

Appendix I: Summary of Material Provisions of Grand Forks AFB Master EUL

- Term - 50 years with one 25-year renewal option
 - Rent - lump sum payment paid upon possession, subject to in-kind consideration agreed to in the interim. The site requires compliance with the National Environmental Policy Act (NEPA), which might require remediation. NEPA satisfaction is a Navy requirement and possession is delayed until complete.
 - Permitted in-kind consideration:
 - Repair or alteration to existing facilities or improvements (including environmental remediation)
 - New facilities or improvements
 - Utility services
 - Maintenance
 - Other services (approved by Assistant Secretary of the Navy for Energy, Installations and Environment)
- Services incidental to the tenant's use are excluded from in-kind consideration.
- If the tenant elects in-kind consideration, then
 - The Navy shall provide the tenant a proposed list of in-kind projects.
 - Tenant shall notify the Navy which, if any, of the proposed in-kind projects it selects, and the estimated cost (detailed).
 - The Navy shall select any projects it desires. The local Real Estate Contracting Officer (RECO) then manages a detailed process for a formal detailed bid for the project and when that bid is accepted, an amendment to the EUL is executed and a rent credit provided for the cost of the selected projects.
 - The project is completed, subject to audit and a final inspection. A final approval is provided by the RECO.
 - The tenant may use 3rd party contractors to provide the in-kind services, must provide payment/performance bonds, must maintain adequate records suitable for auditing, permit RECO oversight (for Navy purposes), and obtain warranties including the Navy as additional beneficiary.
 - Upon early termination, the tenant owes rent for due in-kind services not yet provided.
 - Other significant provisions:
 - Notice and opportunity to cure any defaults.
 - Subleases are permitted, subject to Navy approval, not to be unreasonably withheld, conditioned or delayed, and to be provided within 45 days of request. Approval is reasonable if for national security purposes.
 - First right to buy if the lease is terminated to allow the premises to be sold.
 - Navy approval of improvements to the premises, not to be unreasonably withheld, conditioned or delayed, and to be deemed provided if not response within 60 days of request.
 - Extensive disclaimers of warranties and representations of any kind, including environmental.

Appendix II: Summary of Land Use Constraints at Oceana

The use of land around Oceana is subject to both public and private restrictions, which eliminate the “highest and best uses” as that term is used in the real estate industry. The remaining land uses are not in demand. If a broader array of land uses were permitted, the land around NAS Oceana would be in greater demand.

PUBLIC REGULATIONS

Local:

City land use regulations are designed to protect NAS Oceana from further encroachment of incompatible uses. These regulations are contained in the Zoning Code of the City of Virginia Beach, Virginia, which has land use jurisdiction over all land around NAS Oceana. These regulations were substantially modified in 2005-6, as an accommodation to NAS Oceana and the Navy. The origin of these regulations and their intent is described in the follow excerpt from the City Zoning Ordinance:

“The city council hereby finds that:

- (a) Naval Air Station (NAS) Oceana was first established as an auxiliary airfield in 1943 and was designated as a major Navy jet air base in the 1950s. It is now one of the largest Navy air bases in the country and is the Master Jet Base for the Navy's Atlantic Fleet. NAS Oceana is a vital component in the architecture of the Defense Department's joint service method of operational planning and execution and in the newly-emerging inter-agency approach to meeting homeland defense requirements;
- (b) NAS Oceana is the single largest employer in the City of Virginia Beach. In 2003, it had a gross annual payroll of over seven hundred fifty million dollars (\$750,000,000.00) and spent another four hundred million dollars (\$400,000,000.00) for goods and services. In that year, over twelve thousand (12,000) personnel, comprised of nearly nine thousand eight hundred (9,800) military and over two thousand five hundred (2,500) civilian employees, were employed there. Most of those employees live within the

community, infusing additional benefits into the local economy, primarily through spending and spousal employment salaries. When considering the personal impact of the military in the community, the economic benefit exceeds one billion dollars (\$1,000,000,000.00) annually;

- (c) There are more than thirty thousand (30,000) acres of land in areas within the 70-75 dB DNL or >75 dB DNL Noise Zones and approximately 16,500 acres of land within the 65-70 dB DNL Noise Zone. Approximately four thousand, three hundred (4,300) acres of this land is encumbered by easements or restrictive covenants that limit the uses of the land to those that are not incompatible with flight operations arising out of NAS Oceana;
- (d) Since the installation's inception, development of a type deemed incompatible under the Navy's AICUZ Program has occurred, such that the Navy has voluntarily modified flight arrival and departure procedures, thereby resulting in flight procedures and training that do not replicate actual aircraft carrier operating procedures.
- (e) In August 2005, the Base Realignment and Closure (BRAC) Commission added to the list of installations to be closed or realigned the recommendation to realign NAS Oceana by relocating the Atlantic Fleet's East Coast Master Jet Base to Cecil Field in Jacksonville, Florida if, among other things, the cities of Virginia Beach and Chesapeake fail to enact and enforce legislation to prevent further encroachment of NAS Oceana by the end of March 2006 by adopting zoning ordinances that require the governing bodies to follow Air Installations Compatibility Use Zone (AICUZ) guidelines in deciding discretionary development applications for property in noise level 70 dB day night average noise level (DNL) or greater;
- (f) The closure or realignment of NAS Oceana would have serious adverse economic consequences to the city and the region; and

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(g) In 2004 and 2005, the City of Virginia Beach, along with the cities of Norfolk and Chesapeake, joined with the Navy and the Hampton Roads Planning District Commission to craft a regional joint land use study (JLUS). Among the recommendations of the JLUS was that the city adopt an ordinance applicable in all noise zones greater than 65 dB DNL to help prevent encroachment at NAS Oceana. The JLUS was accepted by resolution of the city council in May of 2005 and the city council directed that appropriate ordinances implementing the recommendations of the JLUS be brought forward for its consideration.”

The regulations create two types of land use zones (with sub-zones), which are depicted on land use maps. The Accident Protection Zones (APZ) are just what it seems, an area when the potential for aircraft crashes is elevated, therefore congregation of people should be discouraged. Clear Zones are areas at the end of runways or near runways where no new building is permitted, and the only permitted use is agricultural (no livestock). The APZ is divided into APZ-1 which has greater restriction and APZ-2 with less restriction. APZ-2 is a relatively small area; most of the APZ is in APZ-1. There are 5 APZ areas and each has its own level of regulation, dependent on the applicable assessed risk. A list of permitted uses in APZ-1 is available at <https://www.vbgov.com/government/departments/planning/areaplans/Documents/Oceana/APZ1-CompUses-NAICS-Final.pdf>.

The permitted uses which have current market demand in the area are few and exclude all residential uses, all hospitality uses, hospitals, assembly uses, most retail uses and high employee count manufacturing uses.

The Department of Defense implemented the Air Installations Compatible Use Zones (AICUZ) Program in response to the Noise Control Act of 1972 in order to protect the public from noise and hazards around air installations, and to insulate those important facilities from incompatible encroaching development. The goal is to provide guidelines (not federal regulation) which local governments may use to prevent noise sensitive uses (particularly, residential, hospitality and assembly areas), or required special noise attenuation

building methods in high noise areas. AICUZ maps provide noise information helpful to land use regulation decisions. The zones are separated by decibel levels, such as less than 65db, 65-75db, 75-80db, 80-85db and 85+db.

A Hampton Roads Joint Land Use Study (JLUS) was issued by a joint committee of the Hampton Road Planning District Commission and the cities of Virginia Beach, Chesapeake and Norfolk. A brochure issued by this group provides excellent information of land use issues and contacts, which includes a detailed map showing noise zones and APZs, and is available at <https://www.vbgov.com/government/departments/planning/areaplans/Documents/Oceana/JLUSAICUZPlanningMap.pdf>.

The City established and maintains the Oceana Land Use Conformity Committee (OLUCC) to make recommendation to the City Council and Economic Development Authority and land use regulations, generally, as well as specific zoning requests.

PRIVATE REGULATIONS

During the 1970-80's, the federal government bought private restrictive easements from area land owners which limit the type of permitted uses on that land. Restrictive easements are private contractual agreements in which one land owner agrees, usually for compensation, to restrict future uses (otherwise legally permitted) for the benefit of another area land owner. The agreement is documented in a written agreement signed by the parties and recorded in the public records. Under law, any subsequent buyer of the restricted land is on constructive (legally implied) notice. In fact, when a buyer purchases the restricted land, the title commitment report issued by the title insurance company for the purchase transaction will cite to the restrictive easement. Most current title commitments have electronic links to all recorded documents referenced in the title commitments, so a buyer could easily review the restrictive easements. However, some buyers of restricted land are reported to have not checked the title to their land and were ignorant of these restrictive easements.

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Reportedly, the Navy spent almost \$58,000,000 purchasing these development rights, primarily from area farmers. They are reported to cover over 12,000 square miles in area. Within this area, residential development, plus business development of the types which attract groups of people (such as retail), are prohibited. The private restrictive easements are legally independent of the City zoning and would restrict the affected land even if City zoning did not exist. The Navy has periodically enforced these rights and required land owners to cease non-conforming uses.

These restrictions are perpetual.

Appendix III: Acknowledgements

The CRE® Consulting Corps team was privileged to talk to a wide variety of stakeholders. Some of those people are listed below, and we thank them for their time.

NAS OCEANA PERSONNEL

RADM Charles Rock, CAPT John Hewitt, CAPT Robert Holmes, CMDR Lakeeva Gunderson, CIV John Lauterbach, CIV Paul Moomaw, CIV Rich Riker, LT Burrell, CIV Bobby Worley, LTCD David Sare, CIV Brian Payne, CIV Michael Wright, CIV Terra Fisher, CIV Blake Waller, CIV Bobby Whirley, CIV Brent Brown, CIV Mark Outman, CIV Ken Snyder, CIV Andrew Porter, CIV Ed Garner, CIV Brent Brow, CIV Bob Crane, CIV Noel Manalo, CIV Hector Gortaire, CIV David Yaw, CIV Scott George, CIV Jamee Martocci, CIV Elizabeth Dietzmann, CIV Debbie Vanbuskirk, CIV Alex Plascencia, CIV Dean Williams, CIV Sarah Ringo, CIV Kenny Steen, CIV Norm Aurland, CIV Rick Butler

CITY OF VIRGINIA BEACH PARTICIPANTS

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STATE AND FEDERAL REPRESENTATIVE PARTICIPANTS

Charlotte Hurd - Military Liaison for U.S. Sen. Mark Warner, Janet Lomax and Diane Kaufman for U.S. Sen. Tim Kaine, State Senator Bill DeSteph, State Representative Barry Knight

REAL ESTATE AND END USER PARTICIPANTS

Ben Davenport - GTS, Craig Cope - Harvey Lindsay Commercial Real Estate, Justin Ballard – S.B. Ballard Construction, Worth Remick – Colliers International, Kathy Owens – Beach Development Group, Susan Gaston – Gaston Group, Gaylene Watson & Ricky Elder – Dominion Energy, Robert Kerr – Kerr Environmental Services, Greg Belliveau – Apple Moving & Storage, Jeff Hodgson and Skyler Thomas – Freedom Shooting Center, Nicole Campbell – Divaris Real

Estate, Steve Brennan – Boeing, Terrie Suit – Virginia REALTORS® Association, Rob Sult - Harvey Lindsay, David Phillips - Apple Moving & Storage

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Dr. Jeff Tanner – 757 Recovery, RADM(R) Craig Quigley - Hampton Roads Military and Federal Facilities Alliance, Tammie Mullins-Rice - Seatack Civic Organization, Bryan Stephens – Hampton Roads Chamber, Steve Romine – Hampton Roads Chamber, Chris Gullickson-Port of Virginia, Amy Parkhurst - Hampton Roads Alliance, Nicole Ryf - Hampton Roads Alliance, Jim Spore - Reinvent Hampton Roads, Tom Frantz - Williams Mullen

Thanks also to the following individuals who helped with this assignment.

Peter Eckert, CRE®, Monica Parikh, CRE®, Robert Thornton, CRE®, Adair Schwartz

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Appendix IV: Resources

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EFI Legislation: Public Law 106–246. July 13, 2000. 114 STAT. 511.

“Intergovernmental Support Agreement” is authorized by 10 USC 2679.

Enhanced Use Lease is authorized by 10 USC 2667

Public Law 106–246, 114 STAT. 520), titled “Brooks Air Force Base Development Demonstration Project” and described as the “Base Efficiency Project” in the authorization. (FY00 Defense Appropriations Bill, 24 Oct 99, Section 8158 gave Secretary of the Air Force authority to carry out a demonstration project at Brooks Air Force Base. It was authorized in the July 13, 2000 defense installation budget.)

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DOD INSTALLATION SERVICES: Use of Intergovernmental Support Agreements Has Had Benefits, but Additional Information Would Inform Expansion. GAO-19-4: Published: Oct 23, 2018. Publicly Released: Oct 23, 2018. <https://www.gao.gov/products/GAO-19-4>

DEFENSE INFRASTRUCTURE: The Enhanced Use Lease Program Requires Management Attention. GAO-11-574: Published: Jun 30, 2011. Publicly Released: Jun 30, 2011. <https://www.gao.gov/products/GAO-11-574>. (GAO review of EUL use by the Armed Forces)

Air Force Enhanced Use Lease (EUL) Playbook. Air Force Civil Engineer. Real Estate Development Division. Aug 29, 2016. <https://www.afcec.af.mil/Portals/17/documents/EUL/AF%20EUL%20Playbook%20-%2020160829.pdf?ver=2016-10-06-110839-517> (Air Force EUL Playbook with a detailed process chart and example EUL form)

NAVFAC Enhanced Use Leasing (EUL) Program https://www.navfac.navy.mil/products_and_services/am/products_and_services/enhanced_use.html (NAVFAC overview of EULs.)

Office of Economic Adjustment www.oea.org (OEA is a likely funding source)

Non-Binding Agreement between United States Air Force and City of San Antonio for a Proposed City-Base Project at Brooks Air Force Base, Texas (12/6/2000)

Grand Forks AFB (Drone Research Park) – Master EUL. (Lease No. USAF-AMC-JFSD-15-2-0173.) <https://www.airforcemag.com/article/grand-forks-experiment-aims-to-avoid-north-dakota-base-cuts/>

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Compatible Uses in APZ-1 <https://www.vbgov.com/government/departments/planning/areaplans/Documents/Oceana/APZ1-CompUses-NAICS-Final.pdf>.

JLUS/AICUZ Planning Map <https://www.vbgov.com/government/departments/planning/areaplans/Documents/Oceana/JLUSAICUZPlanningMap.pdf> (Map showing noise zones and APZs)

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City of Virginia Beach - Economic Development
Authority (EDA) [https://www.yesvirginiabeach.com/
about-us/Pages/development-authority.aspx](https://www.yesvirginiabeach.com/about-us/Pages/development-authority.aspx) (Appropriate
EUL Master parties)



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