

FIRST PROGRESS REPORT

N.A.S. OCEANA ENCROACHMENT

September 8, 2005 – June 30, 2007



City of Virginia Beach





BRAC Hearing – August 4, 2005

FOREWORD & OVERVIEW

By any standard, the City's program of halting and rolling back encroachment around N.A.S. Oceana has been a success, both for the effectiveness of the program in accomplishing its goals and the fairness to property owners its methods incorporate. This report details the measures used by the City in its efforts to address encroachment around the base and the effectiveness of those measures. The report also explains, in detail, the actions of the BRAC Commission that precipitated the City's response and the individual components of that response.

This first report of the actions to stop and roll back encroachment surrounding Naval Air Station Oceana covers a period from the issuance of the BRAC Report through June 30, 2007 and focuses upon the success/effectiveness of the plans enacted by the Commonwealth of Virginia and the City of Virginia Beach. In reviewing this report, please remember that these programs are active and ongoing and results that have been achieved since June 30, 2007 are not reported herein.

The plans consist of two major components: the land use plan, and the acquisition and conformity plan.

The land use provisions reflect the suggested actions of the Joint Land Use Study and the requirements of the BRAC Report. The impact of the APZ-1 and Clear Zone ordinances was immediate and measurable. The ordinance eliminated 1,326 potential incompatible units upon adoption. The effect of other AICUZ-related ordinances was immediate, but while the intuitive benefits and the projected effects are known, the measurement of results is more difficult as the impact will evolve

over a much longer period of time. Both the Navy and the City are cooperatively reviewing and developing tools to measure the effectiveness of the overall plans.

The acquisition and conformity plans were initiated on January 1, 2007 and thus were only in effect for six months at the time of this report. Nonetheless, in the APZ-1 and Clear Zones, property valued at a total of \$15 million was acquired or contracted for during this period. This represents a reduction of 110 incompatible or potentially incompatible units over 19.17 acres of land. In the Interfacility Traffic Area, an additional \$3.4 million of property was acquired, which encompassed 105 acres. The description of the acquisition plans and the measurement of reduction of incompatible uses in the key APZ-1 and Clear Zones are documented herein.

After a review of the success of the programs through June 30, 2007, this report documents the applicable provisions of the BRAC Report, the enactments of the Commonwealth of Virginia, and the response of the City of Virginia Beach.

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BACKGROUND SUMMARY

In its Report issued September 8, 2005, the Defense Base Closure and Realignment Commission ("BRAC") conditioned the ongoing mission of Naval Air Station (N.A.S.) Oceana as the East Coast Master Jet Base upon efforts of the state and local governments to stop and roll back encroachment surrounding N.A.S. Oceana. The Report required enactment of a program to accomplish this objective by the end of March 2006. The Report further required certification of compliance by the Department of Defense's Inspector General by June 1, 2006, and provided the City of Jacksonville, Florida an opportunity to submit a plan before December 31, 2006 for the re-opening of Cecil Field. (See Appendix I for the text of the BRAC provisions).

The Commonwealth of Virginia and the Cities of Virginia Beach and Chesapeake timely submitted a comprehensive program. The Inspector General thereafter certified as compliant all elements of the Plan, except for the BRAC Report's requirement that the City condemn and purchase all incompatible uses within the APZ-1 areas. As a result, he did not certify Virginia's compliance with the BRAC Commission's requirements. Virginia and the City of Virginia Beach filed a lawsuit challenging the Inspector General's interpretation of the requirements of the BRAC Report. However, the lawsuit was rendered moot when Jacksonville failed to submit a BRAC compliance plan by December 30, 2006, thus eliminating the possibility of re-opening Cecil Field.

Virginia began to implement the acquisition aspect of its plan on January 1, 2007. The statutory and land use requirements had been enacted and were effective prior to submission of its Compliance Plan in March 2006.

PREPARATION OF THE COMPLIANCE PROGRAM

Between the date of the BRAC Report (September 8, 2005) and the submission deadline (end of March 2006) the Commonwealth of Virginia and the Cities of Virginia Beach and Chesapeake began

what has proven to be a highly successful effort to develop a program to stop and roll back encroachment.

In a short seven months, driven by the desire to retain N.A.S. Oceana in its current mission and armed with land use tools, tax and economic development incentives, and a financial commitment to meet BRAC provisions, the state and local governments created and enacted a comprehensive program designed to halt new incompatible development and reduce existing incompatible uses. In its effectiveness, the program measurably exceeds the program contemplated by the BRAC Commission.

IMPLEMENTATION OF THE PROGRAM

All legislative enactments, including the land use, land acquisition and rollback programs were approved before the end of March 2006. (The program components are outlined beginning on page 9 of this report). While implementation of the land use provisions were effective upon adoption (December 20, 2005 and March 28, 2006), implementation of the acquisition programs could not begin until after December 31, 2006, the date on which it became evident that Jacksonville would not comply with the BRAC requirements applicable to it. Thus the acquisition plan for the first year of the program, based on a July 1 to June 30 fiscal year, required the acquisition of \$15 million in property from January 1, 2007 to June 30, 2007.

Both the land use program and the acquisition programs represented exhaustive efforts by the City of Virginia Beach to meet the BRAC requirements in an extremely short period.

This first progress report proudly details the success of that program from the date of the BRAC Report, September 8, 2005 to June 30, 2007. Further reports will be issued annually based upon the fiscal year of the City.

THE LAND USE PROGRAM: MEASURING THE EFFORT TO STOP ENCROACHMENT

The initial land use elements of the City's program encompassed all areas within AICUZ Noise Zones of 70 dB DNL and greater. That scope is within the requirements of the BRAC Report and the preceding Joint Land Use Study.

APZ-1 and Clear Zones

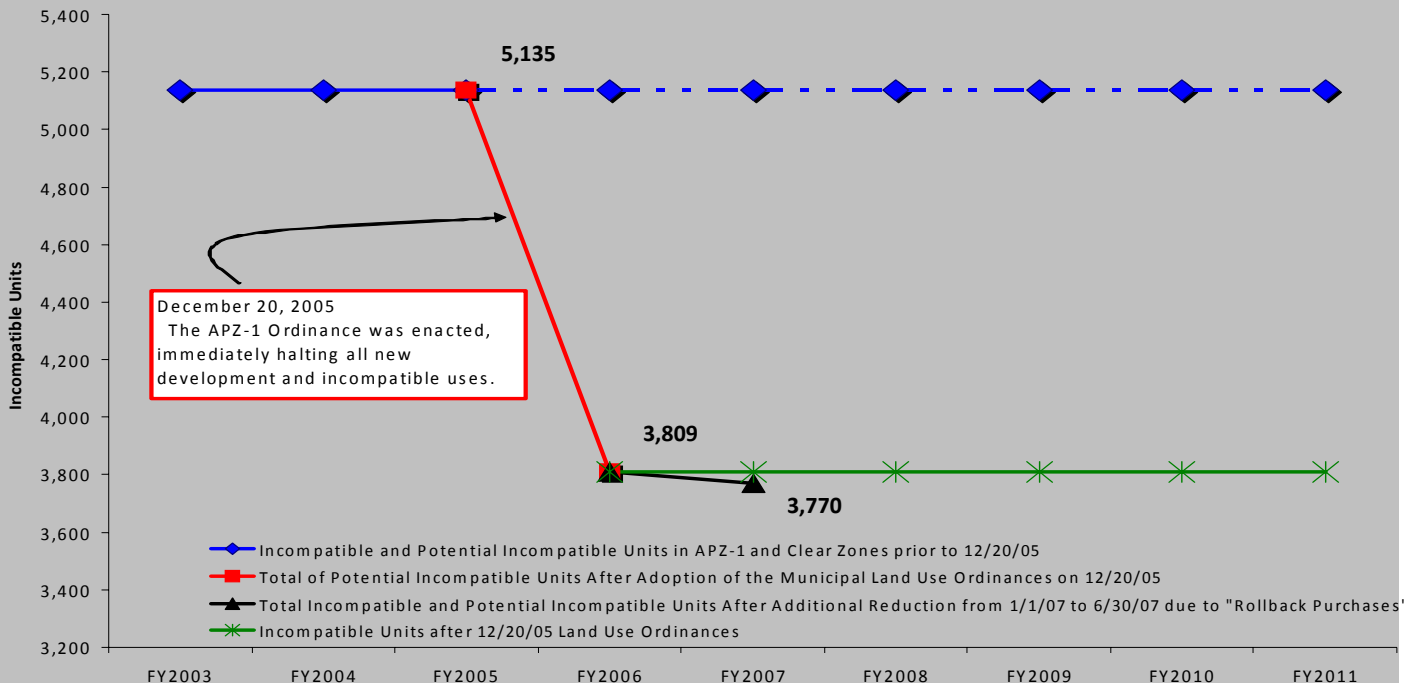
In the APZ-1 and Clear Zones (*See Map, Appendix III*), all future incompatible development was, to the greatest extent allowed by law, prohibited after December 20, 2005. This action, employing local land use tools, was by far a more effective option for stopping encroachment than the BRAC Report's condemnation-only approach, which failed to address the ongoing effect of new, by-right, incompatible development in APZ-1. The chart, entitled **Figure 1**, and the accompanying **Figure 2** matrix demonstrate the immediate reduction of 1,326 potential incompatible units in the APZ-1 and Clear Zones upon adoption of the ordinances on December 20, 2005.

This action did not require the acquisition of property by eminent domain. However, where the land use ordinances left no reasonable use of a parcel and thus resulted in an inverse condemnation, a complementary program provided for the voluntary acquisition of those properties under conditions favorable to the landowner. If requested by an owner, a condemnation action could be filed to resolve differences in purchase price or clear titles. It was this more effective approach to the BRAC requirement - utilizing land use tools - that the Inspector General believed he lacked discretion to certify. As the BRAC Commission previously had concluded its work, the City did not have an opportunity to present this more effective plan to the Commission.

It is important to note that a condemnation approach in the APZ-1/Clear Zone areas would have incurred massive public opposition, taken many additional years to accomplish similar results, and cost significantly more money. For these reasons, Virginia opted for the highly effective local land use initiative.

FIGURE 1

APZ-1 & Clear Zones: Reduction of Incompatible and Potential Incompatible Uses



¹FIGURE 2 - Reduction of APZ-1/Clear Zone Incompatible Units December 20, 2005 – June 30, 2007	Business Units	Residential Dwelling Units	Total Units
Incompatible and Potential Incompatible Units in APZ-1 and Clear Zone prior to December 20, 2005	615	4,520	5,135
Incompatible and Potential Incompatible Units after adoption of the Municipal Land Use Ordinances on December 20, 2005	198	3,611	3,809
Total Incompatible and Potential Incompatible Units After Additional Reduction from January 1, 2007 to June 30, 2007 due to “Rollback Purchases”	188	3,582	3,770

The AICUZ Overlay Ordinance

In the remainder of the AICUZ footprint encompassing noise zones of 70 dB DNL and greater (See Map, Appendix IV), future incompatible development requiring City Council approval was severely restricted to allow approval of discretionary development applications (e.g., rezonings and conditional use permits) only where no compatible use of the property would be reasonable. In such cases, approval could be given only for the lowest reasonable density or intensity. A committee composed of Navy and City staff evaluates land use applications to present joint findings and recommendations to the Planning Commission and City Council.

These land use provisions also avoided the governmental purchase of property which would have a minimal impact on stopping encroachment. It also largely conformed to a Joint Land Use Study conducted with the Navy, was in compliance with BRAC requirements, and avoided significant acquisition costs.

The AICUZ Overlay Ordinance also extended existing sound attenuation requirements applicable to residential units so as to apply to most types of commercial buildings and structures.

The Interfacility Traffic Area

The Interfacility Traffic Area (ITA) (See Map, Appendix V) was identified in the 2005 Joint Land Use Study (JLUS) with the Navy as a strategic flight path, located between N.A.S. Oceana and Naval Auxiliary Land Field Fentress (N.A.L.F.), critical to

the mission of N.A.S. Oceana. It is a largely rural and environmentally sensitive area comprising approximately 4,700 acres in which the JLUS recommended limited future residential growth and preservation of agricultural zoning. The BRAC Report required legislative enactment of the JLUS provisions and establishment of a program for the purchase of development rights in the ITA.

On December 20, 2005, Virginia Beach, again utilizing a local land use tool, amended its Comprehensive Plan and City Zoning Ordinance to change the maximum allowable density for property in the ITA from one dwelling unit per acre (1:1) to one unit per fifteen acres of developable property (1:15) in the greater than 75 dB DNL Noise Zone and to one unit per five acres (1:5) in the 70-75 dB DNL Noise Zone. This action advanced the policies of the JLUS to limit further residential growth and preserve agricultural zoning in the entire ITA area (65 dB DNL and greater), which comprises approximately 4,700 acres.

The Resort Area Ordinances

The Navy recognized the City’s need for economic growth within this relatively small defined area along the Atlantic seaboard but desired to see a reduction of potential residential units at build-out. In cooperation with the Navy, the City studied this area and developed new zoning provisions that incentivized the development of compatible uses in such a manner as to result in approximately 7,000 fewer residential units at build-out. These provisions were enacted on December 20, 2005.

THE ACQUISITION PLANS: MEASURING THE EFFORT TO ROLL BACK ENCROACHMENT

APZ-1 and Clear Zones

In accordance with the BRAC requirement, Virginia committed to purchase \$15 million of incompatible use property within the APZ-1 and Clear Zones annually. The Commonwealth of Virginia and the City of Virginia Beach each committed to appropriate \$7.5 million to support this initiative. The City of Virginia Beach is the implementing agency.

Between January 1, 2007 and June 30, 2007, the City acquired or contracted to acquire \$15 million of property in the APZ-1 and Clear Zones. **Figure 3** details those purchases.

The FY 2007 purchases were primarily of vacant residentially zoned property, developed properties with by-right density increases available, and commercial properties that were adversely affected by the ordinances limiting incompatible



development. All acquisitions were voluntary and were acquired under commercial terms favorable to the landowner.

In reviewing **Figure 1** on page 4, which details the effect of the APZ-1/Clear Zone ordinances, it is important to note that many of the initial purchases were of undeveloped properties that were left without a reasonable use of their property (an inverse condemnation) by reason of the effect of the zoning regulations prohibiting new incompatible uses in APZ-1. Those purchases are reflected within the red line reduction of potential incompatible properties in **Figure 1**.

The black line in **Figure 1** represents the purchase of properties classified as “rollback purchases.” Those purchases consist of properties that retained a potential reasonable use but were purchased pursuant to the acquisition plans for public infrastructure or pursuant to plans to convert incompatible uses to compatible uses.

FIGURE 3 - Acquisitions In APZ-1/Clear Zones²

January 1, 2007 – June 30, 2007

# of OWNERS and # of PARCELS	SQ. FT.	DWELLING UNITS ACQUIRED ³	APZ-1 OR CLEAR ZONE DWELLING UNITS REDUCED ⁴	OTHER INCOMPATIBLE USES ELIMINATED	PURCHASE AMOUNT
PROPERTY ACQUIRED					
29 owners; 37 parcels	524,239	84	72 ⁵	Restaurant, Bar, Retail, Office, Medical Services, Funeral home	\$ 10,741,955
AGREEMENTS RECEIVED-CLOSING PENDING					
11 owners; 18 parcels	207,803	36	36	Restaurant	\$ 2,993,650
VERBAL AGREEMENTS⁶					
2 owners	103,114	2	2	Office building/call center	\$ 1,832,500
TOTAL (for all agreements)	835,156 (19.17 acres)	122	110		\$15,568,105⁷

The Interfacility Traffic Area

Also, between January 1, 2007 and June 30, 2007, the City embarked upon its program to acquire property in the Interfacility Traffic Area (ITA). (See Map, Appendix V)

The City evaluated parcels of property offered by willing sellers to determine which were desirable to purchase in order to limit density and preserve the predominantly agricultural zoning within the ITA. The City Council appropriated \$3.7 million in additional funds to support this program, which brought funding of the total acquisition programs to \$18.4 million, and thus exceeded the BRAC Report requirements. Figure 4 details the expenditure of funds through June 30, 2007.



This program is administered by the Oceana Land Use Conformity Committee. In the period from January 1, 2007 to June 30, 2007, the Committee

reviewed proposed acquisitions within the APZ-1 and Clear Zones, prepared the job description for employment of a relocation specialist to assist in the conversion of incompatible to compatible uses, and initiated work on the APZ-1 Master Plan, which revises the City's Comprehensive Plan within the APZ-1 and Clear Zones to provide guidelines for the orderly conversion of incompatible uses to compatible uses. The Committee is poised to begin the conversion of

uses beginning July 1, 2008. This roll back effort will take place in the APZ-1 and Clear Zones and will be funded from the \$15 million in shared funding appropriated annually by the Commonwealth of Virginia and the City of Virginia Beach.

* * * *

The following portion of this report more fully describes the applicable provisions of the BRAC Report, the enactments of the Commonwealth of Virginia, and the response of the City of Virginia Beach.

FIGURE 4 - ACQUISITIONS IN THE INTERFACILITY TRAFFIC AREA				
January 1, 2007 – June 30, 2007				
PROPERTY ACQUIRED				
PARCEL	ACRES	ROAD FRONTAGE	AICUZ db DNL	AGREED AMOUNT
1	46.71	Indian River Rd.	>75	\$ 1,167,750
2 and 3	8.32	Salem Rd.	65-70	\$ 785,000
AGREEMENTS RECEIVED-CLOSING PENDING				
4 ⁸	50.42	Indian River Rd.	70-75 & >75	\$ 1,447,349
TOTAL	105.45			\$ 3,400,099⁹

The Base Realignment and Closure Commission (BRAC) Report

THE BASE REALIGNMENT AND CLOSURE COMMISSION (BRAC) REPORT

In its Report issued on September 8, 2005, the Defense Base Closure and Realignment Commission ("BRAC")¹⁰ conditioned the ongoing mission of N.A.S. Oceana upon the Commonwealth of Virginia and the Cities of Virginia Beach and Chesapeake "Enact[ing] and enforc[ing] legislation to prevent further encroachment of Naval Air Station Oceana by the end of March 2006." The BRAC Report listed six specific requirements to satisfy this general obligation.

The six specific requirements of the BRAC Report were as follows:

1. Enact state-mandated zoning controls requiring the cities of Virginia Beach and Chesapeake to adopt zoning ordinances that require the governing body to follow Air Installation Compatibility Use Zone (AICUZ) guidelines in deciding discretionary development applications for property in noise levels 70 dB Day-Night average noise level (DNL) or greater;
2. Enact state and local legislation and ordinances to establish a program to condemn and purchase all the incompatible use property located within the Accident Potential Zone 1 areas for Naval Air Station Oceana, as depicted in the 1999 AICUZ pamphlet published by the US Navy and to fund and expend no less than \$15 million annually in furtherance of the aforementioned program;
3. Codify the 2005 final Hampton Roads Joint Land Use Study (JLUS) recommendations;
4. Legislate requirements for the cities of Virginia Beach and Chesapeake to evaluate undeveloped properties in noise zones 70 dB DNL or greater for rezoning classification that would not allow uses incompatible under AICUZ guidelines;
5. Establish programs for purchase of development rights of the inter-facility traffic area between NAS Oceana and NALF Fentress; and
6. Enact legislation creating the Oceana-Fentress Advisory Council.



Virginia's Statutory Enactment of the BRAC Report Provisions

VIRGINIA'S STATUTORY ENACTMENT OF THE BRAC REPORT PROVISIONS

In response to the BRAC Report, the 2006 General Assembly enacted legislation requiring Virginia Beach and Chesapeake to perform the actions specified in the first five of the foregoing requirements.¹¹ More particularly, Chapters 266 and 328 of 2006 Acts of the Assembly (*See Appendix II*):

1. Required the Cities of Virginia Beach and Chesapeake to "adopt zoning ordinances that require the governing body to follow Navy Air Installation Compatible Use Zone (AICUZ) guidelines in deciding discretionary applications for property in noise levels 70 dB DNL or greater;"
2. Imposed the following requirements as a matter of state law:

For the purpose of preventing further encroachment, the governing body of any locality in which a United States Navy Master Jet Base is located shall adopt ordinances to establish a program to purchase or condemn . . . incompatible use property or otherwise seek to convert such property to an appropriate compatible use and to prohibit new uses or development deemed incompatible with air operations in the Accident Potential Zone 1 (APZ-1) and Clear Zone areas, as depicted in the Navy's 1999 AICUZ Pamphlet, and fund and expend no less than \$15 million annually in state and local funds in furtherance of the program, to the extent that properties or development rights are reasonably available for acquisition or their use reasonably may be converted. Such funding and expenditures shall be subject to annual appropriations from the state and locality, and shall continue until such time as all reasonably available properties or development rights have been acquired in the designated areas;
3. Required the Cities of Virginia Beach and Chesapeake to "[a]dopt such ordinances or take such other actions as may be recommended in any Joint Land Use Study" that has been approved by the Cities;
4. Required the Cities of Chesapeake and Virginia Beach to "[u]ndertake an evaluation of undeveloped properties located in noise zones 70 dB DNL or greater to determine the suitability of such properties for rezoning classifications that would prohibit uses incompatible under AICUZ guidelines"; and
5. Required the Cities of Chesapeake and Virginia Beach to "[e]stablish programs to purchase land or development rights in the corridor of land underneath the flight path between the Master Jet Base and the auxiliary landing field known as an interfacility traffic area."¹²

THE VIRGINIA BEACH RESPONSE

Stopping Encroachment: The Land Use Ordinances

In response to the BRAC Report, the City adopted a Compliance Plan, which fulfilled the conditions for retaining the Master Jet Base at NAS Oceana. The Plan was adopted in two phases, on December 20, 2005 and March 28, 2006. The first phase was intended to halt incompatible development in Accident Potential Zone 1, restrict discretionary development¹³ in the 70-75 dB DNL and >75 dB DNL Noise Zones, limit residential development in the Interfacility Traffic Area (ITA) and extend noise attenuation requirements to commercial structures within all Noise Zones. In addition, although not addressed by the BRAC Report or the Virginia legislation, the City adopted zoning and Comprehensive Plan amendments intended to support quality year-round retail development, but at less than the aggregate number of residential units allowed by the zoning ordinance prior to its amendment. The Navy had worked closely with the City in developing those amendments, which had been contemplated in a Statement of Understanding entered into by the City and Navy in March 2005.

The second phase of the City's response, adopted on March 28, 2006, was designed to roll back incompatible development in APZ-1 through the use of a series of zoning and financial incentives intended to induce property owners to replace nonconforming uses (pre-existing uses that are deemed incompatible with operations at NAC Oceana under the City's ordinances and Navy's AICUZ Program guidelines) with new, compatible uses, relocate nonconforming uses to areas outside of APZ-1 or establish conforming uses within APZ-1, while protecting the integrity of established residential neighborhoods potentially affected by the APZ-1 ordinances.

The December 20, 2005 Ordinances

The first phase of the City's response consisted of the adoption of nineteen (19) land use ordinances. The actions most directly responsive to the BRAC consisted of the following:

1. The Air Installations Compatible Use Zones (AICUZ) Overlay Ordinance

The City amended its City Zoning Ordinance, to create a new Article 18, entitled the "Air Installations Compatible Use Zones (AICUZ) Overlay Ordinance." Section 1804(a) of the ordinance states:

[I]t shall be the policy of the City Council that no [discretionary development] application shall be approved unless the uses and structures it contemplates are designated as "compatible" . . . unless the City Council finds that no reasonable use designated as compatible under the applicable Table or Tables can be made of the property. In such cases, the City Council shall . . . approve the proposed use of property at the least density or intensity of development that is reasonable.

The AICUZ Overlay Ordinance also established a maximum residential density of one dwelling unit per fifteen acres of developable land in the > 75 dB DNL Noise Zone and one unit per five acres of developable land in the 70-75 dB DNL Noise Zone. In addition, the ordinance required that most new buildings and structures within the AICUZ footprint be constructed with suitable sound attenuation measures so as to reduce the effect of jet noise within the interior of such structures.

In February 2007, the City Council and the Commanding Officer of NAS Oceana entered into a Memorandum of Understanding setting forth the principles and procedures by which the City and Navy would jointly evaluate applications to provide recommendations for City Council consideration of incompatible uses within the AICUZ footprint. The Memorandum of Understanding, which was first contemplated in a City/Navy Statement of Understanding entered into shortly after the completion of the Joint Land Use Study, enable a committee of Navy and the City staff to work cooperatively at an early stage of the development review process and to present their joint findings and recommendations to the Planning Commission and City Council in a timely manner, thereby enabling mature consideration of the committee's findings and recommendations.

2. The Accident Potential Zone 1 (APZ-1) Ordinance

The APZ-1 Ordinance prohibits new construction of incompatible development in APZ-1 by restricting land uses to those that are designated "compatible" under Navy AICUZ guidelines. The APZ-1 Ordinance immediately halted all new incompatible land use within APZ-1. Its effect on development in the APZ-1 was the equivalent of condemning and purchasing restrictive easements over *all* privately owned property zoned to permit incompatible development in APZ-1. Had the City sought to achieve this result through individual judicial condemnation actions rather than through the exercise of the City's authority to regulate land use, it would have been required to pay compensation of more than \$100 million (in 2005 dollars) for the equivalent easement rights, and the process would have taken more than a decade at the rate of \$15 million per year, during which time new incompatible uses would have continued to develop by right. Thus, the APZ-1 Ordinance is a more cost effective and more efficient means of preventing new incompatible land use than the acquisition of individual easements through judicial condemnation actions.

3. Resort Area Ordinances

One of the recommendations of the Joint Land Use Study was that the City would adopt land use ordinances applicable to the Resort Area pursuant to which "the total number of residential units will not exceed the aggregate number of units allowed under current zoning." That recommendation contemplated that the City would "endeavor to work with all stakeholders to reduce the number of residential units significantly below that number through zoning ordinance amendments." More specifically, the Statement of Understanding provided:

The establishment of a first-class resort at the oceanfront is a strategic priority for the City of Virginia Beach and that, in order to accomplish that goal, the City Council will consider adoption of Comprehensive Plan and City Zoning Ordinance amendments that contemplate a reasonable increase in the number of existing residential units in the oceanfront area to a number sufficient to support quality year-round retail development. This number is anticipated to be less than the aggregate additional number of units allowed by current oceanfront area zoning.

Twelve of the ordinances adopted on December 20, 2005 addressed this goal. Those ordinances, which had been developed with the participation of the Navy, resort area property owners and other stakeholders, consisted of amendments to the Comprehensive Plan and City Zoning Ordinance provisions applicable to the Resort Area directed toward accomplishing the goal of allowing reasonable increases in the total number of residential units in the Resort Area while limiting, through the use of incentives, the ultimate number of such units to a lesser number than could have been developed as a matter of right under the zoning regulations they replaced.

In order to accomplish that purpose, the Resort Area ordinances were amended to allow single-family dwellings as a matter of right in the area west of Arctic Avenue, and to provide the opportunity for increased density on a site if certain conditions were met. These conditions include minimum lot sizes that are larger than generally found in the Resort Area (thereby requiring lots to be aggregated), conformity with design guidelines directed to the development of mixed-use structures and the use of integrated parking structures. The Comprehensive Plan was also amended to incorporate suitable design and other guidelines pertaining to development in the Resort Area and certain traditional neighborhood areas within the Resort Area. Thus, while a developer meeting these guidelines is able to obtain increases in density, the conditions are stringent enough that the conditions for density increases are rarely met. Ultimately, while the total number of *actual* residential units in the Resort Area will grow, that number will be less than the total number of residential units *that could have been built* as a matter of right under the former ordinances.

The Virginia Beach Response and Subsequent Actions

The Planning Department has estimated a long-term reduction of 7,000 dwelling units over by-right potential development prior to enactment of the resort area ordinances.



Rolling Back Encroachment: The Acquisition and Conformity Ordinances

Beginning in FY 2007 (July 1, 2006) and pursuant to the BRAC Report and enactments in the Code of Virginia¹⁴, the Commonwealth and the City of Virginia Beach each appropriated \$7.5 million to fund an Acquisition Plan. The Plan was designed to acquire incompatible or potentially incompatible property uses in order to roll back encroachment. It also serves to pay for the zoning measures enacted in December 2005 and February 2006, which deprived certain property owners of any reasonable use of their property and roll back of incompatible uses. The plan is completely voluntary and affects only willing sellers.

The Acquisition Plans

1. The APZ-1/Clear Zone Use and Acquisition Plan

In adopting the APZ-1 Ordinance, the City Council recognized that the effect of not allowing incompatible development on property in APZ-1 would, in many cases, result in an inverse condemnation of property. This effect would occur primarily on undeveloped lots with residential and apartment zoning, inasmuch as the only uses allowed on such lots under the City Zoning Ordinance were residential in nature, and therefore incompatible. As a result, in order to compensate the owners of affected property, the City Council adopted the APZ-1 Use and Acquisition Plan (the "APZ-1 Plan") on December 20, 2005.¹⁵

The Virginia Beach Response and Subsequent Actions

The APZ-1 Plan consists of the following elements:

- (a) Acquisition by the City of properties that are left without a reasonable use as a result of the restrictions imposed by the APZ-1 Ordinance (primarily undeveloped, residentially zoned property).¹⁶
- (b) Acquisition by the City, at the request of the owner, of property that is zoned for duplex use but currently developed with a single-family residence. Such property no longer may be redeveloped for duplex use under the APZ-1 Ordinance. In appropriate circumstances, properties that the City acquires will be converted to a conforming use.
- (c) Acquisition by the City, at the request of the owner, of property that is zoned for duplex use and already developed with a duplex.¹⁷
- (d) Acquisition by the City, at the request of the owner, of vested developments that had not yet been developed with new structures.¹⁸
- (e) Acquisition by the City on a case-by-case voluntary basis, of non-residential property that is currently developed with a use that is non-conforming under the APZ-1 Ordinance. Once it has acquired such property, the City would convert it to a conforming use.

2. The Interfacility Traffic Area Property Acquisition Plan

The BRAC Report also required that the City "[e]stablish programs for purchase of development rights of the inter-facility traffic area between NAS Oceana and NALF Fentress."¹⁹ As a result, the City enacted the Interfacility Traffic Area Property Acquisition Plan ("ITA Acquisition Plan").

This plan identifies options for purchasing properties in the ITA, defined as the portion of the Transition Area west of West Neck Creek located within Noise Zone 65 dB DNL or greater. Such options include:

- Acquiring fee simple title on a voluntary basis;
- Acquiring fee simple title by eminent domain where land in the ITA is needed as wetlands mitigation sites for the Southeastern Parkway project.;
- Acquiring development rights on a voluntary basis; and
- Exchanging or trading existing public land for desired property.

The plan identifies acquisition of fee simple title in Noise Zones 70 dB DNL or greater on a voluntary basis as the City's preferred option. The City has appropriated \$3.7 million to fund the ITA Acquisition Plan.

The Virginia Beach Response and Subsequent Actions

The Conformity Use Plan The Oceana Land Use Conformity Program

In adopting the December 20, 2005 ordinances comprising the City's initial response to the BRAC Commission's decision, the City Council also directed the City Manager to bring forward additional innovative means of rolling back incompatible development by replacing nonconforming uses with conforming uses in APZ-1. That directive was accomplished on March 28, 2006, when the City Council adopted several ordinances, collectively known as the Oceana Land Use Conformity Program, intended to accomplish, by *voluntary* means, the conversion of nonconforming uses to conforming uses in APZ-1, as well as the relocation of nonconforming uses out of APZ-1, while avoiding adverse effects on established residential neighborhoods in APZ-1.

A description of these ordinances follows.

1. APZ-1 Zoning Incentives

The ordinance provided that, if certain design criteria are met by a proposed use in APZ-1, a new compatible use may be located in APZ-1 without a conditional use permit even if the use would otherwise require a use under applicable provisions of the City Zoning Ordinance. In order to qualify for such treatment, the proposed use must conform to certain design criteria intended to ensure that its presence would not adversely affect residential neighborhoods or other property in the area. By avoiding the necessity of obtaining a conditional use permit from the City Council, a proposed project can receive all necessary City approvals in a significantly shorter period of time than if a use permit is required.

2. APZ-1 Technology/Business Opportunity Zone.

The ordinance created a "technology/business opportunity zone" coextensive with APZ-1 that provides a 90% rebate of the Business License tax for a period of 15 years for any new compatible use in APZ-1, and reimbursement of fees for building permits, site plan applications, and water and sewer connections. In order to qualify for the rebates, a proposed conforming business must be located in APZ-1 and conform to the design criteria discussed above.



The Virginia Beach Response and Subsequent Actions

3. APZ-1 Property Tax Exemption District

The ordinance provides a 15-year partial real estate tax abatement for the rehabilitation, renovation or replacement of commercial or industrial improvements resulting in the conversion of a non-conforming use to a conforming use in APZ-1. The monetary amount of the difference in the value of the building before and after renovation is not subject to real estate taxes.

As with the prior ordinance, reimbursement of fees for building permits, site plan applications, and water and sewer connections is provided, and the same design criteria must be met.

4. Economic Development Investment Program (EDIP) Incentives

In addition to the other incentive-based ordinances, the City Council also expanded the definition of “Economic Redevelopment Areas” to include properties located in the APZ-1 and Clear Zones, thereby allowing qualifying properties in those areas to be eligible for awards of funds under the City's Economic Development Investment Program. In order to qualify, the Oceana Land Use Conformity Committee must determine that a development or redevelopment will further the goals of the Oceana Land Use Conformity Program, including bringing new conforming uses into APZ-1, converting nonconforming uses to conforming uses, retaining conforming uses in APZ-1 and relocating nonconforming uses in APZ-1 and Clear Zones to other areas of the City.



The Commonwealth of Virginia and the Cities of Virginia Beach and Chesapeake have enacted legislation and local ordinances, and have taken various other actions, that fully satisfy both the letter and the purpose of each of the six requirements in the BRAC Report.

5. Comprehensive Plan Amendments

The City Council also amended the Comprehensive Plan to incorporate certain guiding principles for development in APZ-1. Those principles may be summarized as follows:

- (a) The City will encourage the replacement of nonconforming uses that are in APZ-1 with those that are conforming. Among the techniques to be used are retention of conforming uses where they already exist, recruitment of conforming uses from outside the APZ-1 area, providing incentives to the private sector to replace nonconforming with conforming uses, and location of appropriate conforming public uses within the area;

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- (b) The City's involvement will be only with willing property owners;
- (c) Unsuitable uses will not be allowed to intrude into areas where people live and work to the detriment of the quality of life in those areas; and
- (d) The replacement of nonconforming uses by conforming uses will be achieved in such manner as to protect and enhance the health, safety, welfare and quality of life of persons who work or reside in APZ-1 and not adversely affect established residential neighborhoods.

6. Oceana Land Use Conformity Committee

The City Council established the Oceana Land Use Conformity Committee and charged it with the duty to coordinate the various aspects of the Program and to make recommendations to the City Council, Development Authority and Planning Commission on matters relating to the Program. The Commanding Officer of N.A.S. Oceana sits as a non-voting member of the Committee to provide the Navy's perspective on the Committee's actions.



CONCLUSION

Since the date on which the BRAC Commission issued its decision, the State and City have made extraordinary efforts to address the problem of encroachment around NAS Oceana in a manner that has effectively halted incompatible development in AICUZ-affected areas, begun to reduce the number of incompatible uses in such areas, and treated affected property owners fairly by providing compensation to them not only where it is legally required, but also in circumstances in which compensation is not legally mandated.

The initial response of the City focused on ensuring that further encroachment by incompatible uses in Accident Potential Zone 1 was stopped, to the extent possible under Virginia law, and severely restricted in other portions of the AICUZ footprint including the Interfacility Traffic Area. Those efforts were complemented by the implementation of the APZ-1/Clear Zone and Acquisition Plan and Interfacility Traffic Area Property Acquisition Plan, both of which provided a means by which affected property owners could be fairly compensated for the loss of their development rights. While those efforts are ongoing, recent efforts have concentrated on the use of zoning, tax and financial incentives to induce owners of incompatible uses in APZ-1 to relocate those uses to areas in which such uses are not incompatible with flight operations out of NAS Oceana. The Oceana Land Use Conformity Committee has been established and is the process of implementing the incentive programs and overseeing a significant revision of the Comprehensive Plan addressing future land use in APZ-1.

The City's response to the BRAC Commission's decision has been both comprehensive and effective, and could well serve as a model for other localities grappling with the problem of encroachment upon military bases. We are proud of our partnership with the Navy and look forward to many more years of hosting the East Coast Master Jet Base in Virginia Beach.



END NOTES

¹ FIGURE 1

- a. Figures are for general planning purposes only. This information should not be solely relied upon for the final determination of land use compatibility. Properties with buildings located wholly or partially within APZ-1 and Clear Zones have been evaluated for compatibility determinations. Properties where APZ-1 and Clear Zones fall only within the required minimum setback areas have not been included in this analysis. Non-residential parcels cited in this inventory are assumed to have the appropriate legal business licenses to conduct business in this area. This inventory does not address matters of compatibility as they may apply within APZ-2 or AICUZ-related noise zones. The zoning information provided is intended for study purposes only and should not be considered as a certified version of the Official Zoning Map. Parcels with more than one zoning classification are identified with a single zoning classification for the purposes of this study.
- b. Figures are estimated to be within a 5% +/- error rate. Figures are estimated with City of Virginia Beach stored and gathered data.
- c. Figures include existing incompatible units, existing compatible units that could have converted to an incompatible use absent the APZ-1/CZ Ordinance, units that are vested for incompatible residential development, residential dwelling units that could have been built on developed residential lots absent APZ-1/CZ Ordinance, and residential and non-residential units estimated to be prevented on undeveloped land. This information should not be solely relied upon for final determination of properties with additional development potential.
- d. Figures are estimated from general lot area requirements per zoning category for individual properties determined to be undeveloped with residential zoning.
- e. Figures are estimated from general lot area requirements per zoning category for individual properties determined to have additional residential development potential.
- f. The number of non-residential units prevented has been estimated based upon historic trends, applying a factor of 0.7 business units/acre, by examining existing business units per acre in existing developed non-residential land within APZ-1 and the Clear Zones.
- g. Figures are estimated from existing APZ-1/Clear Zone inventory, data as of June 25, 2007. Compatible business units may co-exist on parcels with incompatible business units.
- h. Figures are shown as of June 30, 2007 and include incompatible units reduced by the City of Virginia Beach as part of the APZ-1/Clear Zone Use and Acquisition Program, either by (1) agreements received and pending closing or by (2) actual closing. Figures for residential dwelling units reduced are comprised of vested properties purchased within APZ-1/CZ. Figures do not include units purchased as part of the APZ-1/CZ Use and Acquisition Program already calculated under "new incompatible units prevented by ordinance."

² See Map in Appendix III, reflecting APZ-1 and the Clear Zone.

³ The number of "Dwelling Units Acquired" reflects the total units acquired through the purchase. For instance, a vested development with seven townhomes would be counted as seven dwelling units. A duplex would count as two units. A single-family home on a duplex lot would be considered as two units, because the City is acquiring the existing dwelling unit, as well as the potential for a second unit to be built.

⁴ The number of "Dwelling Units Reduced" reflects the total units that are in APZ-1 and/or the Clear Zone, which have been eliminated by the Acquisition Plan. For example, a vested development was acquired that was planned for nine homes, but only four were inside the APZ-1 boundary. Thus, nine units were acquired, but the number of APZ-1/Clear Zone dwelling units reduced is four. Another example is a single-family home on a duplex lot. If the single-family home is allowed to remain, then the property counts as two units acquired, but only one unit reduced (because the single-family home is permitted with a deed restriction for only single-family use in perpetuity). If the single-family home is removed, then the property counts as two units acquired and two units reduced.

⁵ As discussed in the preceding endnote, this number is less than the number of units acquired, because a lesser amount was actually reduced from the APZ-1. In one case, a portion of the development was outside of the APZ-1 boundary. In other cases, a single-family home is permitted to remain on the property.

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- ⁶ Two verbal agreements could not be processed prior to June 30, 2007. One property had title issues and needed a deed of correction to be recorded. The second property was an office building, which was found to have structural issues. Due diligence required the City to perform a thorough evaluation before processing any agreement. Closings are now pending the processing of documents.
- ⁷ Expenses for Fiscal year 2007 (titles, surveys, appraisals) amounted to an additional \$101,928. The total for acquisitions, as well as expenses, amounted to \$16,670,033.
- ⁸ For this property, the parties reached an agreement; however the property had a title problem in that the legal description did not match the survey and boundary. These issues were resolved shortly after the end of the fiscal year and the property was acquired by deed on August 29, 2007.
- ⁹ An additional \$44,267 was expended in the acquisition process for titles, surveys, and appraisals. The total funds expended for ITA acquisitions, including expenses, were \$3,474,366.
- ¹⁰ See Appendix I, listing the BRAC Report in its entirety.
- ¹¹ The sixth condition was met by the General Assembly's enactment of a statute establishing the Oceana-Fentress Military Advisory Council and did not require any action by the City. See Appendix II.
- ¹² The Interfacility Traffic Area is the area beneath the flight path between NAS Oceana and NALF Fentress. As such, it is an area in which the development of new incompatible uses is of special concern to the Navy.
- ¹³ Discretionary development is defined in the City's AICUZ Overlay Ordinance, and includes development that requires City Council approval in the form of a rezoning or conditional use permit or, under certain circumstances, a street closure or authorization of the enlargement of a nonconforming use.
- ¹⁴ See Appendix II - Virginia Code § 2.2-2666.3 and Chapters 266 and 328 of the 2006 Acts of the Assembly
- ¹⁵ On February 14, 2006, the provisions of the Plan were extended to Clear Zones.
- ¹⁶ In support of this element of the plan, the General Assembly enacted legislation authorizing the City to initiate condemnation proceedings to take certain undeveloped residential property within APZ-1 where such proceedings are requested by the property owner as means of establishing the level of compensation to be paid, or clearing title issues.
- ¹⁷ The APZ-1 Acquisition Plan was amended January 23, 2007, in order to allow the City to acquire developed duplexes and accomplish further rollback of residential density.
- ¹⁸ The APZ-1 Acquisition Plan was amended on January 23, 2007, in order to allow the City to acquire vested developments. These are properties that had a vested right under the law due to the approval of development plans and significant expenditures toward development prior to December 20, 2005.
- ¹⁹ In addition, the BRAC Report also required that the City codify the recommendations of the JLUS Study, one of which was that the City "pursue the purchase of impacted properties in the >70 dB DNL area of the Transition Area for open space."