80000017

ORDINANCE NO. 1-79

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BUTTE COUNTY, STATE OF IDAHO, PROVIDING ZONING FOR THE ARCO-BUTTE COUNTY AIRPORT AND ITS VICINITY; DEFINING TERMS USED IN SAID ORDINANCE; PROVIDING FOR AIRSPACE OBSTRUCTION ZONING; PROVIDING LAND USE SAFETY ZONING; PROVIDING AIRPORT ZONING MAPS; PROVIDING FOR A VARIANCE SYSTEMS; PROVIDING FOR HAZARD MARKING AND LIGHTING RULES; PROVIDING FOR AN AIRPORT ZONING ADMINISTRATOR; PROVIDING FOR A BOARD OF ADJUSTMENT; PROVIDING FOR A SYSTEMS OF APPEALS AND JUDICIAL REVIEW; PROVIDING FOR PENALTIES FOR NON CONFORMANCE WITH THIS ORDINANCE; PROVIDES FOR REGULATIONS WITH REGARD TO CONFLICTS AND SEVERABILITY; PROVIDES FOR RECORDATION AND FILING; AND PROVIDING FOR PUBLICATION OF SAID ORDINANCE, AND AN EFFECTIVE DATE FOR THE ORDINANCE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF BUTTE COUNTY, IDAHO:

This Only

SECTION I: PURPOSE AND AUTHORITY

The Board of County Commissioners of Butte County pursuant to the provisions and authority conferred by Article 12, Section 2, of the Idaho State constitution, and Title 21, Chapter 5, and Title 67, Chapter 65 of the Idaho Code, hereby finds and declares that:

A. An airport hazard endangers the lives and property of users of the Arco-Butte County Airport, and property or occupants of land in its vicinity, and also if of the obstructive type, in effect reduces the size of the area available for landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Arco-Butte County Airport and the public investment herein.

B. The creation or establishment of an airport hazard is a public nuisance and an injury to the region served by the Arco-Butte County Airport.

C. For the protection of the public health, safety, order, convenience, prosperity and general welfare, and for the promotion of the most appropriate use of land, it is necessary to prevent the creation or establishment of airport hazards.

D. The prevention of these airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

E. The prevention of the creation or establishment of airport hazards and the elimination, removal, alteration mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds.

SECTION II: SHORT TITLE

This ordinance shall be know as "Arco-Butte County Airport Zoning Ordinance." Those sections of land affected by this Ordinance are indicated in "Exhibit A" which is attached to this Ordinance.

SECTION III: DEFENITIONS

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

"Airport" means the Arco-Butte County Airport.

"AIRPORT ELEVATION" means the established elevation of the heighest point on the usable landing area which elevation is established to be 5331 feet above mean sea level.

"AIRPORT HAZARD" means any structure or tree or use of land which obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land which is hazardous to persons or property because of its proximity to the airport.

"DWELLING" means any building or portion thereof designed or used as a residence or sleeping place of one or more persons.

"HEIGHT" for the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

"LANDING AREA" means the area of the airport used for the landing, taking off or taxiing of aircraft.

"PERCISION INSTUMENT RUNWAY" means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), or a Precision Approach Radar (PAR). Also, a runway for which a precision instrument approach system is planned and is so indicated on an approved planning document.

"PERSON" means an individual, firm, partnership, corporation, company association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

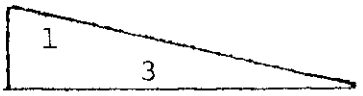
"NONPRECISION INSTRUMENT RUNWAY" means a runway having an existing or planned straight-in instrument approach procedure utilizing air navigation facilities wiht only horizontal guidance, and for which no precision approach facilities are planned or indicated on an approved planning document.

"VISUAL RUNWAY" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an approved planning document.

"NONCONFORMING USE" means any pre-existing structure, tree, natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment hereto.

"RUNWAY" means any existing or planned paved surface or turf covered area of the airport which is specifically designated and used or planned to be used for the landing and/or taking off of aircraft.

"SLOPE" means an incline from the horizonal expressed in an arithmetic ratio of horizontal magnitued to vertical magnitude.



Slope = 3 ft. horizontal to 1 ft. vertical

"STRUCTURE" means an object constructed or installed by man, including, but without limitations, buildings, towers, smokestacks, and overhead transmission lines.

"TREE" means any object of natural growth.

"WATER SURFACES" for the purpose of this Ordinance shall have the same meaning as land for the establishment of protected zones.

SECTION IV: AIRSPACE OBSTRUCTION ZONING

A. AIRSPACE ZONES: In order to carry out the the purpose of this Ordinance, as set forth above, the following airspace zones are hereby established: Primary Zone, Horizontal Zone, Conical Zone, Approach Zone, Precision Instrument Approach Zone, and Transitional Zone and whose locations and dimensions are as follows:

1. PRIMARY ZONE: All that land which lies directly under and imaginary primary surface longitudinally centered on a runway and extending 200 feet beyond each end of Runway 5/23. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 250 feet for Runway 5/23.

2. HORIZONTAL ZONE: All that land which lies directly under an imaginary horizontal surface 150 feet above the established airport elevation, or a height of 5481 feet above mean sea level, the perimeter of which is constructed by a swinging arcs of specified radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs. The radius of each arc is 5,000 feet for Runway 5/23.

3. CONICAL ZONE: All that land which lies directly under an imaginary conical surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet as measured radially outward from the periphery of the horizontal surface.

4. APPROACH ZONE: All that land which lies directly under an imaginary approach surface longitudinally centered on the extended centerline at each end of runway. The inner edge of the approach surface is at the same width and elevation as, and coincides with, the end of the primary surface. The approach surface inclines outward and upward at a sope of 20:1 for Runway 5/23. The approach surface expands uniformly to a width of 1,250 feet for Runway 5/23.

The approach surface extends for a horizontal distance of:

a. 5,000 feet for all utility and visual runways; and,

b. 10,000 feet for all non-precision instrument runways other than utility. The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

5. TRANSITIONAL ZONE: All that land which lies directly under an imaginary surface extending outward and upward at right angles to the runway centerline and centerline extended at a sope of 7 to 1 from the sides of the primary

surfaces and from the sides of the approach surfaces until they intersect the horizontal surface or the conical surface. Transitional surfaces for those portions of the precision instrument approach surface 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 precision instrument approach surface and at right angles to the extended precision instrument runway centerline.

B. HEIGHT RESTRICTIONS: Except as otherwise provided in this Ordinance, and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained, or allowed to grow in any airspace zone created in Subsection IV A so as to project above any of the imaginary airspace surfaces described in said Subsection IV a hereof. Where an area is covered by more than one height limitation, the more restrictive limitations shall prevail. Nothing in this ordinance shall be construed as prohibiting the growth, construction, aleration or maintenance of any tree or structure to a height up to 30 feet above the surface of the land. However, this condition or interpretation of the severability clause shall in no way foreclose the public right to acquire easements, through purchase or condemnation, over such area, when necessary.

SECTION V: LAND USE SAFETY ZONING

A. SAFETY ZONE BOUDARIES: In order to carry out the purpose of this Ordinance, as set forth above and also, in order to restrict those uses which may be hazardous to the

operational safety of aircraft operating to and from the Arco-Butte County Airport, and furthermore to limit population and building density in the runway approach areas, thereby creating sufficient open space so as to protect life and property in case of an accident, there are hereby established the following land use safety zones.

1. SAFETY ZONE A: All land in that portion of the approach zones of a runway, as defined in Subsection IV A hereof, which extends outward from the end of primary surface a distance equal to two-thirds of the planned length of the runway, which distance shall be:

a. 3,200 feet for runway 5

b. 3,200 feet for runway 23

2. SAFETY ZONE B: All land in that portion of the approach zones of a runway, as defined in Subsection IV A hereof, which extends outward from Safety Zone A a distance equal to one-third of the planned length of the runway, which distance shall be:

a. 1,600 feet for runway 5

b. 1,600 feet for runway 23

3. SAFETY ZONE C: All that land which is enclosed within the perimeter or the horizontal zone, as defined in Subsection IV A hereof, and which is not included in Zone A or Zone B.

B. USE RESTRICTIONS:

1. GENERAL: Subject at all times to he height restrictions set forth in Subsection IV B, no use shall be made of any land in any of the safety zones defined in Subsection IV A which creates or causes interference with the operations of radio or electronic communications between the airport and aircraft, makes it difficult for pilots to distinquish between airport lights and other lights, results in glare in the eyes of pilots using the airport, impairs visibility in the vicinity of the airport, or maneuvering of aircraft.

2. ZONE A: Subject at all times to he height restrictions set forth in Subsection IV B and to the general restrictions contained in Subsection V B-1, areas designated as Zone A shall contain no building or temporary structures and shall be restricted to those uses which will not create, attract, or bring together an assembly of persons thereon. Permitted uses may include agriculture, light outdoor recreation (nonspectator), cemeteries and auto parking.

3. ZONE B: Subject at all times to the height restrictions set forth in Subsection IV B, and to the general restrictions contained in Subsection V B-1, areas designated as Zone B shall be restricted in use as follows:

a. Each use shall be on a site whose area shall not be less than three acrea.

b. Each use shall not create, attract, or bring toghether a site population that would exceed 15 times that of the site acreage.

c. Each site shall have not more than one building

plot upon which any number of structures may be erected.

d. A building plot shall be a single, uniform and noncontrived area, whose shape is uncomplicated and whose area shall not exceed the following minimum ratios with respect to the total site area:

Site Area at Least (Acres)	But Less Than (Acres)	Ratio of Site Area to Bldg. Plot Area	Building Plot Area (sq. ft.)	Max. Site Population (15 persons/A
3	4	12:1 12:1	10,900	45
4	6	10:1 10:1	17,400	60
6	10	8:1 8:1	32,600	90
10	20	6:1 6:1	72,500	150
20	and up	4:1	218,000	300

e. The following uses are specifically prohibited in Zone B: churches, hospitals, schools, theaters, stadiums, hotels and motels, trailer courts, can grounds, and other places of public or semipublic assembly.

4. ZONE C: ZONE C is subject only to height restrictions set forth in Subsection IV B, and to the general restrictions contained in Subsection V B-1.

SECTION VI: AIRPORT ZONING MAP

The several zones herein established are shown on the Arco-Butte County Airport Zoning Map consisting of 2 sheets, prepared by Smith & Kangas Engineers, Inc. and dated May 10, 1979, attached hereto and made a part hereof, which map, together with such amendments therto as may from time to time be made, and all notations, references, elevations, data, zone boundaries, and other information thereon, shall be and the same is hereby adopted as part of this Ordinance.

SECTION VII: NONCONFORMING USES

Regulations not retroactive. The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other changes or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, aleration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted and completed

within two years thereof.

SECTION VIII: PERMITS

A. FUTURE USES: Except as specifically provided by this Ordinance no material change shall be made in the use of land and no structure shall be erected, altered, or otherwise established in any zone hereby created unless a permit therefore shall have been applied for and granted by the zoning administrator, hereinafter, provided for. Each application for a permit shall indicate the purpose for which the permit is desired, be on the form provided by the Administrator, and with sufficient particularity to permit it to conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

B. EXISTING USES: Before any existing use or structure may be replaced, substantially altered or repaired, or rebuilt within any zone established herein, a permit must be secured authorizing such replacment, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation that it was on the effective date of this Ordinance or any amendments thereto, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

C. NONCONFORMING USES ABANDONED OR DESTROYED. Whenever the Zoning Administrator determines that a nonconforming structure

or tree has been abandoned or more than 80% torn down, physically deteriorated, or decayed no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Whether application is made for a permit under this paragraph or not, the Zoning Administrator may order the owner of the abandoned or partially destroyed nonconforming structure, at his own expense, to lower, remove, reconstruct, or equip the same in the manner necessary to conform to the provisions of this ordinance. In the event the owner of the nonconforming structure shall neglect or refuse to comply with such order for ten days after receipt of written notice of such order, the Zoning Administrator may, by appropriate legal action, proceed to have the abandoned or partially destroyed nonconforming structure lowered, removed, reconstructed, or equipped and assess the cost and expense thereof against the land on which the structure is or was located. Unless such an assessment is paid within ninety days from the service of notice thereof on the owner of the land, the sum shall bear interest at the rate of eight per cent per annum from the date the cost and expense is incurred until paid, and shall be collected in the same manner as are general taxes.

SECTION IX: VARIANCES

Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this ordinance, may apply to the Board of Adjustment, hereinafter provided for, for a variance from such regulations

on the form provided by the Administrator. Such variance shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this ordinance; provided any variance so allowed may be subject to any reasonable conditions that the Board of Adjustment may deem necessary to effectuate the purposes of this ordinance.

SECTION X: LIMITATIONS

The requirements established by this ordinance in no way preempt or wave the requirements for notification or review established by other public agencies, such as those established by Federal Air Regulation.

SECTION XI: HAZARD MARKING AND LIGHTING

A. NONCONFORMING USES: The owner of any nonconforming structure of tree is hereby required to permit the installation, operation, and maintenance hereon of such markers and lights as shall be deemed necessary by the Zoning Administrator to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such marking and lighting shall be in conformance with existing published standards provided by the State or Federal Government. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Arco and Butte County.

B. PERMITS AND VARIANCES: Any permit or variance granted by the Zoning Administrator or Board of Adjustment as the case may be, may if such action is deemed advisable to effectuate the purpose of this ordinance and be reasonable in the circumatnaces, so condition such permit or variance as to require the owner of the structure or tree in question at his own expense, to install operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an airport hazard.

SECTION XII: AIRPORT ZONING ADMINSTRATOR

It shall be the duty of the Arco-Butte County Airport Commission to administer and enforce the regulations prescribed herein. Applications for permits and Variances shall be made to the Arco-Butte County Airport Commission upon a form furnished by the Arco-Butte County Airport Commission. Permit applications shall be promptley considered and granted or denied by the Arco-Butte County Airport Commission.Variance applications shall be forthwith transmitted by the Arco-Butte County Airport Commission for action by the Board of Adjustment hereinafter provided for.

SECTION XIII: BOARD OF ADJUSTMENT

A. ESTABLISHMENT: The Board of Adjustment shall consist of five members appointed by the Butte County Board of County Commissioners. Members of the Butte County Board of County Commissioners are eligible for appointment to the Board of Adjustment. Each shall serve for a term of three years and until his successor is duly appointed and qualified. Of the members first appointed, one shall be appointed for a term of one year,

two for a term of two yeard, and two for a term for three years. Upon their appointment the members shall select a chairman to act at the pleasure of the board. Members shall be removable by the Board of County Commissioners, wherein whose jurisdiction they reside, for cause, upon written charges, after a public hearing.

B. POWERS: The Board of Adjustment shall have and exercise the following powers:

1. To hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance.

2. To hear and decide special exceptions to the terms of the Ordinance upon which such Board of Adjustment under such regulations may be required to pass.

3. To hear and decide specific variances.

C. PROCEDURES:

1. The Board of Adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this Ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting Chairman may administer oaths and compel the attendance of witnesses. All hearings of the Board of Adjustment shall be public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Zoning Administrator and shall be a public record.

2. The Board of Adjustment shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision or determination which comes before it under the provisions of this Ordinance.

3. The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

SECTION XIV: APPEALS

A. Any person aggrieved, or any taxpayer affected by any decision of the Zoning Administrator made in his administration of this Ordinance may appeal to the Board of Adjustment. Such appeals may also be made by any governing body of a municipality, county, or airport commission, which is of th opinion that a decision of the zoning administrator is an improper application of this ordinance as it concerns such governing body or board.

B. All appeals hereunder must be commenced within 30 days of the Zoning Administrator's decision, by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all the paper constituting the record upon which the action appealed from was taken.

C. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceeding shall not be stayed except by order of the Board of Adjustment on notice to the Zoning Administrator and on due cause shown.

D. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by an agent or by an attorney.

E. The Board of Adjustment may, in conformity with the provisions of this ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination, as may be appropriate under the circumstances, and to that end shall have all the powers of the Zoning Administrator.

F. Secondary appeal: A second appeal of any decision made by the Board of Adjustment may be made directly to the County Commission having jurisdiction over the appellants property. Such second appeal shall be in accordance with the procedures outlined in XIII (A-E) above.

SECTION XV: JUSICIAL REVIEW

Any person aggrieved, or any taxpayer affected by any decision of the Board of Adjustment or appelant authority defined in XII(F), or any governing body of a municipality, county, or airport zoning board, which is of the opinion that a decision of the board of adjustment or appellant authority is illegal may present to the District Court of the Seventh Judicial District in and for Butte County a verified petition setting forth that the decision or action is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the Board of Adjustment. The petitioner must exhaust the remedies provided in this Ordinance before availing himself of the right to petition a court as provided by this section.

SECTION XVI: PENALTIES

Every person who shall construct, establish, substantially change, alter or repair any existing structure or use, or permit the growth of any tree without having complied with the provision of this ordinance or who, having been granted a permit or variance under the provisions of this Ordinance, shall construct, establish, substantially change or substantially alter or repair any existing growth or structure or permit the growth of any tree, except as permitted by such permit or variance, shall be guilty of a misdemeanor and shall be punished by a fine of not more than $300 or umprisonment for not more than 90 days or by both. Each day a violation continues to exist shall constitute a separate offense. The Airport Zoning Administrator may enforce all provisions of this ordinance through such proceedings for injunctive

relief and other relief as may be proper under the laws of Idaho and other applicable law.

SECTION XVII: CONFLICTS

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures ormtrees, the use of land, or any other matter, the more stringent limitation or regulation shall govern and prevail. This ordinance may be coordinated with and become an appendices to area-wide comprehensive zonign ordinances encompassing the areas described.

SECTION XVIII: SEVERABILITY

A. In any case in which the provision of this Ordinance, although generally resonable, are held by a court to interfere with the use or enjoymentof a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of this Ordinance as to other structures and parcels of land, and to this end the provisions of this Ordinance are declared to be severable. Such holding will not foreclose the public right to exercise its authority to obatain title over land affected thereby through acquisition or condemnation action.

B. Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the parts so declared to be unconstitutional or invalid.

SECTION XIX: EFFECTIVE DATE

This Ordinance shall be in full force and effect upon publication following passage and approval.

Regularly passed and approved by the Butte County Board of County Commissioners on this 30th day of June, 1979.

Kenneth L McAffee
Chairman

James A Andreason
Member

Richard E Beal
Member

ATTEST:

Sharyle D McAffee
Clerk

EXHIBIT A

ARCO-BUTTE COUNTY AIRPORT

ZONING ORDINANCE

This Ordinance affects all or a portion of the following sections of land:

NAME AND NUMBER OF TOWNSHIP	TYPE OF AIRPORT ZONING	
	AIRSPACE OBSTRUCTION ZONING Section IV of Ordinance Pages 1 of Zoning Map.	LAND USE SAFETY ZONING Section V of Ordinance page 2 of Zoning Map.
T 4 N R 26 East of Boise Meridian	Section: 33, 34, 35, and 36	N/A
T 3 N R 26 EAST of BOISE Meridian	Sections: 1,2,3,4,9,10, 11,12,13,14,15,16,21,22, 23	Sections: 1,2,3,4,9,10, 11,12,13,14,15,16
T 3 N R 27 East of Boise Meridian	Sections: 6,7,18	N/A
T 4 N R 27 East of Boise Meridian	Section: 31	N/A