Staff Instruction

Subject: **Airport Zoning Regulation**

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1.0 INTRODUCTION

1.1 Purpose

The purpose of this document is to provide step-by-step procedures to develop airport zoning regulations using both the federal and the federal/provincial process pursuant to the *Aeronautics Act*.

1.2 Applicability

This document applies to Transport Canada Civil Aviation (TCCA) Headquarters (HQ) and regional personnel.

1.3 Description of Changes

Not applicable.

2.0 REFERENCES AND REQUIREMENTS

2.1 Reference Documents

It is intended that the following reference materials be used in conjunction with this document:

(a) *Aeronautics Act;*

(b) Part III of the *Canadian Aviation Regulations* (CARs) – *Aerodromes, Airports, and Heliports*;

(c) Treasury Board, *Cabinet Directive, Cabinet Directive on Streamlining Regulations* (CDSR), 2007-04-01;

(d) Transport Canada Publication (TP) 312, 4th Edition, March 1993 (Revised 03/2005); and 3rd Edition, February 1986- *Aerodromes Standards and Recommended Practices*;

(e) TP 1247, Edition 8, May 2005 – *Land Use in the Vicinity of Airports*;

(f) TP 8240, AWM Bulletin No. 38, Summer 2007 - *Airport Wildlife Management*.

2.2 Cancelled Documents

Not applicable

2.3 Definitions and Abbreviations

The following definitions and abbreviations are used in this document:

(a) **ANS**: Air Navigation System.

(b) **ANSROD**: Air Navigation System Requirements Operational Directive.

(c) **ARP**: Airport Reference Point.

(d) **ASL**: Above Sea Level.

(e) **AZR**: Airport Zoning Regulation.

(f) **AWM**: Airport Wildlife Management.

(g) **CDSR**: Cabinet Directive on Streamlining Regulations.

(h) **DOJ**: Department of Justice.

(i) **HQ**: Headquarters.

(j) **ICAO**: International Civil Aviation Organization.

(k) **INAC**: Indian and Northern Affairs Canada.

(l) **LTO**: Land Titles Office/Land Registry Office.

(m) **MARs**: Miscellaneous Amendments Regulations.

(n) **NAS**: National Airports System.

(o) **NAVAID**: Navigational Aid.

(p) **OIC**: Order-in-Council.

(q) **PA**: Provincial Authority.

(r) **PCO**: Privy Council Office.

(s) **PWGSC**: Public Works and Government Services Canada.

(t) **RDCA**: Regional Director, Civil Aviation.

(u) **RDG**: Regional Director General.

(v) **RDIMS**: Records, Documents and Information Management System.

(w) **RIAS**: Regulatory Impact Analysis Statement.

(x) **RMAS**: Regional Manager, Aerodrome Safety.

(y) **RU**: Regulations Unit, Legislative Services.

(z) **SEA**: Strategic Environmental Assessment.

(aa) **SOR**: Statutory Orders and Regulations.

(bb) **TB**: Treasury Board.

(cc) **TBRAS**: Treasury Board Regulatory Affairs Secretariat.

(dd) **TC**: Transport Canada.

(ee) **TCCA**: Transport Canada, Civil Aviation.

(ff) **ZLUO**: Zoning and Land Use Officer, Standards Branch, Ottawa

3.0 BACKGROUND

(1) Historically, AZRs were established at TC-owned airports at the Department's cost, in order to prevent incompatible development on privately owned lands adjacent to and in the vicinity of the airport.

(a) In 1991, an operational directive, ANSROD-91-03, was issued and provided direction for ANS Civil Aviation Inspectors in the development of AZRs.

(b) In 1992, the *Aeronautics Act* was amended to include an additional process for zoning airports through agreements with a provincial authority to regulate lands in its jurisdiction to prevent incompatible development around airports.

(c) With the establishment of the NAS in 1994, TC transferred the operation and management of the larger airports to local entities called "airport authorities" while maintaining ownership of the facilities. The smaller airports were transferred outright to local authorities, cities or towns.

(d) The new operators became responsible for day-to-day management of the airport including responsibility for monitoring compliance with AZRs.

(2) These changes coupled with a significant loss of corporate memory and the introduction of new staff, have resulted in the requirement to update Civil Aviation guidance and direction to employees involved with AZRs.

4.0 INFORMATION

(1) It is recognized that each region may have additional requirements and therefore, this SI has been developed as a guidance tool only.

(2) All required templates and instructions are available in RDIMS as working documents for regional Civil Aviation personnel involved in the development of AZRs. The process to develop federal zoning regulations, including Requests for Interpretations of AZRs, working document can be found in RDIMS #5396256. The Process to Develop Federal/Provincial Zoning Regulations working document can be found in RDIMS #5428521. *The referenced documents are for internal use by TC employees. They are accessible to the public for reference purposes only.*

5.0 FEDERAL PROCESS

Outlined below are the steps and procedures to establish AZRs under s. 5.4 of the *Aeronautics Act*. This is known as the federal process. It is recognized that each region may have additional requirements and therefore this is a guidance tool only. A link to the CDSR is provided, as all regulations must satisfy the requirements of this document (http://www.tbs-sct.gc.ca/ri-qr/directive/directivetb-eng.asp).

5.1 Steps to the Pre-Regulatory Phase of the Federal Process

(1) The proponent (airport owner/operator) submits a written request to TC RDCA to make/amend AZRs. If the airport owner and operator are separate entities, the airport owner must send a letter to the RDCA endorsing the airport operator's request. If the owner/operator is TC, the written request would come from the Programs Branch.

(2) The inspector communicates with the proponent to ensure that the proponent clearly understands they are responsible for all zoning costs. The inspector sends to the proponent an AZR requirements form along with an overview of the steps/timetable to establish AZRs. The inspector also provides the proponent with a sample commitment agreement that assigns responsibility to the proponent for all zoning costs, compliance monitoring, and addressing natural growth penetration.

(3) The proponent completes the AZR requirements form, based on factors such as:

- (a) airport's master plan, indicating long term requirements;
- (b) future airfield expansion;
- (c) future approach aids;
- (d) future instrument procedures requirements/limits, and corresponding Obstacle Limitation Surface standards (see TP 312 – *Aerodromes and Standards and Recommended Practices*);
- (e) Bird Hazard Areas based on the AWM Plan & TC's "*Safety Above All*";
- (f) NAVAID sensitive areas, i.e. protection for aeronautical facilities and from communications interference (defined in consultation with NAV CANADA);
- (g) ICAO Type A Obstacle Charts, if applicable;
- (h) aircraft engine-out performance criteria (if a more restrictive approach surface slope is requested, per TP 312 Recommendation 4.2.4.3);
- (i) Long-term municipal plans; and

(j) Special requirements (mobile objects, strip surfaces, future land required outside airport boundaries, etc.).

(4) The proponent sends the completed AZR requirements form to the inspector with a covering letter summarizing the documents and the requested zoning parameters.

(5) The inspector reviews the AZR requirements form (and adjusts as necessary), to ensure that it meets certification requirements for current/future needs. Once accepted by both parties, the form becomes an appendix to the commitment agreement.

(6) The inspector prepares a draft commitment agreement, by filling in the blanks pertaining to the airport.

(7) The inspector compiles the commitment agreement (with all Appendices) and sends to the ZLUO, for review and approval. Once the commitment agreement has been reviewed and approved, it is sent for execution by the RDCA. RDCA must sign two (2) sets of originals. The inspector then sends both sets of originals to the proponent for its execution, with covering letter. The proponent retains one (1) set of the signed originals and returns the other set of signed originals to the inspector.

(8) The inspector prepares a briefing note for the RDCA. A copy is sent to Regional Communications, the appropriate regional officials (if NAS airport), and to the ZLUO.

Note: *A briefing note is only a suggestion; if the region feels an e-mail or memo is sufficient, then that is also acceptable.*

(9) The ZLUO, completes a SEA Preliminary Scan and consults with the Programs Branch Environmental Unit as required. The SEA scan is to be approved by RDG and a final copy is to be sent to the Environmental Programs Branch, Environmental Affairs, Ottawa.

(10) The inspector completes an initial draft of the Triage Questionnaire (part of the Framework for the Triage of Regulatory Submissions). Before sign-off by the RDCA, the inspector forwards the draft Triage Statement to the ZLUO. The ZLUO is responsible for the final version of the Triage and will consult with the inspector, if required. The ZLUO forwards the Triage Statement to TBRAS for review and approval. Once TBRAS approves the Triage and advises the ZLUO of the level of significance and the applicable RIAS format, TBRAS returns the Triage to the ZLUO who will then forward it to the inspector for RDCA sign-off. The RDCA signs the statement and the inspector then forwards a signed copy back to the ZLUO. If any changes to the Triage Questionnaire are made as the process evolves, the Triage Questionnaire must be re-submitted to TBRAS for review and approval.

(11) The proponent obtains estimates for zoning costs from PWGSC or other contractor. *Note: PWGSC has the most experience with the zoning process, although some airports have used other consultants.* PWGSC estimates usually include: survey, intrusions report, title search, draft regulation, translation, public consultation, PCO and LTO registration, and distribution of AZRs/zoning plans to affected jurisdictions.

(12) The proponent proceeds with a preliminary zoning intrusions report to summarize any impediments to proposed zoning parameters in consultation with the inspector.

(13) The proponent undertakes or contracts out the preparation of zoning plans (based on the AZR requirements form) in a format suitable for deposit in its respective provincial/territorial LTO. Zoning plans are developed using the units of measure (metric, imperial or geo-coded) that meet the requirements of the applicable LTO. If the LTO accepts either measurement system, then use metric because it is consistent with TP312. An accredited land surveyor will determine the scale and number of decimal places on the zoning plans.

(a) The zoning plans can be colour-coded for ease of interpretation. Historically, these colours have been used: Yellow for the outer surface; Red for transitional surfaces; Blue

for take-off/approach surfaces; and Green for runway strips. Other colours can be used for additional areas zoned, such as bird hazard areas.

(b) The outer surface is a horizontal surface above an airport and its environs, and is normally established at a constant elevation of 45 m above the assigned elevation of the ARP. Normally the elevation assigned to the ARP is that of the lowest runway threshold unless there is a difference of more than 15 m (50 ft.) between the lowest and the highest threshold, in which case the mean elevation is used. The ARP is measured to the nearest 0.3 m (1 ft.) ASL. For amendments to AZRs, the established height of the outer surface is normally maintained at the existing height.

(c) The preparation of the zoning plan is to include the AZR template of restrictive clauses and the legal description of lands affected.

(d) The zoning plans are part of the regulation and should accompany the text for review and approval. The plans and the text must be in both official languages.

(14) The proponent sends the draft zoning plans and AZR drafting instructions to the inspector for review. The inspector is to review the plans and AZR drafting instructions for compliance with the AZR requirements form.

(15) PWGSC or the inspector arranges translation of AZR drafting instructions into the other official language. Each region has been dealing with this process differently; therefore, it is recommended that the inspector follow the regional process for procuring translation services.

(16) The inspector sends the translated zoning instructions to the RU who prepares a discussion draft. When the discussion draft is returned to the inspector from the RU, there may or may not be some changes/clarification required.

(17) Consultation: (3 levels)

(a) Land Use Authorities: The inspector sends the latest AZR drafting instructions (in both official languages) and zoning plans to local land use authorities/municipal planners. The inspector schedules briefings with the municipalities (with participation by PWGSC/surveyor and TC).

(b) Potentially Affected Landowners: A notice of intent for the proposed zoning regulation is to be published in at least one (1) issue of a local newspaper (English and French, if applicable). The notice must identify the location of the proposed regulation and provide all interested parties and affected landowners with a contact name and number for additional information. This notice must be published prior to *Canada Gazette* Part I after briefings with municipalities have been conducted.

(c) Aboriginal Groups: Aboriginal consultation may be required if the regulation might impact on potential or established Aboriginal or treaty rights. The inspector consults with the regional Aboriginal Consultation Specialist who will advise on the process to be followed. Three (3) engagement template letters are contained in RDIMS and can be used for consultation purposes. *Sending these letters registered mail is strongly recommended.* The inspector is to obtain a written response, where possible, from all parties consulted and address areas of concern. It is extremely important that copies of all correspondence be retained by the inspector and saved in RDIMS (classification number Z 5130-9-3-2 U), including facsimile cover sheets, confirmation of receipts, e-mails, letters, etc.

(18) The inspector updates the briefing note for the RDCA. A copy is sent to Regional Communications, the appropriate regional officials (if NAS airport), and to the ZLUO.

(19) The inspector drafts the initial RIAS, summarizing consultation. The type of RIAS is determined by the TB Analyst and communicated to the regional inspector when the Triage is approved. A Cost and Benefits Identification Report to identify and assess the potential positive and negative economic, environmental and social impacts on Canadians, business and government of the

proposed regulation will be required and must be included in the RIAS. PWGSC or the inspector arranges for translation of the RIAS.

(20) The inspector sends the final AZR drafting instructions, zoning plans and RIAS (in both official languages) to the RU for drafting and examination, and copies the ZLUO.

5.2 Steps to the Regulatory Phase of the Federal Process

(1) The RU prepares a discussion draft using the drafting instructions and zoning plans. If there are any questions or further clarification is required, the RU returns the package to inspector, who determines disposition of the questions and responds as required (cc to the ZLUO). The RU conducts final review.

(2) The inspector updates the briefing note to the RDCA. A copy is sent to Regional Communications, the appropriate regional officials (if NAS airport), and to the ZLUO.

(3) RU blue-stamps the proposed regulation and forwards to the inspector for inclusion in the submission package. The inspector is to complete a Request for Insertion to *Canada Gazette* Part I of the proposed regulation and RIAS. The inspector completes and includes this document in the submission package for the RDG's signature.

(4) The ZLUO, prepares the submission package for the RDG's signature. The ZLUO compiles all the documentation and presents the submission package to the RDG for signature. This package would include the following: covering Route Slip, the Briefing Document to the Minister, the RIAS (English and French), a copy of the blue-stamped regulation (RU to provide), Communications Plan (Communications Group to provide), Supplementary Note, if applicable, (English and French), PCO Transmittal Letter, the SEA Preliminary Scan, SEA Sign-Off Sheet (*if a detailed analysis was done*), and a Request for Insertion in the *Canada Gazette*. After sign-off by the RDG, the inspector forwards the package back to the ZLUO.

(5) The ZLUO, will forward the submission to the appropriate groups for sign-off and transmission to TB/PCO for Part I pre-publication review and approval, prior to publication in *Canada Gazette* Part I. The ZLUO will notify the inspector when the proposed regulation is pre-published in *Canada Gazette* Part I. *The RDG must be available to be in attendance at the Treasury Board (Part B) Governor-in-Council meeting and prepared to answer any questions relevant to the regulation.* TBRAS will advise the ZLUO as to the level of attendance at the TB meeting.

(6) The inspector updates the briefing note to the RDCA. A copy is sent to Regional Communications, the appropriate regional officials (if NAS airport), and to the ZLUO.

(7) The inspector consults with the ZLUO on the timing for the newspaper publication of the public notice in both official languages (generally in newspaper with the largest circulation in the region) in two (2) successive issues. In locations served by separate newspapers in each official language, it is recommended that the English notice be placed in the English newspaper indicating the French language newspaper to consult for the French notice, and vice versa.

(8) The inspector consults with Regional Communications to review the public notice to ensure all requirements are met. The inspector then arranges for newspaper publication (which cannot occur before *Canada Gazette* Part I). The inspector must provide tear sheets from newspaper publication to Regional and HQ Communications, and the ZLUO.

(9) The proposed AZR and explanatory materials, zoning plans, etc. may also be posted on the regional website to provide more comprehensive information for the public along with a statement that the regulation is not in force until deposit in the land registry office and a disclaimer to that effect. Make sure this is done after *Canada Gazette* Part I. The inspector is to check the *Canada Gazette* website to ensure that the regulation has been gazetted.

(10) A 60-day public notice period begins, during which time the proponent hosts public consultation meetings (with participation by PWGSC/surveyor, TC, and NavCan/3rd party approach designers if desired). Interested aboriginal parties should also be included – use the listing of native bands

provided by INAC in Phase 1, Step 17(3). *Note: for finalizing the RIAS, it may be advisable to have a head count of attendees at public meetings (a voluntary sign-in sheet could be used).*

(11) During the notice period, interested parties may submit written representations to the Minister. The RMAS, responds to any representations made as a result of public consultation. The volume of these representations and their areas of concern must be evaluated and summarized for the RIAS, and if warranted, changes to the proposed AZRs may be needed to address the comments. If any changes are required, the inspector coordinates with the proponent and the ZLUO, as required. The inspector then updates the RIAS (particularly the consultation section), obtains revised translation and returns it to the RU for editing of the proposed regulation, if necessary, with a copy to the ZLUO. If there are no substantial changes, then the proposed regulation need only be reviewed again by the RU prior to *Canada Gazette* Part II.

(12) The inspector updates the briefing note to the RDCA. A copy is sent to Regional Communications, the appropriate regional officials (if NAS airport), and to the ZLUO.

(13) RU blue-stamps the proposed AZR and forwards to the inspector. The inspector prepares a Request for Insertion to *Canada Gazette* Part II of the proposed AZRs. The inspector includes this document in the submission package for the RDG's signature.

(14) The ZLUO, prepares the submission package for the RDG's signature. This package includes: a covering Route Slip, the Briefing Document to the Minister, PCO Transmittal Letter, a copy of the blue-stamped regulation, the updated RIAS, a Recommendation to Council, a Communications Plan and Request for Insertion in the *Canada Gazette*. After sign-off by the RDG, the inspector forwards the package back to the ZLUO.

(15) The ZLUO will forward the submission to the appropriate groups for sign-off and transmission to TB/PCO for Part II pre-publication review and approval, prior to publication in *Canada Gazette* Part II. Prior to transmission to TB a copy of the text is sent to the inspector and surveyor for a final review. The ZLUO notifies the inspector when TB has approved the proposed AZRs prior to publication in *Canada Gazette* Part II. The RDG must be available to be in attendance at the TB (Part B) Governor-in-Council meeting and prepared to answer any questions relevant to the regulation.

(16) The AZR and explanatory materials, zoning plans, etc. may also be posted on the regional website to provide more comprehensive information for the public along with a disclaimer stating regulation not in force until deposit in land registry office. Again, ensure this is done after publication in *Canada Gazette* Part II. The inspector is to check the *Canada Gazette* website.

(17) The inspector updates the briefing note to the RDCA. A copy is sent to Regional Communications, the appropriate regional officials (if NAS airport), and to the ZLUO.

5.3 Steps to the Post-Regulatory Phase of the Federal Process

(1) The proponent must submit to the inspector a baseline report of existing intrusions before the AZRs come into force, to provide a legal basis for proving which objects or activities, if any, are grandfathered and therefore not subject to the application of the AZRs. The inspector must retain the baseline report permanently with the AZRs.

(2) The proponent's surveyor updates the zoning plans and obtains the signature of the RMAS who then sends copies to the ZLUO who will obtain the signature of the Minister's representative. The plans, along with the original blue stamped regulations and the original OIC (French and English) are then returned to the proponent's surveyor for deposit along with the text. The number of documents may vary as the number of certified copies required depends on the number of LTOs. The provincial land surveyor signs the zoning plans at the time of deposit. The regulation comes into force upon deposit in the appropriate LTO.

Note: *The practice of having the LTO annotate all affected titles is not prescribed in the Aeronautics Act. Provincial regulations or procedures have, in some cases, been established that would have a bearing on this. The inspector is to determine this with the proponent /LTO/PWGSC/Regional DOJ as applicable.*

(3) Where legally possible, annotating affected land titles is strongly recommended as the foremost proactive method of enhancing voluntary compliance. This is especially beneficial over the long term as properties are sold to new owners who were not exposed to the public communication campaign when the AZRs were originally put in place. Some Regions have found that if AZRs are not noted on title, eventually there is a much greater likelihood of unintentional infringements due to lack of awareness by landowners and lessees. Enforcement after the fact can be a challenge, particularly when contraventions have continued for years with no safety implications.

The inspector updates the briefing note to the RDCA. A copy is sent to Regional Communications, the appropriate regional officials (if NAS airport), and to the ZLUO.

(4) The inspector is to initiate newspaper publication of the full AZRs in both official languages (use final text that has been published on the *Canada Gazette* Website), including key plan of zoning (generally in newspaper with the largest circulation in the region) in two (2) successive issues. In locations served by separate newspapers in each official language, it is recommended that the French notice be placed in the French newspaper indicating the English language newspaper to consult for the English notice, and vice versa.

Note*: At this stage, the entire zoning regulation, as opposed to just the notice, must be published in the local newspapers.*

(5) The inspector coordinates with Regional Communications to review materials to be published, to ensure all requirements are met. The inspector then arranges for newspaper publication. The inspector notifies the ZLUO when the regulation has been published in the local newspapers. The inspector must provide tear sheets from the newspaper publication to Regional and HQ Communications, and the ZLUO.

(6) The proponent provides confirmation of LTO deposit, along with two (2) hard copies and one (1) electronic copy of final zoning plans and AZRs to the inspector, plus additional copies to land use authorities/municipal planners and any other key stakeholders.

(7) AZRs are posted on the TC website. The Coordination and Corporate Secretariat in Executive Services, Ottawa has the mandate for the TC Acts and Regulations website and is responsible for posting and updating AZRs. The website is updated regularly with information from the *Canada Gazette*. The AZR is not in force until it is deposited in the LTO, therefore, when posted to the TC website, there must be a disclaimer attached to the regulation that it is not in force. Any repealing regulations must remain on the TC website until the new regulation comes into force. The inspector is responsible for advising the ZLUO, of deposit of the regulation in the LTO who in turn notifies the Coordination and Corporate Secretariat of Executive Services of the deposit at which time the disclaimer is removed and the repealing regulation is pulled and archived.

6.0 FEDERAL/PROVINCIAL PROCESS

(1) Outlined below are the steps and procedures to establish AZRs under paragraph 5.81(1) of the *Aeronautics Act*. This is known as the federal/provincial process. PA is defined in the *Aeronautics Act* as “an authority in a province responsible for the regulation of land use”. This includes cities, municipalities, districts, townships, etc. PAs do not have jurisdiction to zone Aboriginal First Nations lands. The federal/provincial process was established in the *Aeronautics Act* to provide a constitutionally valid method of delegating federal airport zoning powers to local governments,

who normally have jurisdiction for land use control. The process was designed so that the delegation does not conflict with the separation of federal and provincial powers in the Constitution.

(2) Canadian courts have consistently ruled that the federal government has exclusive constitutional jurisdiction over matters pertaining to aeronautics. Land use by-laws passed by local governments for purposes related to airports or aviation have been ruled ultra vires in past court decisions. It is recognized that each of the five TCCA regions may have additional requirements and therefore this is a guidance tool only and not policy.

6.1 Steps to the Federal/Provincial Process

(1) The proponent (airport owner/operator) submits a written request to the RDCA to establish AZRs. If the airport owner and operator are separate parties, the airport owner must send a letter to the RDCA endorsing the proponent's request.

(2) The inspector sends an information package to the proponent, who is responsible for distributing it to the affected PA.

(3) PA to notify the proponent when they have considered the above documents and are ready to move forward with the federal/provincial process. The proponent then notifies the inspector in writing of the PAs that are willing to engage in the provincial authority process.

Note: *If more than one (1) PA has jurisdiction on lands around the airport, TC can enter into agreements with only the PAs who are interested. Although the result would be that not all lands around the airport would be zoned, the proponent may be of the opinion that having some lands zoned is preferable to no zoning control at all. There may be more than one (1) PA entering into an agreement; therefore, there may be more than one (1) agreement and more than one (1) by-law.*

(4) The inspector sends an AZR requirements form to the proponent. The proponent completes the form, based on factors such as:

(a) airport master plan, indicating long term requirements;

(b) future airfield expansion;

(c) future approach aids;

(d) future instrument procedures requirements/limits, and corresponding Obstacle Limitation Surface standards;

(e) Bird Hazard Areas based on AWM Plan & TC's "Safety Above All";

(f) NAVAID sensitive areas, i.e. protection for aeronautical facilities and from communications interference (defined in consultation with NAV CANADA); and

(g) long-term municipal plans.

(5) The proponent sends the completed AZR requirements form to the inspector with a covering letter summarizing the documents and assumptions on which it based it's requested zoning parameters. The proponent also includes the signed legal agreement, which was included in the preliminary information package. If required, the proponent consults with the inspector regarding the contents of the legal agreement.

(6) The inspector reviews the AZR requirements form (and adjusts if necessary), to ensure that it meets certification requirements for present/future needs. Once accepted by both parties, the form becomes Appendix A to the legal agreement. The inspector forwards the legal agreement to the ZLUO, who will review, in consultation with the RU. The inspector writes to the proponent attaching the updated AZR requirements form, and draft legal agreement and advises the proponent to have the PA proceed in the development of zoning plans and drafting of by-law.

(7) PA undertakes or contracts out preparation of zoning plans and drafting of the by-law. The by-law must protect the areas defined on the AZR requirements form, using whatever format and technology the PA normally uses to define zoned areas, and following the by-law requirements of the province/territory where the airport is located.

(a) Zoning plans are developed using metric measurement units because it is consistent with TP 312. The PA's surveyor will determine the scale and number of decimal places on the zoning plans. The zoning plans must be interpretable by the PA. TC is not responsible for interpreting federal/provincial zoning by-laws for the public.

(b) The zoning plans can be colour-coded for ease of interpretation. Historically, these colours have been used: Yellow for the outer surface; Red for transitional surfaces; Blue for take-off/approach surfaces; and Green for runway strips. Other colours can be used for additional areas zoned, such as bird hazard areas.

(c) The outer surface is a horizontal surface above an airport and its environs, and is normally established at a constant elevation of 45 m above the assigned elevation of the ARP. Normally the elevation assigned to the ARP is that of the lowest threshold unless there is a difference of more than 15 m (50 ft.) between the lowest and the highest threshold, in which case the mean elevation is used. The ARP is measured to the nearest 0.3 m (1 ft.) ASL. For amendments to AZRs, the established height of the outer surface is normally maintained at the existing height.

(d) The zoning plans are part of the regulation and should accompany the text for review and approval. The plans and the text must be in both official languages.

(8) The inspector prepares a briefing note for the RDCA. A copy is sent to Regional Communications and to the ZLUO.

(9) PA sends the draft by-law and zoning plans to the proponent, who reviews them and obtains any necessary corrections, and then submits them to the inspector. The inspector performs an editorial review of the plans and the draft by-laws, checks for compliance to the AZR requirements form and ensures that the by-law is consistent with the legal agreement. PA will have to determine the restrictive clauses based on whether its provincial laws allow it to use restrictive clauses.

Note: *Aboriginal consultation may be required if the regulation might adversely impact on potential or established Aboriginal or treaty rights.*

(10) The inspector consults with the regional Aboriginal Consultation specialist who will advise on the process to be followed. The three (3) engagement template letters are contained in the RDIMS and can be used for consultation purposes. *Sending these letters registered mail is strongly recommended.* The inspector is to obtain a written response from all parties consulted and address areas of concern where possible. It is extremely important that copies of all correspondence be retained by the inspector and saved in RDIMS (classification number Z 5130-9-3-2 U), including facsimile cover sheets, confirmation of receipts, e-mails, letters, etc.

(11) The inspector updates the briefing note for the RDCA. A copy is sent to Regional Communications and to the ZLUO.

(12) The inspector sends the draft zoning plans, by-law and draft legal agreement to their regional DOJ office and HQ RU for review. Regional DOJ/HQ RU ensures that the agreement correctly addresses any matters and legislation that are specific to the applicable province/territory. If there are any questions or if further clarification is required, Regional DOJ/HQ RU returns the package to the inspector, who determines the disposition of questions and responds as required. Regional DOJ/HQ RU conducts a final review and returns the documents to the inspector when they meet all legal requirements.

(13) The inspector arranges the translation of the draft by-law into the other official language. Each region has been dealing with this process differently; therefore, it is recommended that the inspector follow the regional process for procuring translation services.

(14) The inspector compiles two (2) sets of final legal agreement authorized by DOJ (with all Appendices) to the PA for execution. PA signs and returns both sets for execution by the delegated authority in RDCA. The inspector sends one (1) executed set back to the PA. One (1) photocopy is retained in the region and one (1) duplicate copy is sent to the TC Legal Registry, Legal Services, Ottawa.

(15) The inspector updates the briefing note for the RDCA. A copy is sent to Regional Communications and to the ZLUO.

(16) PA undertakes its by-law process, including advertising, consultation process, etc. PA passes the by-law, and within three (3) days of final adoption it must send three (3) certified true copies of the by-law and zoning plans to the RDCA by express courier. PA is to inform the inspector before council meets to consider final adoption so that the inspector can consult with PCO.

(17) The inspector consults with PCO's Registrar of Statutory Instruments to alert them that the by-law will be coming for registration, which must be done within 7 days of being passed.

(18) The inspector urgently compiles the three (3) certified true copies of the by-law and zoning plans, plus the RDCA's set of the executed legal agreement with all Appendices (including the translated version of the by-law). The inspector sends these documents with covering letter by express courier to PCO.

(19) PCO assigns Statutory Orders & Regulations (SOR) #, retains one (1) certified true copy of the documents, and returns the other two (2) copies to the ZLUO, who retains one (1) copy in the TC Legal Registry and returns the other copy to the inspector. The inspector retains a photocopy for regional files and sends the certified true copy to the PA, along with the SOR# provided by PCO. The zoning by-laws are now federal regulations and are in force.

Note: *There is no requirement under the Aeronautics Act or the Legal Agreement for the by-laws to be deposited in the Land Titles Office and in some provinces it is not possible to do this as provincial law does not permit it.*

(20) Within twenty-three (23) days of final adoption, the PA must publish notice of the final adoption of the AZRs, along with a summary of same, in at least one (1) newspaper serving the community in which the affected lands are situated. The proponent must provide tear sheets from newspaper publication to the inspector, who forwards to the ZLUO, to retain with the TC Legal Registry copy of the AZRs.

(21) The inspector is to ensure that an electronic copy of the regulation is obtained and forwarded to the ZLUO.

(22) AZRs are posted on the TC website. The Coordination & Corporate Secretariat in Executive Services, Ottawa has the mandate for the TC Acts and Regulations website and is responsible for posting and updating AZRs.

(23) The inspector updates the briefing note for the RDCA (including summary of publication activities in newspaper and on website). A copy of the briefing note is sent to Regional Communications and to the ZLUO.

7.0 AMENDING AND REPLACING AIRPORT ZONING REGULATIONS

7.1 Amending an Airport Zoning Regulation:

(1) The process to amend an AZR depends on the type of amendment being proposed. If the amendment is significant, all the steps in the Federal process must be completed. Once the

Triage has been reviewed and approved by TBRAS, the TB analyst will advise as to the impact and significance of the proposed amendment and the process to follow. If a proposed amendment to an AZR meets the criteria set for an exemption from pre-publication pursuant to paragraph 5.5(2)(b) of the *Aeronautics Act* and is supported by TBRAS, the RU of Legislative Services will ultimately make the final decision for exemption from pre-publication (*Canada Gazette*, Part I). In the case of errors in regulations that would not have policy implications (non-substantive amendments), the MARs process would apply. The MARs process is used to correct the following:

(a) errors in format, syntax, spelling and punctuation;

(b) typographical errors, archaisms, anomalies and renumbering;

(c) inconsistencies between the English and French version; and

(d) repeal of spent or obsolete regulations.

(2) MARs may also include changes requested by the Standing Joint Committee for the Scrutiny of Regulations (SJC), whether or not they have policy implications. If a proposed amendment is based on a SJC concern, TBRAS will advise as to the process to be followed. The MARs program is a TB program and the eligibility must be strictly adhered to. The ZLUO, will provide functional direction and guidance to the regional inspector in the passage of a proposed amendment through the applicable regulatory channels.

7.2 Repealing an Airport Zoning Regulation:

(1) The process to repeal an AZR is the same as the process to make new regulations. A new regulation would need to be developed to repeal a regulation or regulations and would be entitled "Regulation repealing the _____(name of airport) Zoning Regulations".

(2) All steps in the Federal process would need to be completed, including the Triage, RIAS, Cost Benefit Identification, etc.

8.0 REQUESTS FOR INTERPRETATIONS OF AIRPORT ZONING REGULATIONS

(1) When AZRs are deposited in LTOs, a notation is usually made on each affected land title to the effect that the property is subject to zoning under the *Aeronautics Act*. The notation does not provide any information on the specific restrictions affecting the property. This often generates inquiries from the public, particularly when property is changing ownership. As there can be hundreds of thousands of land titles affected by each zoning regulation, the volume of inquiries from the public can be significant. Often the inquiries are initiated by lawyers who request a written interpretation from TC, on behalf of clients who are being charged fees by lawyers for this service. Therefore, regional offices responsible for Aerodromes and Air Navigation are not required to respond with specific height limitation calculations, as that service is provided by accredited land surveyors. As an alternative, the public can be directed to the LTO where an official copy of the AZR is deposited.

(2) Sample responses that can be used to reply to requests for interpretations of AZRs will be available in RDIMS. For general information and guidance, the public, landowners, law firms and land use authorities can also be referred to a TC regional website such as the following:

(a) Region of Waterloo International AZRs:

http://laws.justice.gc.ca/eng/SOR-2006-78/

(b) Pickering Airport Site Zoning Regulations:

http://laws.justice.gc.ca/eng/SOR-2004-212/

(3) The benefits of having a website for AZRs are that all the information pertaining to the zoning can be included, not just the text which is available on both the *Canada Gazette* website and the DOJ website. This can include maps, guidance material, consultation results, background information, etc.

9.0 ENFORCEMENT OF AIRPORT ZONING REGULATIONS

(1) The Minister has the discretion to determine enforcement priorities, and therefore, TC is not automatically obligated to enforce compliance to AZRs. The airport operator is encouraged to be proactive in monitoring all airport zoned surfaces.

(2) Infringements to AZRs are usually not an immediate threat to aviation safety. To assist airport operators in managing compliance to AZRs, the Minister may delegate to airport operators his authority under section 5.7 of the *Aeronautics Act* (notice of entry to enforce compliance in respect of natural growth). In situations where zoning compliance authority has not been delegated to airport operators, the following policy shall apply:

(a) Natural Growth Infringements: If the AZRs do not contain a natural growth clause, they cannot be used in respect of natural growth violations (because the “Building Restrictions” clause is limited to objects that are “erected” or “constructed”). The airport operator would be responsible for resolving the natural growth issues via other means. If the AZRs contain a natural growth clause, subsection 7.3(3) of the *Aeronautics Act* (summary conviction process) shall not be used for natural growth infringements. Exemptions from AZRs will only be granted for natural growth infringements in exceptional circumstances. Natural growth that existed prior to enactment of AZRs is legally non-conforming in accordance with subsection 5.4(4) of the *Aeronautics Act*. If the airport operator is unable to provide evidence that the natural growth infringement occurred after the AZRs were enacted, enforcement action cannot be taken. However, an agreement with the landowner could be developed. Section 5.7 of the *Aeronautics Act* shall not be used by TC for natural growth infringements when there are other ways of ensuring aviation safety. Where it is possible to use other measures for dealing with infringements, these should be used instead of section 5.7 of the *Aeronautics Act*. An external delegation of authority has been developed in conjunction with Legal Services and is available to those airport operators who request it. The airport operator is to bear all financial costs associated with the removal of natural growth. The delegation of authority document is available in the RDIMS.

(b) Other Obstacle Infringements: In circumstances where a violation to an AZR constitutes an immediate threat to aviation safety, inspectors should contact the Civil Aviation Enforcement Branch for guidance. AZRs can be enforced by the police of jurisdiction pursuant to subsection 7.3(3) of the *Aeronautics Act*. In addition, it may be possible to obtain a court injunction against the violating activity. The Enforcement Branch would determine this on a case-by-case basis in consultation with the DOJ.

10.0 CONTACT OFFICE

For more information, please contact the:

Standards Branch, Program Manager – Noise Management and Airport Zoning or Zoning and Land Use Officer Standards Branch.

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E-mail: janet.bigras@tc.gc.ca

Suggestions for amendment to this document are invited, and should be submitted via the Transport Canada Civil Aviation Issues Reporting System (CAIRS) at the following Internet address:

http://www.tc.gc.ca/CAIRS

or by e-mail at: CAIRS_NCR@tc.gc.ca

[original signed by Don Sherritt]

Don Sherritt
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Civil Aviation
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