# 824 ACRES

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P-18-005

## STATUS OF MAJOR ISSUES

- Meadow Lake Airport Comments
  - BoCC has not adopted:
    - Part 77 surfaces
    - A zoning overlay

    *No complete application has been submitted by Meadow Lake to request the BoCC to adopt the above

    (additional information to be provided during staff presentation)

- The applicant and Meadow Lake Airport Meeting 04/22/19
  - Summary to be provided by applicant

## CRITERIA FOR APPROVAL

- 5.3.5 Map Amendment
  - The application is in general conformance with the El Paso County Master Plan including applicable Small Area Plans or there has been a substantial change in the character of the neighborhood since the land was last zoned;
  - The rezoning is in compliance with all applicable statutory provisions, including but not limited to C.R.S. §30-28-111 §30-28-113, and §30-28-116;
  - The proposed land use or zone district is compatible with the existing and permitted land uses and zone districts in all directions; and
  - The site is suitable for the intended use, including the ability to meet the standards as described in Chapter 5 of the Land Development Code, for the intended zone district.

## PLANNING COMMISSION

- March 19, 2019
  - Unanimous Recommendation for Approval (5-0)
  - Discussion of Meadow Lake Airport Concerns/FAA comments

## 824 ACRES REZONE

Applicant Presentation

- Representative: William Guman & Associates
- Owner: ROI Property Group LLC

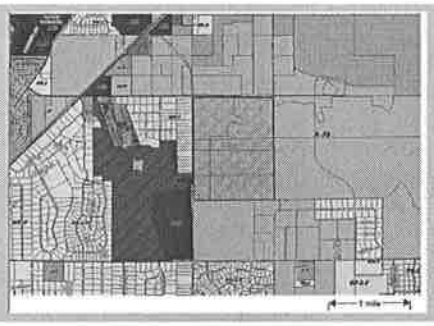
## REQUEST

REQUEST: Rezone from A-35 (Agricultural) to RR-2.5 (Residential Rural)

Density and dimensional standards:

- Minimum lot size - 2.5 acres
- Minimum width at the front lot line - 200 feet
- Setbacks - 25 in the front and rear, 15 on the sides
- Maximum height - 30 feet

## SURROUNDING ZONING



## BACKGROUND

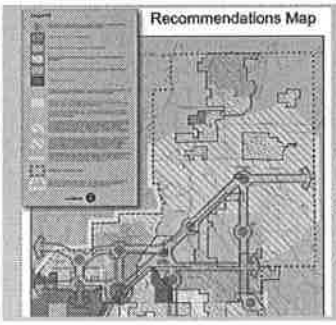
- Previously part of Santa Fe Springs
  - Approved in 2004
  - PUD with mix of uses and urban development
  - Never initiated
  - Conditions not met
- Rezoned to A-35 12/12/17

## SURROUNDING DEVELOPMENT

## POLICY PLAN ANALYSIS

- Policy 6.1.3- Encourage new development which is contiguous and compatible with previously developed areas in terms of factors such as density, land use, and access.
- Policy 6.1.11- Plan and implement land development so that it will be functionally and aesthetically integrated within the context of adjoining properties and uses.

## FALCON/PEYTON SMALL AREA PLAN




Urban Densities: Parcel sizes are less than 2.5 acres, typically less than 1 acre. These areas are served by urban level infrastructure, including roadways, water distribution, and wastewater treatment

## FALCON/PEYTON SMALL AREA PLAN

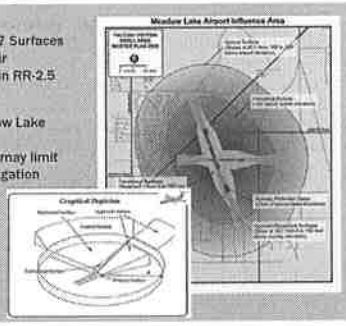
The subject parcel is adjacent to the Meadow Lake subarea. Section 4.4.3- Meadow Lake Airport, (page 4-23) includes the following goals and policies:

- 4.4.3.1 Recognize the economic and safety importance of Meadow Lake Airport and encourage compatible land uses within and around the facility
- 4.4.3.2 Promote the Airport property as a center for mixed use commercial, business airport-compatible residential uses under the assumption that urban services will ultimately be extended to the property.
- 4.4.3.3 Encourage effective notice of Airport operations and impacts to adjoining property owners, preferably in advance of purchase and development of these properties.
- 4.4.3.4 Recognize the Meadow Lake Airport area as an appropriate location for non-residential uses including those industrial uses which are compatible with Airport operations and surrounding residential areas.

## FALCON/PEYTON SMALL AREA PLAN

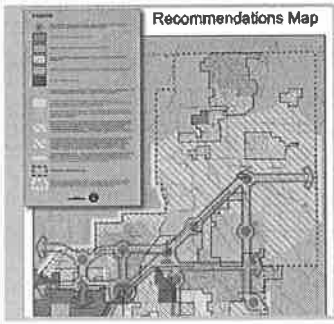
Part 77 Surfaces
BoCC has not adopted Part 77 Surfaces
- Part 77 surfaces 150' in air
  - Maximum height 30' in RR-2.5

Noise
BoCC has not adopted Meadow Lake Airport Noise Overlay
- If requested and adopted, may limit uses OR require noise mitigation construction measures




## FALCON/PEYTON SMALL AREA PLAN

Recommendations Map



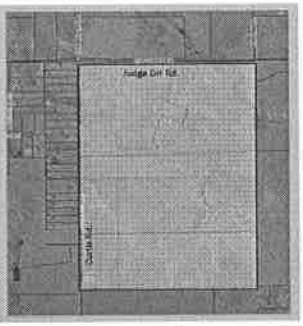
Summary
- Recommends urban density (lots 2.5 or less)
- No limited densities in airport vicinity

## FLOODPLAIN


- AE 100 Year Floodplain
- No Build on future filing of plat(s)

## TRANSPORTATION

With Plat(s)
- Road Impact Fee
- Roadway Improvements
  - Falcon Highway/Curtis
  - Judge Orr/Curtis




## STATUS OF MAJOR ISSUES

Meadow Lake & FAA Opposition
- Part 77 Surfaces (150' in air)
- Limiting land use
  - No adoption/request to adopt Part 77 or overlay

El Paso County Required Process
- Contact surrounding owners to obtain easements/land
- 1041 application for Part 77
- Land Development Code Amendment to create Overlay
- Map Amendment (Rezoning) to place Overlay

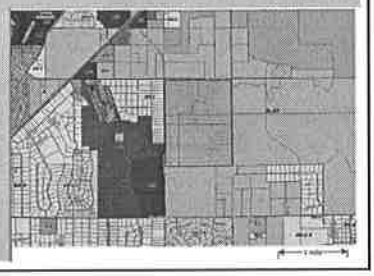
## RECOMMENDED CONDITIONS

- Any future or subsequent development and/or use of the property shall be in accordance with the use, density, and dimensional standards of the RR-2.5 (Residential Rural) zoning district and with the applicable sections of the Land Development Code and Engineering Criteria Manual.
- The adjacent portions of Curtis Road shall be improved to meet the minimum standards of an arterial roadway per the Engineering Criteria Manual. The necessary improvements and phasing will be finalized with the future applications for Preliminary Plan and Final Plat. This work may be subject to any reimbursement as outlined in the El Paso County Road Impact Fee Program.

## NOTICE

February 27, 2019

- 32 notified
  - 2 in favor
  - 1 opposed



## QUESTIONS?

# Land Use and Meadow Lake Airport

## 824 Acres (Saddlehorn Ranch) Rezone

## Judge Orr Ranchettes Rezone & Preliminary Plan

Board of County Commissioners - Public Hearing | April 23, 2019

## ISSUES OF CONCERN

- Applicants want to rezone their properties for development purposes
- Meadow Lake Airport/Meadow Lake Airport Association ("MLA") and Federal Aviation Administration ("FAA") oppose
- County must make land use decisions that are fair and are in accordance with law.

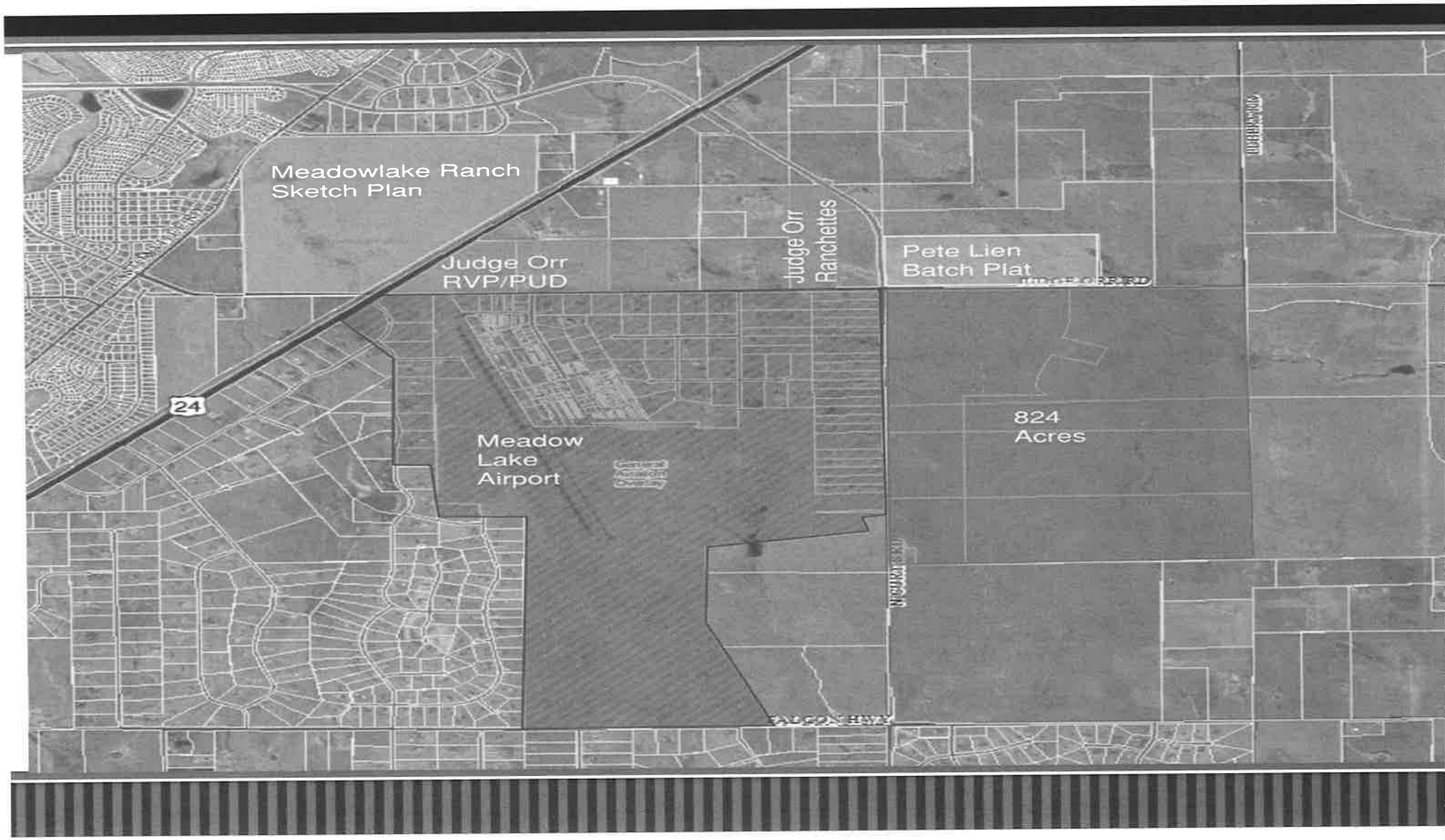
# DEVELOPMENT APPLICATIONS

824 Acres (aka Saddlehorn Ranch)("Saddlehorn")

- Rezone 824 acres from A-35 (Agricultural) to RR-2.5 (Residential Rural)
- West boundary adjacent to MLA
- 2008 Falcon/Peyton Small Area Plan shows MLA east/west Approach/Departure Surfaces extend into Saddlehorn property

Judge Orr Ranchettes("Ranchettes")

- Rezone 40.67 acres from A-35 (Agricultural) to R-5 (Residential Rural) & Preliminary Plan
- South boundary adjacent to MLA on MLA's east side


Meadowlake Ranch
Sketch Plan
Judge Orr
RVP/PUD
Judge Orr
Ranchettes
Pete Lien
Batch Plat
24
Meadow
Lake
Airport
824
Acres

# MLA OPPOSES (Quotes from MLA Letter March 28, 2019)

- Based on April 22, 2019 meeting between MLA Saddlehorn, County understands MLA will not oppose.
- "The Meadow Lake Airport Association (MLAA) continues to be adamantly opposed to consideration of the development plans listed above, and any others that may arise within the Meadow Lake Airport Influence Area (AIA) . . . *until such time as El Paso County develops, approves, and publishes a Land Use Plan for the Airport Influence Area in accordance with the requirement of C.R.S. 43-10-113*. . . ." (Emphasis in original).
- "Several development proposals . . . are directly in line with the existing approach and departure paths of the runways at this significant federally-obligated General Aviation facility."
- "El Paso County must defer any consideration of these proposals, and any others within the Meadow Lake Airport Influence Area, until a Land Use Plan has been developed and published."
- "Continued failure to comply with the State statute will more than likely result in legal action."

## MLA OPPOSES (cont. from last slide)

- MLA has suggested that the County should impose a requirement of avigation easements as a condition of development approval.

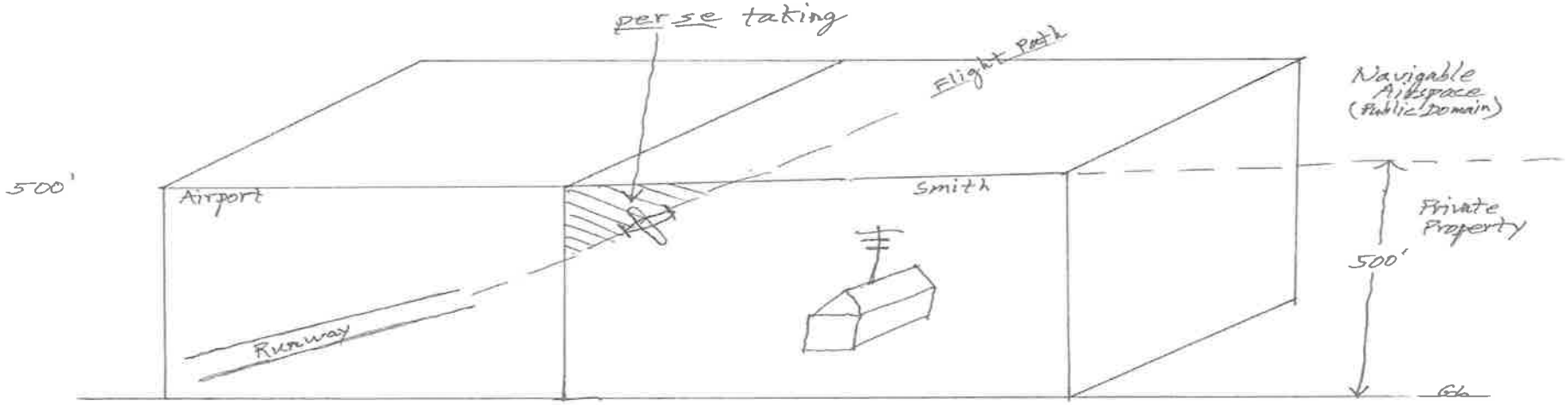
## FAA OPPOSES (March 22, 2019 e-mail from Linda Bruce, Colorado State Planner, FAA to Dave Elliott of MLA)

- "In addition to an easement, we would recommend additional measures be taken to protect the safety of persons and property on the ground. . . .we strongly recommend open space be established in approach/departure areas for Runway 8/26. In addition, we recommend the aviation easement to be included as a plat note on the development plat of any residential development, as well as a disclosure statement to properly disclose the airport to all residents on the subject property."
- "Even with these additional measures, the FAA continues to be opposed to rezoning the subject parcel to allow residential use."

## FAA OPPOSES (cont. from last slide)

- "FAA would not support any Federal assistance to mitigate aircraft noise or incompatible land uses associated with residential development built on the subject property, including soundproofing, the acquisition of houses and relocation of residents."

# OVERLYING CONCERN



## § 43-10-113, C.R.S.

1) The general assembly hereby declares commercial service airports, public airports, reliever airports, as defined in 49 U.S.C. sec. 47102, and the land areas surrounding such airports, as defined in 14 CFR part 77, to be a matter of state interest as provided in article 65.1 of title 24, C.R.S.

2) Governmental entities with zoning and building permit authority shall adopt and enforce, at a minimum, rules and regulations to protect the land areas defined in 14 CFR part 77.

- 49 U.S.C. sec. 47102

(23)"Reliever airport" means an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general avigation access to the overall community.

- No legislative history or case law that explains what or how local government is to "the land areas defined."

# 14 CFR Part 77

SAFE, EFFICIENT USE, AND PRESERVATION OF THE NAVIGABLE AIRSPACE

## § 77.17 Obstruction standards.

a) An existing object, including a mobile object, is, and a future object would be an obstruction to air navigation if it is of greater height than any of the following heights or surfaces:

1) A height of 499 feet AGL at the site of the object.

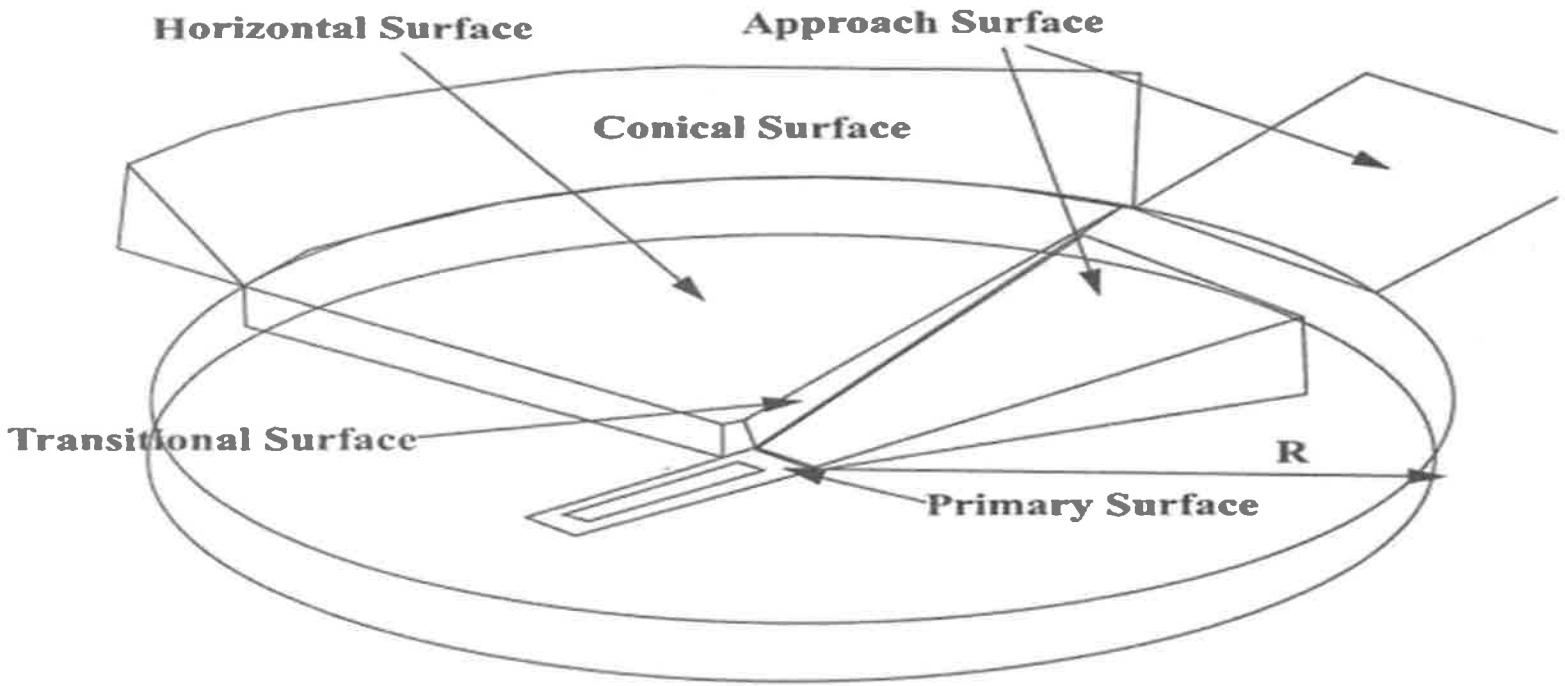
5) The surface of a takeoff and landing area of an airport or any imaginary surface established under § 77.19, 77.21, or 77.23. However, no part of the takeoff or landing area itself will be considered an obstruction.

## 14 CFR Part 77 (cont. from last slide)

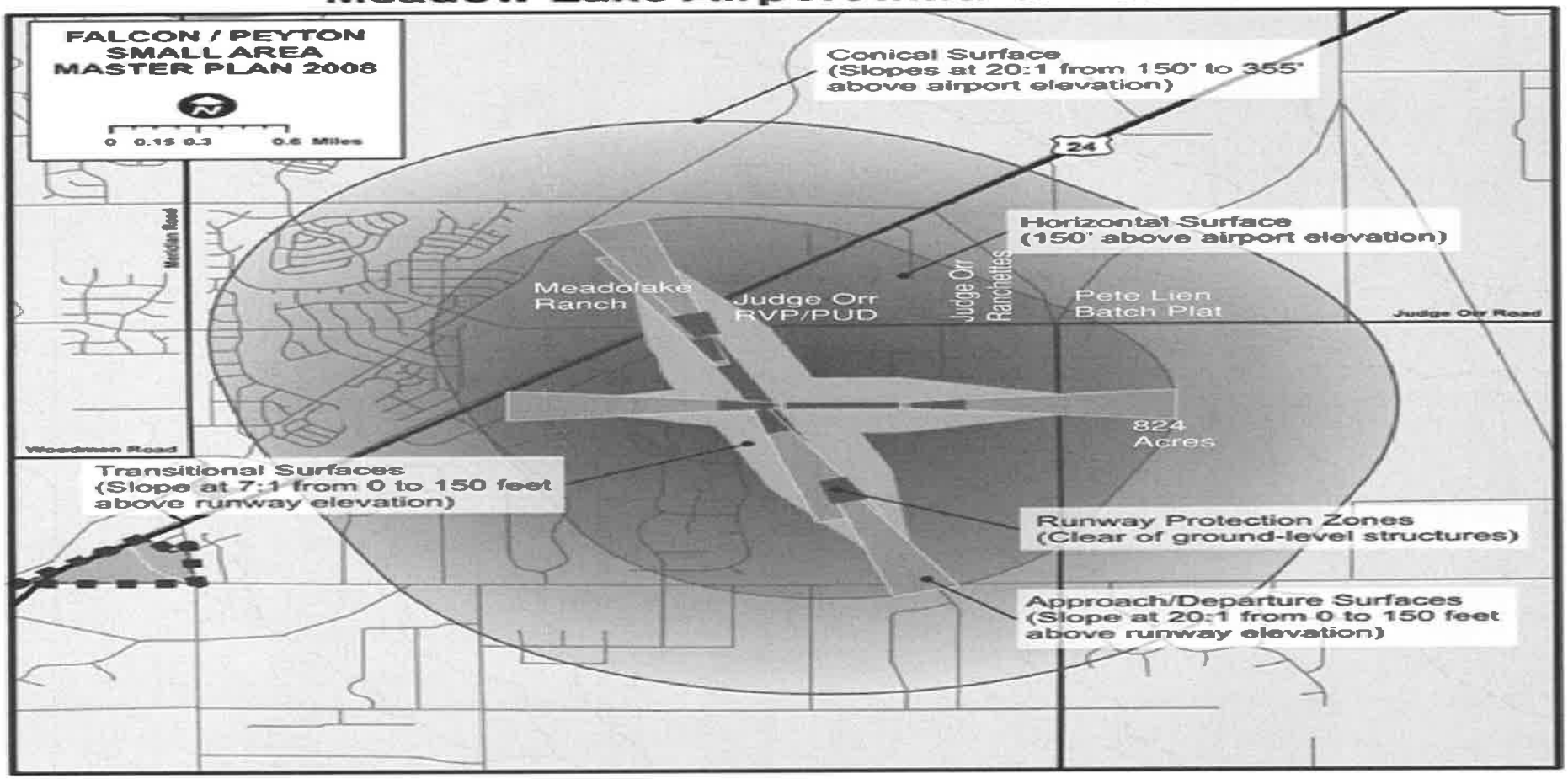
## § 77.19 Civil airport imaginary surfaces.

- The following civil airport imaginary surfaces are established with relation to the airport and to each runway. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach procedure existing or planned for that runway end.

# Graphical Depiction



# Meadow Lake Airport Influence Area



# COUNTY IS IN COMPLIANCE WITH § 43-10-113, C.R.S.

- County adopted 1041 Regulations--Areas and Activities of State Interest—regarding Airports in 2013, and revised with much input from MLA in 2014.
- County has advised MLA that adoption of Part 77 Imaginary Surfaces entails the following process:
  - Obtain 1041 approval
    - Adopt Part 77 Surfaces
  - Amend Airport Overlay Zone
- MLA is responsible as airport owner to initiate and obtain these approvals. MLA needs to make a complete application for a 1041 approval.

# MLA IS RESPONSIBLE TO ACQUIRE PRIVATE PROPERTY RIGHTS NECESSARY TO OPERATE THE AIRPORT

- BoCC Resolution 12-390—Approved General Aviation Overlay (GA-O) Zone District for Meadow Lake Airport
  - "Approval of the GA-O does not approve an Airport Master Plan or Layout Plan, adoption and/or enforcement of noise contours, airport accident zones, or Part 77 Surfaces which are not under consideration with this application." (Condition 1).
  - "For land use approvals with the General Aviation Overlay that will result in over flights of private property at less than 500 feet above ground level, it shall be the responsibility of the Meadow Lake Airport and/or Meadow Lake Airport Association to obtain the appropriate legal approvals of the land owner(s) or acquire the necessary property interests in the affected private property to allow such over flights and provide proof of the same to the County." (Condition 9).

(cont. from last slide)

## 7.202 Review Criteria (1041 Regulation)

(15) The applicant can provide evidence that sufficient property rights or restrictions exist, or alternatively, that adequate measures have been or will be taken and property rights have been or will be acquired to demonstrate that the airport site or expansion, and uses and activities associated with or generated by it, can be legally operated as proposed.

# NAVIGABLE AIRSPACE, GLIDE PATHS, AND *PER SE* TAKINGS

State Law

- Colo. Const. Art. 11, § 15
  - Section 15. *Taking property for public use compensation, how ascertained*. Private property shall not be taken or damaged, for public or private use, without just compensation.
- § 41-1-106, C.R.S.
  - Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by United States law.
- § 41-1-107, C.R.S.
  - The ownership of space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight of aircraft.

# NAVIGABLE AIRSPACE

- 14 C.F.R. § 91.119
- Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

  **(b)***Over congested areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

  **(c)***Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

# CASE LAW

- *United States V. Causby*, 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946).
- Military planes frequently and regularly flying over Causby's house and chicken farm at heights of 83' that caused excessive noise and glare, caused Causby and family loss of sleep and nervousness, caused chickens to die from flying into walls from fright, and thus causing Causby to give up commercial chicken farm constituted a taking of an easement over the property—equivalent to a fee interest in this case because it is permanent.
- Congress defined navigable airspace in the public domain as airspace above the minimum safe altitude of flight prescribed by the Civil Aeronautics Association.
- Glide path for takeoff and landing thus not within navigable airspace.
- Landowner owns at least as much of the space above the ground as they can occupy or use in connection with the land. The fact that he does not occupy it in a physical sense – by the erection of buildings and the like – is not material.

# CASE LAW

- *Griggs v. Allegheny County, Pa.*, 369 U.S. 84, 82 S.Ct.531, 7 L.Ed.2d 585 (1962).
- Griggs' property 3,200' from end of NE runway. Slope gradient at property was 81' or 11.36' above Griggs' chimney.
- Court recognized Congress redefined navigable airspace in 1958: "airspace above minimum altitudes of flight to include airspace needed to insure safety in take-off and landing of aircraft."
- Congress set minimum safe altitudes at 1,000' over congested areas, 500' over other than congested areas.
- The Court nevertheless held that flights in the public domain on landings and take-off constituted an interference with individual property rights amounting to a taking in the constitutional sense of an air easement by the airport for which compensation must be paid.
- "The glide path for the northeast runway is as necessary for the operation of the airport as is a surface right of way for operation of a bridge or as land for operation of a dam."
- "Respondent [County airport] in designing it had to acquire some private property. Our conclusion is that by constitutional standards it did not acquire enough."
- The case indicates that although planes may fly below 500' when necessary for takeoff and landing, this right does not divest the property owner of his protected property right to his usable airspace, and in designing the airport, the airport owner may have to acquire enough private property to avoid a future taking of private property without paying just compensation.

# CASE LAW

- *McCarran Intern. Airport v. Sisolak,* 137 P.3d 1110 (Nev. 2006).
  - A Nevada case that a Colorado court likely would follow based on constitutional provisions and statutes almost identical to ones in Colorado.
  - Sisolak bought property near County Airport.
  - Predecessor in title granted County avigation easement.
  - County passed ordinance and overlay map that resulted in restricting heights of structures on Sisolak's property and required grant of avigation easement.

## CASE LAW (cont. from last slide)

- *McCarran Intern. Airport v. Sisolak,* 137 P.3d 1110 (Nev. 2006).
  - Held: Adoption of ordinance established permanent physical invasion of airspace over Sisolak's property, which is a *per se* taking. Planes flying at altitudes less than 500' over Sisolak's property as permitted by the ordinance constituted physical invasion of private property, without compensation, which is a taking.
- The Court affirmed the trial court's judgment against the County of $16,617,300.
- Land use regulations or approvals that result in aircraft flying at altitudes below 500' AGL over private property, or the height of uses on private property is restricted, without the owner's permission or payment for the use, will constitute a physical invasion of the owner's property and will require the owner to acquiesce to permanent physical invasion without just compensation. This results in a *per se* taking.

## *PER SE* TAKINGS

- Government regulation or condition either:
  - Requires owner to suffer permanent physical invasion of her property; or
  - Completely deprives owner of all economic beneficial use of her property
- If no compensation, results in taking under $5^{th}/14^{th}$ Amendments.
- Property Rights are rights to possess (power to exclude others), use, and dispose.
- Physical occupation by government regulation or condition destroys each right. Government does not simply take single "stick" from bundle of property rights, it chops through the bundle taking a slice of every stick.

## REGULATORY PER SE TAKINGS (cont. from last slide)

- Regulatory taking—Government takes or appropriates private property for specific public use—requires just compensation. Forces owner by ordinance or condition to acquiesce to permanent physical occupation of their property.
- Basic Problem: Avigation easements imposed by the government and overlay maps adopted by the government can result in height restrictions for buildings on private property. Restrictions okay unless imposed to prevent owner's use of airspace above her property so airplanes can use it instead.

## IF BoCC IS INCLINED TO DENY REZONING REQUESTS:

- Not in conformity with master plan
- Incompatible with existing use of airport
- Health, safety, and welfare—approval could result in injury to persons or property from airplane crashes
- Cannot deny on basis of Part 77 Surfaces that have not yet been approved

## IF BoCC IS INCLINED TO APPROVE REZONING REQUESTS:

It should not impose as condition of approval an avigation easement in favor of MLA. This creates risk of potential takings challenges from applicant and/or future lot owners.

# Questions?