STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL March 20, 2008	No. I08-003 (R08-011) Re: Development Plans Regarding Ancillary Military Facilities

TO: The Honorable John B. Nelson
Arizona House of Representatives

Question Presented

Is residentially zoned land within the boundaries of an ancillary military facility's high-noise or accident-potential zone exempt from Arizona Revised Statutes ("A.R.S.") § 28-8481's requirements where no "development plan" other than zoning was approved with respect to the land by December 31, 2004?

Summary Answer

Arizona Revised Statutes § 28-8481(F) exempts from A.R.S. § 28-8481's requirements land with respect to which a "development plan" (as A.R.S. § 28-8481(P)(1) defines that term) was approved by December 31, 2004. Preexisting zoning does not constitute a "development plan" within A.R.S. § 28-8481(P)(1)'s meaning. Land that was zoned before December 31,

2004, but with respect to which no development plan was approved before that date therefore is not exempt from A.R.S. § 28-8481's requirements.

Analysis

Arizona Revised Statutes § 28-8481(A) requires political subdivisions whose territory includes land within the boundaries of an ancillary military facility's high-noise or accident-potential zone to adopt comprehensive and general plans and to adopt and enforce zoning regulations "to assure development compatible with the high noise and accident potential generated by . . . ancillary military facility operations that have or may have an adverse effect on public health and safety." Subsection B of the statute requires political subdivisions to incorporate sound attenuation standards into building codes that apply to land in the vicinity of ancillary military facilities. Subsection C of the statute requires political subdivisions whose territory includes land within the boundaries of an ancillary military facility's high-noise or accident-potential zone to adopt, administer, and enforce the zoning regulations that subsection A of the statute authorizes in the same manner as the law requires them to enforce their comprehensive zoning ordinances, with the exception that they may not grant a variance without a specific finding that the variance preserves the purpose of ancillary military facility compatibility.

Subsection 28-8481(F) provides an exemption for land with respect to which a "development plan" was approved prior to December 31, 2004. *See* A.R.S. § 28-8481(F) ("This section does not . . . authorize . . . any political subdivision to restrict . . . the right of a landowner to [develop] . . . any property located in a high noise or accident potential zone that is appurtenant to an ancillary military facility under the terms and conditions of a development plan

. . . approved on or before December 31, 2004 . . . .)"[1] Subsection 28-8481(P) defines "development plan" as the following:

> 1. "Development plan":
>
> (a) Means a plan that is submitted to and approved by the governing body of the political subdivision pursuant to a zoning ordinance or regulation adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6 and that describes with reasonable certainty the density and intensity of use for a specific parcel or parcels of property.
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> (b) Includes a planned community development plan, a planned area development plan, a planned unit development plan, a development plan that is the subject of a development agreement adopted pursuant to § 9-500.05 or 11-1101, a site plan, a subdivision plat or any other land use approval designation that is the subject of a zoning ordinance adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6.
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> (c) Means a conceptual plan for development that generally depicts densities on a particular property that a military airport, as described in paragraph 9, subdivision (a), deems is compatible with the operation of the ancillary military facility.

(Footnotes omitted.) You have asked whether residential zoning, without more, constitutes a "development plan" for the purposes of this exemption from A.R.S. § 28-8481's requirements.

The primary goal of statutory construction is to ascertain and give effect to the Legislature's intent in enacting the statute. *Mejak v. Granville*, 212 Ariz. 555, 557, 136 P.3d 874, 876 (2006). The statute's language is the best indicator of that intent. *Id.* When a statute's plain language is clear and unambiguous, courts give effect to that language without resorting to any other rules of statutory construction. *Ariz. Dep't of Revenue v. Salt River Project Agric. Improvement & Power Dist.*, 212 Ariz. 35, 39, 126 P.3d 1063, 1067 (App. 2006). Courts must

[1] *See also* A.R.S. § 28-8481(E) ("This section does not . . . authorize . . . any political subdivision to restrict . . . the right of a landowner to [develop] . . . any property under the terms and conditions of a development plan . . . approved on or before December 31, 2000, or on or before December 31 of the year in which the development's property becomes territory in the vicinity of a[n] . . . ancillary military facility . . . .").

read and apply statutes in accordance with any special statutory definitions of the terms that the statute uses. *State v. Hazlett*, 205 Ariz. 523, 531, 73 P.3d 1258, 1266 (App. 2003).

Subsection 28-8481(P)(1)(a) defines a "development plan" as a plan (1) that is submitted to and approved by a political subdivision's governing body pursuant to a zoning ordinance or regulation and (2) that "describes with reasonable certainty the density and intensity of use for a specific parcel or parcels of property." The statute does not define a development plan as a zoning ordinance or regulation. It instead defines it as a plan that must be submitted to and approved by a political subdivision *pursuant to* a zoning ordinance or regulation. Under this definition, a development plan is not identical to a zoning ordinance or regulation but is instead a plan that is submitted and approved *after* zoning ordinances or regulations are already in place.

While a zoning ordinance or regulation might satisfy the second half of A.R.S. § 28-8481(P)(1)(a)'s definition of a "development plan" by "describ[ing] with reasonable certainty the density and intensity of use for a specific parcel or parcels of property," this would not establish that such a regulation or ordinance was a development plan within the statute's meaning. Because the statute includes the conjunctive word "and," a plan would have to satisfy both parts of the definition to be considered a development plan within its meaning. *See Phoenix Newspapers, Inc. v. Ariz. Dep't of Corr.*, 188 Ariz. 237, 244, 934 P.2d 801, 808 (App. 1997) (stating that when a statute is written in the conjunctive, all of its elements must be satisfied); *Guarrascio v. Fisher*, 154 Ariz. 186, 188, 741 P.2d 319, 321 (App. 1987) (stating the same with respect to a court rule). Because a regulation or ordinance could not satisfy the first part of the definition, it could not be a development plan within the meaning of A.R.S. § 28-8481(P)(1)(a) even if it satisfied the second part.

Arizona Revised Statutes § 28-8481(P)(1)(b) lists examples of the types of plans that the term "development plan" may include.[2] It identifies a series of plans by specific names and concludes with the phrase "any *other* land use approval designation that is the subject of a zoning ordinance." (Emphasis added.) That concluding phrase must refer to plans of the same kind or type as the preceding ones listed. *See State v. Barnett*, 142 Ariz. 592, 596, 691 P.2d 683, 687 (1984) (stating that when a statute lists specific classes of items and then refers to them in more general terms, the general terms are limited to the same class as the items specifically listed); *see also Wilderness World, Inc. v. Ariz. Dep't of Revenue*, 182 Ariz. 196, 199, 895 P.2d 108, 111 (1995) (same). Thus, like subsection (P)(1)(a), this subsection contemplates that a "development plan" is a plan that is submitted for approval *pursuant to* a zoning ordinance. It does not provide that a zoning ordinance itself may be a development plan.[3]

Conclusion

Because preexisting zoning does not constitute a "development plan" within the meaning of A.R.S. § 28-8481(F) and (P), land that was zoned before December 31, 2004, but with respect to which no development plan was approved before that date is not exempt from A.R.S. § 28-8481's requirements.

Terry Goddard
Attorney General

[2] Arizona Revised Statutes § 28-8481(P)(1)(c) does not apply to the issue raised because it applies to conceptual plans that a military airport deems compatible and does not make any reference to zoning ordinances.

[3] Any issues regarding whether implementing A.R.S. § 28-8481 constitutes a taking under the United States Constitution's Fifth Amendment and Arizona Constitution article 2, section 17, or requires compensation under A.R.S. §§ 12-1131 to -1138, are beyond the scope of this Opinion because they do not affect the statutory interpretation question at issue here and the analysis depends entirely upon the facts that relate to the specific parcel at issue.