriculture and conservation values; environmentally sensitive areas and resources; flood plains; aquifer recharge areas; unique natural resources, geological formations, and vistas; water bodies and coastal zones). In addition, it may serve as the basis for formulating special strategies to protect and to enhance quality of life. When

The local capital improvements program represents a coordinated plan of public investment in community growth, development, and the future

The comprehensive planning process is the ideal vehicle to identify and set aside special use areas that are of special interest to a local or State government

special areas or features are designated by the local jurisdiction and embedded in a comprehensive/general plan and/or statewide growth management policy, they become effective planning tools for a local government's sustainable growth.

- 1) Areas of Critical State (and Local Government) Concern:** Several States have existing statutory language focused on geographic areas that may be of significance to the jurisdiction and of statewide importance (see Appendix 1.2).

Some States have enacted statutes to protect people from natural hazards and disasters; to preserve endangered or threatened species habitats; to maintain air, land, and water quality; historic or culturally significant artifacts; and scenic views and vistas. Special-area protections of select State assets and resources are matters of public policy in States such as California, Florida, Maryland, Washington, and others. (This is discussed in detail in Part V.)

The comprehensive planning process is the ideal vehicle to identify and set aside special use areas that are of special interest to a local or State government. A military installation may fall into this category as an area of critical state/local concern.

- 2) Growth Policy Element:** A typical growth policy element of a comprehensive plan attempts to define, under a single set of guiding principles and policies, linkages between the type of development desired by a community and the timing or staging of that development. It normally does not deal with the total amount, type, or mix of development under build-out conditions. These are issues normally reserved to the land use and economic development elements of the plan.

The growth policy element of the plan ties the staging (timing) of public facilities and public capital investment strategies to a plan's land use, housing, transportation, and economic development elements. The reasoning is that all elements must work in harmony to support a comprehensive growth policy and management strategy intended to achieve a balance in the timing (staging) and location of development based on the short- and long-term ability of local government to adequately support and sustain its fiscal obligations.

The presence of a military installation is significant to the community and the region

- 3) Military Influence Planning District (MIPD) Element:** A new concept, presented for the first time in this *Guide*, explores the idea of local government recognizing the importance of the military presence in the community and establishing through the local planning process an MIPD element. An MIPD element is no different from transportation, housing, land use, or other typical elements of a comprehensive/general plan. It is recognition by the local jurisdiction responsible for conducting comprehensive community planning that the presence of a military installation is significant to the community and the region.

The designation of an MIPD, or similarly named element or sub-planning area, takes on special meaning to a local government. The local planning commission and governing body may legislatively prepare and adopt a land use compatibility plan. It becomes an element of the comprehensive/general plan based on information provided by the military services and a desire to protect the public health, safety, and welfare in an official designated geographic area.²⁰ This designation would set the legislative framework, authority, and justification for the comprehensive plan and its goal to achieve compatible transitional land use between a military installation and the community, if that were the desired outcome.

In summary, the local comprehensive plan is the first strategy used to balance land use activity and community development goals. It represents the official public policy of local government and a statement about the future growth and development intentions that a local government may invest in and support. As such, it sets the public framework and legislative agenda for other local development codes that subsequently are enacted and enforced by local government (i.e., zoning, subdivision, and building codes).

F. The Local Zoning Ordinance

The zoning ordinance is a land use classification system that specifies the use, type, bulk, height, density, and location of buildings or structures on a given parcel of land. It can establish the required front, side, and rear-yard setbacks from neighboring properties; off-street parking requirements to respond to land use intensity; and other urban design standards and amenities as prerequisites to obtaining a building permit. The objective is to ensure that residential, commercial, industrial, agricultural, and conservation areas are protected and buffered from incompatible development and one another so they may prosper as viable components of the local community's economy.

Zoning is the division of a governmental entity's corporate landscape, be it municipal, township, or county, into distinct geographically defined "like-use" district(s), the purpose of which is to regulate the planned and/or intended use of property to protect the public health, safety, and welfare; protect property values; prevent nuisance; and conform to the local comprehensive/general plan.

In the process of original zoning and rezoning of property the burden of proof is based on an applicant's presentation of pertinent facts, conformance with the plan, and demonstration of changing conditions as justification for a zoning reclassification (rezoning).

Planning and zoning decisions do not depend solely upon the recommendations of the comprehensive plan. While it is considered an important guide in decision making, other factors and circumstances may have occurred since adoption of the plan that will be taken into account by the governing deciding body.

The local zoning ordinance is an important tool in encroachment prevention and complements the comprehensive/general plan. Missing from most comprehensive plans and zoning ordinances is the recognition of the presence of a military installation and its status as a major public facility, contributor to the local economy, and employer (see Part V).

The local comprehensive plan is the first strategy used to balance land use activity and community development goals

The local zoning ordinance is an important tool in encroachment prevention

Following the introduction of the Standard State Zoning Enabling Act,²¹ its acceptance by local governments (New York City being the first), and its successful defense before the United States Supreme Court,²² zoning has become the principle means by which a community comprehensive plan is implemented, property values are stabilized, and nuisances limited.

Over time, zoning has evolved in response to contemporary values while the basic principles have remained. In most cases, following the adoption and approval of a comprehensive or sector plan, a local planning commission will file a “comprehensive amendment” to either the official zoning ordinance text or the official adopted zoning map so that zoning may be placed in sync with the recommendations of the adopted and approved comprehensive/general plan.

Land use decisions should be rational and deliberative, based on a thorough, well-thought-out comprehensive/general planning process

Consistency: The idea that the zoning ordinance and map should conform to or be consistent with an independently adopted comprehensive/general plan is generally accepted doctrine in the planning profession. From this, it follows that land use decisions should be rational and deliberative, based on a thorough, well-thought-out comprehensive/general planning process.

The civil courts are more likely to uphold land use decisions under the principle of “legislative wisdom” than affirm a challenge on grounds of regulatory taking or inverse condemnation. However, the process used to arrive at an informed decision must be based on:

- a) A duly adopted and approved comprehensive plan;*
- b) An established public hearing record;*
- c) Extended opportunity for all parties to participate in and provide testimony or the record; and,*
- d) A careful and deliberative policy and decision-making process based on findings of fact and conclusions of law.*

To illustrate, the Maryland court, in *Norbeck Village Joint Venture v. Montgomery County Council*²³ held that a comprehensive downzoning based on the county’s plan did not constitute a taking. The downzoning, the court reasoned, was based on a comprehensive legislative planning policy that fairly distributed the benefits and burdens of land use regulations.

Downzoning can be an important strategy in encroachment prevention

Part V expands on the role of the local zoning ordinance and the adopted official zoning map as principal tools in promoting compatible land use near military installations. A local adopted plan that seeks to tighten zoning regulations in a comprehensive manner will most likely receive deferential and favorable judicial review. However, downzoning of a single tract of land can and will receive closer judicial review as “spot zoning.”

A military installation commander or planner should be aware of this distinction between the plan, which sets the policy framework for zoning decisions, but does not compel nor automatically grant zoning, and zoning which is a separate legislative process. Zoning is implemented in close accordance with the comprehensive/general plan, but does not invariably follow it. For example, in California there is a consistency requirement that stipulates an amendment to the plan before a piecemeal rezoning application by an individual property owner can be considered. In other States, the plan may not be as influential or determinative.

G. The Adopted Official Zoning Map

Separate and distinct from the zoning ordinance is the adopted official zoning map of a jurisdiction. The adopted official zoning map is enacted under a legislative process that is separate from the comprehensive/general plan or the zoning ordinance. It identifies in physical space (parcel specific map) the zoning classifications assigned to a specific property by a local governing body having zoning authority. It is a semipermanent assignment of a zoning classification to private property. It identifies from the local government's perspective the highest and best use for the property based on a community-adopted and approved comprehensive/general plan.

Zoning map boundaries typically follow property lines, centerlines of rights-of-way, and natural ridges and streams, and rarely divide a single property into two or more zones. A zoning designation may not easily be changed. The process of change can be rigorous.

A change in a zoning district shown on the official zoning map may be accomplished in two ways: (1) through a piecemeal zoning map amendment sought by the owner or contract purchaser of a particular property, as the owner's agent; or (2) through a comprehensive zoning map amendment involving many properties at the same time. It may involve an entire planning area/district. A comprehensive zoning map amendment may only be initiated by a local planning commission or by the local legislative body having zoning jurisdiction.

1. Parcel Specific Zoning Map Amendment: Application for a parcel-specific zoning map amendment is filed by the owner of record or a duly designated representative of the owner, in accordance with criteria and procedures specified in the local zoning code. A parcel-specific zoning map amendment (or Euclidian²⁴ zoning change) covers a single property. When the local planning commission and legislative body consider, in turn, a specific change in a zoning classification, oftentimes the request is weighed against a number of factors including the following:

- The land use recommendation contained in the adopted and approved local comprehensive/general plan and other relevant public policy statements and precedents;
- The changing conditions associated with the subject property;
- The potential for nuisance and impact on adjacent properties (i.e., traffic and public utility impacts that could be generated from the proposed

rezoning affecting a community's ability to physically and financially support the proposal); and

- The potential for environmental degradation (air, land, or water).

Fundamental to all parcel-specific zoning map amendments is the requirement for public hearing, the taking of testimony, cross-examination of witness before a planning commission and/or zoning hearing examiner who formulates the initial recommendation to the final deciding governing body, and then before the governing body itself.

In some States, in order to change a parcel-specific zoning map, it may be necessary to amend the comprehensive plan. In others, it may not. The reader should consult relevant State statutory requirements before engaging in local land use planning and zoning matters.

The military installation commander and planner must be sure to review piecemeal rezoning applications that could affect a military installation's mission

In some jurisdictions, the local governing body relies on a "hearing examiner" to take the testimony of record and formulate a recommendation to the final decision-making body (city/county council or board of county commissioners). In either event, the planning commission is always involved and its recommendations are considered by the zoning authority.

Parcel-specific zoning map amendments are one factor contributing to urban sprawl. They are not a leading factor. They are secondary to investment decisions in capital improvements by Federal, State, and local governments that can constitute a change in condition or a change in the character of a neighborhood, justifying piecemeal rezoning.

The parcel-specific zoning map amendment is not a constructive tool in an encroachment prevention strategy. To the contrary, it can stimulate piecemeal growth and development that may be incongruent with a military installation's missions and the community's comprehensive/general plan. In its most obvious form it could be like granting an individual zoning request to build a hotel, child care center, or private school in an aircraft Accident Potential Zone or in a high noise area (greater than 65 decibels (dB) day-night sound level (DNL/Ldn), regardless of the source of danger or nuisance.

Strategy: *The military installation commander and planner must be sure to review piecemeal rezoning applications that could affect a military installation's mission and be prepared to present to the planning commission and final deciding body their comments and recommendations on the proposed rezoning.*

2. Comprehensive Zoning Map Amendment: As the term implies, a comprehensive zoning map amendment is based on an inclusive approach that applies different zoning classification to an area of multiple properties or a subarea of multiple properties based on a local government's comprehensive plan. It is a legislative and procedural function of local government intended to implement public policy embodied in the comprehensive plan. Approval is by a simple majority vote of the seated legislative body and does not require the multiple findings of fact or conclusions of law normally applicable to a parcel-specific zoning map amendment, where changing conditions can justify a parcel-specific rezoning.

A planning commission or local governing body with zoning authority files a comprehensive zoning map amendment. Normally, it is triggered by and based on the recommendations contained in a pending or an adopted and approved comprehensive plan.

Strategy: *The comprehensive zoning map amendment is a powerful tool in encroachment prevention, especially if it is backed by a carefully deliberated planning study, such as a comprehensive/general plan, a public facilities analysis, or a compatible land use plan/study (JLUS) or similar designated sub-planning area, such as an MIPD analysis conducted by the local governing body. It must include the requirement for one or more duly advertised and conducted public hearings with opportunity for all interested or affected parties to appear and provide input to the deciding body.*

Sometimes, a comprehensive/general plan amendment will recommend a downzoning of property to a lesser density or intensity of land use. This often is challenged by local property interests as a regulatory taking. However, recent court rulings have favored downzoning as long as it is based on a well-thought-out and publicly deliberated comprehensive plan.²⁵

Generally, downzoning is recognized as a way local governments may address the problem of overzoned property. Overzoned areas may be incompatible with the goals, objectives, and policies of the adopted and approved comprehensive/general plan. They may outstrip the capability and capacity, planned or otherwise, of the local government to support.

Part V discusses in detail the comprehensive zoning map amendment as a sprawl and encroachment prevention tool. If properly implemented a comprehensive rezoning map amendment can result in either “legal downzoning” or “upzoning,” as the case may be.

Zoning does not establish a vested interest in property. It identifies the land uses permitted by right, the density and intensity of such use, and the development standards that may be ascribed to property by local government fiat. It is a semipermanent application of the policy powers in the interest of protecting the public health, safety, and welfare. It may be changed to a higher or lower density or use depending on the circumstances, changing conditions, and a determination by the local legislative body through a comprehensive/general planning process.

Comprehensive zoning in the context of a comprehensive/general plan, sector plan, or special area plan is an important tool in establishing compatible land use near a military installation. The local military installation commander or planner should be aware of and participate actively in any public process involving an amendment to a local government’s comprehensive/general plan, zoning ordinance text, or zoning map amendment, whether it is parcel specific or comprehensive, to determine the impact, if any, on the mission of the installation.

3. Conditional or Special Zoning Use Permits: In some jurisdictions, a “special zoning use permit” may be required as a condition for issuance of a building permit. This is a way of triggering a more site-specific plan review of a development proposal. Under this

Recent court rulings have favored downzoning as long as it is based on a well-thought-out and publicly deliberated comprehensive plan

system, special zoning use permits provide an opportunity for a planning commission to review in detail the specifics of a development proposal before authorizing a building permit. This helps local government in making informed decisions regarding the compatibility of a proposed land use(s) given the zoning classification, character of the area, and special circumstances, such as required parking spaces, screening, and buffering.

Zoning does not establish a vested interest in property

4. Special Exceptions: Virtually all local zoning ordinances identify some uses as a special exception to the rigid application of standards specified in the zoning ordinance for a given zoning classification. A special exception is a use allowed in a given zone subject to additional review and imposition of standards by the planning commission as called for by the zoning ordinance.

5. Variances: A zoning board of appeals may hear and grant variances to the strict application of zoning standards (e.g., side yard setback and building height). The zoning ordinance can specify the basis for a variance. Variances are normally based on statutory or common law and unusual circumstances or hardship. However, the hardship may not be self-inflicted.

H. Beyond Zoning

Today, zoning regulations are a commonly accepted form of land use control. However, they are not the only legal method by which local government can exercise land use stewardship under the police powers.

Other land use regulatory tools available include subdivision regulations, building height and setback requirements, and building codes/regulations. There are traffic codes, minimum housing and sanitary codes, on and off-street parking regulations, and public capital investment strategies CIP, etc.

These tools, if properly applied in accordance with a comprehensive/general plan, can influence and regulate land use decisions at all levels. All flow from a public policy framework adopted and implemented by local government. Part V explores these land use regulations and their linkage to the comprehensive/general plan and the zoning ordinance.

The local government's CIP is an important fiscal and planning document

The local government's CIP is an important fiscal and planning document. Public decisions are made that can and will affect the financing, timing, and location of growth based on street widening and improvements, school construction, water and sewer extensions, and other public works-type projects that support growth and economic development.

The local military installation commander and planner should pay close attention to the annual CIP decisions of local government as they may affect short- and longer- term plans and programs of the military installation. A CIP can be a clear signal as to the intentions of local government to promote, control, or direct growth and development in specific areas.

Parts III and IV examine the roles of States and the Federal Government relative to land use planning and decision making. Part V takes the local planning principles and practices and identifies a menu of relevant planning tools and protocols that could materially contribute to securing compatible land use near military installations and ranges. Their application is based on the goals and objectives of the governing body and policy directions provided by an adopted and approved comprehensive/general plan.

Strategy: *It is up to the military installation commander and planner to identify those tools that are most appropriate given the circumstances. In all cases, it is advisable to research state enabling legislation and the local codes and ordinances to ascertain which of the applicable planning tools and techniques are available, and to apply them judiciously. Most important is to seek out the local community planning director or chief planner to identify the likelihood of encroachment that may compromise the utility of a military installation's mission.*

ENDNOTES

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- ¹ *Ex parte* communications take place when one party to an issue pending before a decision-making body communicates with a decision maker concerning the pending issue. A decision made after an *ex parte* communication may not be sustainable.
- ² Ellis Katz, *Local Self-Government in the United States*, Issues of Democracy (Apr. 1999), available at <http://usinfo.state.gov/journals/itdhr/0499/ijde/katz.htm>.
- ³ Municipal Research Center of Washington State, Bureau of Governmental Research at the University of Washington, available at <http://www.mrsc.org/Subjects/Governance/locgov12.aspx>.
- ⁴ *Id.*
- ⁵ *Id.*
- ⁶ The Maryland-National Capital Park and Planning Commission in Montgomery and Prince George's Counties, Maryland; The Regional Planning Commission for the cities of Indianapolis and the city of Lawrence, and Marian County, Indiana, are examples of special districts or consolidated governmental units with specific delegated powers over planning and zoning matters. In many States, such as Alabama, Florida, Missouri, and Tennessee, there are regional planning commissions consisting of multiple counties with powers to plan, but no powers to exercise zoning authority.
- ⁷ Escambia County, Florida, Joint Land Use Study, Sept., 2003. A sub-geographic area plan often is referred to as a "Sector Plan," "Neighborhood Plan," "Central Business District Plan," "Park, Recreation, and Open Space Plan," and the like. Escambia County, Florida, adopted a land use compatibility plan around Naval Air Station Pensacola and designated the planning area as an "Airfield Influence Planning District." (See Part V.)
- ⁸ "Standing" is a legal term that denotes the ability to bring a challenge, a lawsuit, or an appeal.
- ⁹ *De-Tom Enters, Inc. v. United States*, 552 F.2d 337 (1977). *Blue v. United States*, 21 Cl. Ct. 359 (1990).
- ¹⁰ U.S. Constitution, Amendment X.
- ¹¹ The constitutionality of this delegation as related to planning and zoning authority was resolved in 1926 with the decision in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=272&page=365>.
- ¹² A description of the Standard State Zoning Enabling Act, available at <http://www.planning.org/growingsmart/enablingacts.htm>.
- ¹³ 32 C.F.R. § 256.1(a), available at http://www.access.gpo.gov/nara/cfr/waisidx_04/32cfr256_04.html; DoD Instruction (DoDI) 4165.57, available at <http://www.dtic.mil/whs/directives/corres/html/416557.htm>.
- ¹⁴ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, available at http://www.abanet.org/rppt/cmtes/rp/c1/cases/Village_of_Euclid_v_Ambler_Realty_Co.pdf.

¹⁵ The term “local government” includes municipalities, cities, towns, villages, boroughs, counties, regional government, council of governments, planning commissions, and other instrumentalities of State or local government that have delegated planning and zoning authority.

¹⁶ All States have planning and zoning enabling legislation. Home rule or legislative home rule takes precedence over State enabling legislation.

¹⁷ U.S. Dept. of Commerce, The 1965 Standard Land Use Coding Manual (Jan. 1965), available at <http://www.planning.org/LBCS/OtherStandards/SLUCM.html>.

¹⁸ American Planning Association, Land-Based Classification Standards, available at <http://www.planning.org/lbcs>.

¹⁹ Fed. Aviation Admin., U.S. Dep’t of Transp., A Model Zoning Ordinance to Limit the Height of Objects Around Airports, AC 150/5190-4A (Dec. 14, 1987), available at <http://www.faa.gov/arp/pdf/5190-4a.pdf>.

²⁰ The Department of Defense manages through the Office of Economic Development a Joint Land Use Study (JLUS) program that funds compatibility plans of local governments where there is, or there is the likelihood that, civilian encroachment could impact on the utility of a military installation. See 10 U.S.C. § 2391.

²¹ *Standard State Zoning Enabling Act*, *supra* note 12

²² *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365.

²³ 254 A.2d 700 (1969).

²⁴ Euclidean zoning refers to the original Supreme Court decision justifying zoning of property as a legitimate exercise of the police powers. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

²⁵ For further information on downzoning, see Jesse J. Richardson, Jr., *Downzoning, Fairness, and FarmLand Protection*, 19 J. Land Use 59–90 (Fall 2003). Cases on downzoning include *In Re: Appeal of Realen Valley Forge Greenes Associates*, 838 A.2d 718 (Pa. 2003), available at <http://law.wustl.edu/landuselaw/downzoning.htm>; *Lea Turner et al. v. Supervisors of Prince William County*, No. 010580 (Cir. Ct. Prince William Cty Mar. 1, 2002), available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=va&vol=1010580&invol=1>; *Gazza v. N.Y.S. Dep’t of Environmental Conservation*, 679 N.E.2d 1035 (N.Y. 1997); *Basile v. Town of Southampton*, 678 N.E.2d 489 (N.Y. 1997); *Matter of Anello v. Bd. of Zoning Appeals*, 678 N.Y. 2d 870 (N.Y. 1997). For a bibliography, see the Web site for Washington University School of Law, St. Louis, Missouri, available at <http://law.wustl.edu/landuselaw/cases.html>