

# STAFF EVALUATION

**Case No.:** Rezoning No. 21-00012  
Use Permit No. 22-00001

**Planning Commission Date:** March 17, 2022

**City Council Date:** August 10, 2022

**Prepared By:** Donald Whipple, Chief City Planner 728-5235  
**Reviewed By:** Mike Hayes, Planning and Zoning Division Manager 728-5244  
Bonnie Brown, Deputy City Attorney

## General Information

*Applicant* Westview Landing, LLC.

*Property Owners* Sarah Bonwell Hudgins Foundation, Inc.

*Site Location* 10 Doris Carlson Dr [LRSN: 5000040], 51 Battle Rd [LRSN: 5000041], 30 Singleton Dr [LRSN: 5000042, portion], and 60 Battle Rd B [LRSN: 5001596]

### Aerial Map:



*Requested Action* Rezone four parcels, totaling  $\pm 37.86$  acres, from One Family Residential (R-11) District to Multifamily Residential (MD-3) District with proffered conditions.

Use Permit to allow for the construction of multifamily dwellings within the Multifamily Residential (MD-3) District.

*Description of Proposal* **General**  
The development, as described in the application, includes two (2) four-story residential buildings and ten (10) three-story buildings.

Combined, the total proposed unit count is approximately 484 units. In addition, the development includes, but is not limited to, community amenities such as a clubhouse, swimming pool, fitness center, car washing stations, EV charging stations, dog park, and garages. Much of the development is proposed to occur where existing development is currently found on the site.

The development would be consistent with the development standards of the Multifamily Residential (MD-3) District found in the Zoning Ordinance.

### **Site Layout**

The primary entrance to the proposed development is from Thomas Nelson Drive. The layout of the site is a typical garden-style apartment development. There are twelve separate apartment buildings surrounded and separated by parking lots. A multi-functional community amenity building would be located near the entrance to the development. The two four story buildings would be located in the center of the development. These two buildings are oriented around a shared community green space. In the proposed layout, the ten three-story buildings are distributed throughout the site. In addition to the community amenities and residential buildings, the applicant is proposing 38 garages distributed between two (2) buildings and 94 storage units distributed between four (4) buildings.

A 20 foot wide landscape buffer is proposed along the western and southern boundaries of the site where buildings, parking, or other improvements are adjacent to low density residential zoned parcels. By comparison, if this property were to be redeveloped under the existing R-11 zoning, a typical rear yard abutting these existing single family homes would measure a minimum of 20 feet while averaging around 35 feet (based upon a typical 80' X 150' lot). This landscaping serves to buffer the proposed development from existing single family neighborhoods albeit at a minimum level. The garages, car wash stations and storage buildings would be limited to resident use.

### **Building Materials**

The exterior of the buildings is proposed to be constructed primarily of brick veneer with accents of fiber cement siding and prefabricated cellular PVC columns. In addition, roofing is proposed to be architectural grade shingles.

### **Unit Composition**

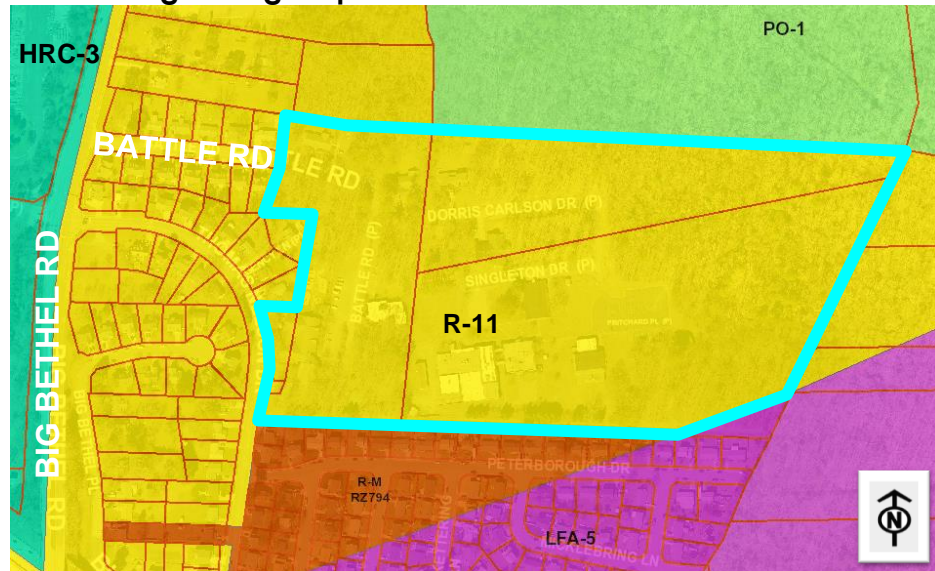
The two four-story residential buildings are closed-corridor buildings, where the entrances to the units are accessed by an internal hallway. The ten three-story buildings are open-corridor, where the entrances are accessed by a staircase and hallway open to the exterior of the building.

*Existing Land Use* Day Care 2/Group Home (Sarah Bonwell Hudgins Foundation)  
some of the buildings are vacant

*Zoning* One Family Residential (R-11) District  
Air Installation Compatible Use Zone Overlay (O-AICUZ): 65-70 dB  
DNL and Aircraft Accident Potential Zone II

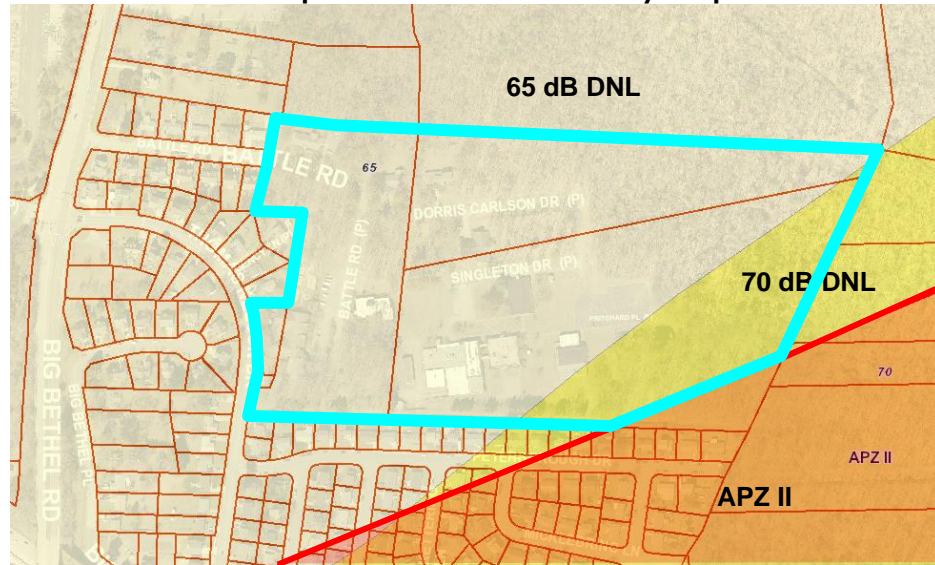
*Surrounding Land Use and Zoning* **North:** One Family Residential (R-11) District, Parks and Open Space General (PO-1) District; Vacant  
**South:** Multiple Residential (R-M) District, Langley Flight Approach (LFA-5) District; single-family residential  
**East:** One Family Residential (R-11) District, Langley Flight Approach (LFA-5) District; Vacant  
**West:** One Family Residential (R-11) District; single-family residential

**Surrounding Zoning Map:**



A majority of the subject property is zoned One Family Residential (R-11) District. This zoning district is consistent with other single family home neighborhoods in this area of the City along Big Bethel Road.

The southeastern corner of the subject property is zoned Langley Fight Approach Limited Residential (LFA-5) District, but is not part of the rezoning request. The purpose of the LFA districts is to provide reasonable regulation of land use for properties under the flight approach to JBLE- Langley runways. LFA-5 limits the intensity of development, specifically the concentration of people living in the area within the flight approach.

**Air Installation Compatible Use Zone Overlay Map:**

The subject property is also within the Air Installation Compatible Use Zone Overlay (O-AICUZ) District. The purpose of the AICUZ Overlay is to minimize any noise impacts from flight operations and limit the degree of property damage and loss of life that could result from potential aircraft accidents in proximity to the flight approaches into and out of JBLE-Langely runways. O-AICUZ also ensures that residential construction developed in proximity to these flight approach areas are constructed in manners that will mitigate the noise impacts through appropriate noise attenuation construction methods.

O-AICUZ is divided into two sections: airport noise zones and aircraft accident potential zones. The subject site is within the 70 and 65 dB DNL airport noise zones. This means that the proposed residential development is required to use noise attenuation construction methods. A portion of the subject site is within the aircraft accident potential zone II (APZ-II). The APZ zones are those areas in which there is the highest probability of flight accidents from take-off and landing operations. According to Sec. 9-6 Table 2 of the City of Hampton Zoning Ordinance, multiple-family dwellings are not a compatible land use within APZ-II.

*Public Policy*

The Hampton Community Plan (2006, as amended) is adopted as the guiding policy document for the City of Hampton with regards to future growth and development of the community. The Hampton Community Plan includes the following policy recommendations pertinent to this case:

**Land Use and Community Design Policies:**

**LU-CD Objective 3:** Promote compatibility and synergy among different land uses.



**LU-CD Policy 4:** Evaluate land use proposals from a regional, city-wide, and neighborhood perspective.

**LU-CD Policy 7:** Safeguard the integrity of existing residential neighborhoods.

**LU-CD Policy 11:** Promote high quality design and site planning that is compatible with surrounding development.

**LU-CD Policy 29:** Encourage high quality new developments that are compatible with surrounding neighborhoods.

***Resilience Policies:***

**LU-CD Policy 39:** Prioritize protecting natural systems and restore or recreate natural systems where they have been compromised.

***Environmental Stewardship Policies:***

**EN Policy 22:** Partner with Langley Air Force Base to promote compatible land uses within the flight approach zones and noise areas associated with the AICUZ program.

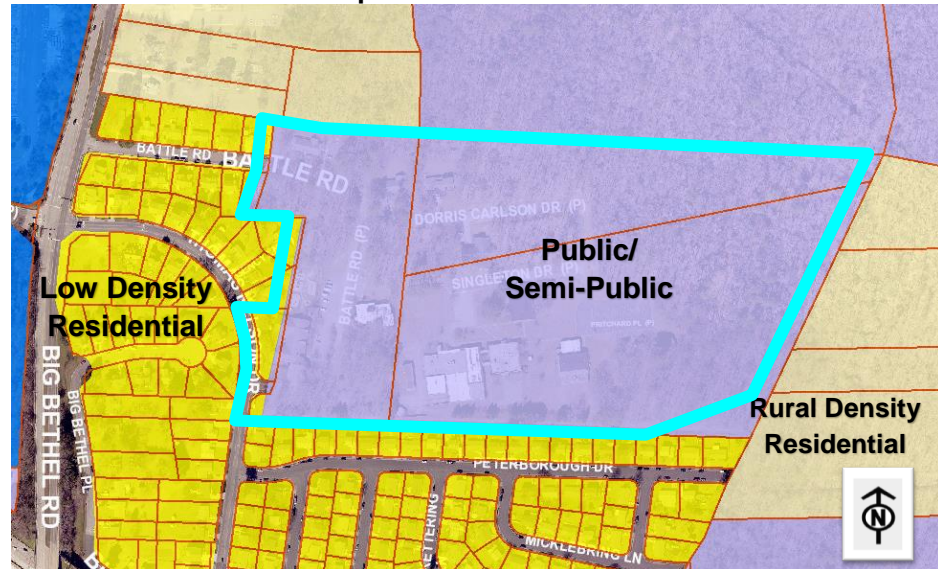
***Economic Development Policies:***

**ED Policy 15:** Maintain a close liaison with Fort Monroe, Langley Air Force Base, and the NASA Langley Research Center.

**ED Policy 16:** Monitor trends in defense and space contracting, spending, and organizational change.

***Future Land Use:***

The Hampton Community Plan (2006, as amended) designates this area as public/semi-public and low density residential. Low density residential development includes areas with a recommended density range from 3.5 to less than 9 units per acre. The public/semi-public category includes areas appropriate for government buildings, public or private institutional uses, and community facilities.

**Future Land Use Plan Map:***Zoning History*

RZ1005 (1992) established the LFA zoning districts

In November 2021, City Council amended the Zoning Ordinance to require a use permit for multifamily dwellings within the MD-3 Zoning District.

*Traffic Impacts*

Vehicular access to and from the site would be from Battle Road and Thomas Nelson Drive. Both Battle Road and Thomas Nelson Drive are identified as Local Streets in the Community Plan. Local Streets provide the lowest level of service and primarily function to connect properties to higher level streets, such as Collectors and Arterials. Traffic studies identify both projected traffic volumes as well as determining the impact of additional traffic volume on each road "Level of Service." Categories of "Level of Service" range from "A" which is best, highest level of service to "F" which is the worst and lowest level of service. For most urban areas, a Level of Service of C is acceptable, In more dense highly developed areas, Level of Service D may be the realistic standard. Level of Service F is unacceptable and indicates some action is necessary to insure safe and acceptable service levels are achieved.

The primary point of entry to the site would be from Thomas Nelson Drive. Thomas Nelson Drive functions as both a neighborhood street, providing access to and from the surrounding single family neighborhoods, and as a connection between Thomas Nelson Community College, Big Bethel Road, and Butler Farm Road. There is a four-way traffic light at the Thomas Nelson Drive and Big Bethel intersection.

The secondary point of entry to the site would be from Battle Road. Currently, Battle Road is a neighborhood street that serves 13 single family homes and is used as a secondary access point to the Sarah B. Hudgins Foundation. The intersection of Battle Road

and Big Bethel Road is limited to right-in and right-out turning movements. Left turns onto Big Bethel Road from Battle Road to travel southbound are not permitted due to the median. Similarly, left turns from southbound Big Bethel to Battle Road are also prevented by the presence of a physical median.

A Traffic Impact Analysis (TIA) was conducted by the applicant for this proposal. The TIA predicts that the proposed development will generate an additional 162 trips during the weekday AM peak hour, 203 trips during the PM peak hour, and 2,658 total daily trips. With the addition trips, the summary findings from the report are as follows:

- At the Thomas Nelson Drive/Battle Road south intersection, the level of service (LOS) for the westbound approach changes from A to B and the southbound left turn remains at LOS A.
- At the Big Bethel Road/Thomas Nelson Drive/West Park Lane intersection, there is an overall LOS C in the AM peak hours and overall LOS B in the PM peak hour.
- At the Big Bethel Road/Battle Road north intersection, the LOS remains unchanged.

Relative to the existing operation of the Sarah Bonwell Hudgins Center, the proposed Westview Landing development will have increased traffic with changes in delay measured from 0.1 to 3.3 seconds. Level of Service (LOS) results with the proposal are well within the capacity of the adjacent roadways and all queues for turn lanes are within storage.

The Public Works Department has reviewed the TIA and finds that the project's impact to surrounding streets and intersections is minimal and will require only minor timing adjustments at the Big Bethel Road/Thomas Nelson Drive/West Park Lane intersection to accommodate the additional traffic volumes.

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#### *Environmental*

The applicant has identified wetlands on the site as non-tidal. The applicant submitted a wetlands delineation to the Army Corps of Engineers and the City for review. Due to a backlog of cases, the Army Corps of Engineers has not yet confirmed jurisdiction of the wetlands on the subject site. Because a jurisdictional determination has not been completed, the applicant has proposed a proffered condition that allows the conceptual plan to be modified if the jurisdictional determination results in changes to the proposed density, layout and other features of the plan (Proffer Condition No.3).

Approximately  $\pm 14.49$  acres of the property has been identified as wetlands by the applicant. These wetlands are primarily concentrated in the eastern and northeastern portion of the site.

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The proposed development directly impacts  $\pm 0.78$  acres of the identified wetlands.

Staff has been working with an environmental consultant, Whitman, Requardt, and Associates (WRA), to determine whether or not the wetlands present on the subject site are connected via surface flow to wetlands that have been determined to be a Chesapeake Bay Preservation District feature to the north. Based on their evaluation, WRA has determined the following:

- o Confirmed the wetland delineation for the subject as provided by the applicant's environmental consultant
- o The identified wetlands are connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, as defined in the City's Zoning Ordinance
- o In that a surface flow connection exists, then the Chesapeake Bay Preservation Act (CBPA) is applicable to the subject site

With the CBPA applicable to the identified wetlands feature on the subject site, a 100 foot Resource Protection Area (RPA) buffer would be applied around the identified wetlands which would impact the size, design, and magnitude of the proposed development.

*Proffered  
Conditions*

There are thirteen (13) proffered conditions. Proposed proffered conditions include:

1. Limiting use to multifamily residences, and accessory uses;
2. Substantial conformance with the concept plan;
3. Modification of the concept plan to comply with Army Corps of Engineers findings;
4. Maximum unit count;
5. Substantial conformance with the building elevations;
6. High quality building materials (brick veneer, fiber cement siding, architectural grade shingles);
7. Inclusion of community amenities (clubhouse, pool, fitness center, etc.);
8. 20 foot wide landscape buffer along the western and southern property boundaries; and
9. Full cut-off exterior lighting fixtures.

Additional proffered conditions can be found in the application package.

*Community  
Outreach*

A community meeting was held March 9, 2022 at the Sandy Bottom Nature Park. In addition, staff has received approximately 12 written comments from neighboring residents voicing their concerns with the proposal.



*Analysis*

Rezoning Application No.21-00012 is a request to rezone four (4) parcels, totaling ±37.86 acres, from One Family Residential (R-11) District to Multifamily Residential (MD-3) District with thirteen (13) proffered conditions. Also associated with this request is Use Permit No. 22-00001. A use permit is required to allow the construction of multifamily dwellings within the MD-3 District. The proposed multifamily development would include approximately 484 units, with the final total depending upon the actual developable acreage.

The proposed land use, multifamily residential, is in direct conflict with the City's major policy documents for this area: the Hampton Community Plan (2006, as amended) and the Joint Land Use Study ("JLUS") Memorandum of Understanding with Langley Air Force Base. In addition to conflicting policy, staff has identified technical issues that present challenges in fully vetting the proposed development and potentially affect the ability to execute the proposed project if the applications are approved.

The future land use recommendation of the Hampton Community Plan (2006 as amended) designates the subject site as public/semi-public use and low density residential. At 20 units per acre, the proposed development is categorized as a high-density residential land use within the Hampton Community Plan (2006 as amended). The future land use recommendation of public/semi-public and low density residential represent viable redevelopment opportunities for this location that would be in compliance with adopted land use policy.

The Hampton Community Plan (2006 as amended) recognizes the need for providing a wide variety and mix of housing types within the city, but notes that low density, high-value housing is appropriate in environmentally sensitive areas ( pg. LU-15), such as the subject site. Additionally, the Hampton Community Plan (2006 as amended) encourages safeguarding existing, surrounding neighborhoods through compatible development (LU-CD Policy 7, 29). By-right, under the existing zoning, the subject site could be developed with approximately 90 single family homes that would be compatible in scale and size to the character of the neighborhood. The 484 units proposed represent a 537% increase in residential density when compared to what could be developed under the existing zoning.

The proposed high density, total unit count, and vehicular access of the development is not appropriate given the sites locational characteristics in requiring access through existing single family neighborhoods, known wetlands, and proximity to the JBLE-Langley flight approaches and noise zones. The findings of the traffic impact analysis show that there would be some degradation to the level of service but not to the extent that infrastructure improvements would be needed based on technical traffic flow numbers. However, within the context of this single-family neighborhood the impact is likely to change the character of the residential streets that would be used to access the proposed high-density development. While high density and low-density housing can readily exist harmoniously in an urban context, their proximity is not appropriate within the suburban nature of the northern Big Bethel corridor.

In addition to the land use recommendations from the Hampton Community Plan (2006 as amended), the proposal conflicts with generally accepted planning principles for locating higher density residential developments in a community like Hampton. Ideally, higher density housing is located in close proximity to commercial cores and higher

volume roads. It is further preferred that the higher density residential develop locate on the edges of single-family neighborhoods along busier street corridors. This juxtaposition of land uses allows the higher density residential development to serve as a buffer between busy roads and the lower density single-family residential neighborhoods and does not require the residents of the denser development to drive through the lower density development.

The Community Plan also encourages protecting natural systems and restoring natural systems where they have been compromised (LU-CD Policy 39). While the proposed development does not appear to encroach into the existing wetlands, the City's environmental consultant, WRA has determined these wetlands to be a Chesapeake Bay Preservation Act (CBPA) feature. As a regulated feature, a 100 foot Resource Protection Area (RPA) buffer must be applied at the edge of the feature. The current proposal does not reflect the wetlands being a Chesapeake Bay Preservation District feature and does not account for the required buffer.

While preparing the application, the applicant identified the wetlands on the site. Against staff's advice, the applicant requested moving forward to the March Planning Commission without knowing whether or not those wetlands are a Chesapeake Bay Preservation District (CBPD) feature.

Based on prior wetland investigations of properties located to the north, staff suspected the wetlands on the subject site were connected by surface flow to those neighboring wetlands which previously had been confirmed as a feature; and thus, the CBPD buffer properties would apply. City environmental consultant, Whitman, Requardt & Associates, LLP (WRA) conducted a field visit and analysis of these wetlands, determined that a substantial portion of the wetlands on the subject site are connected by surface flow to the wetlands on the adjacent properties, and with that information staff determined that the wetlands are a Chesapeake Bay Preservation Act (CBPA) feature. As a regulated wetland feature, the 100-foot Resource Protection Area (RPA) buffer extending from the edge of the wetlands is required which impacts the current design and size of development on this site. As such, the proposed concept plan could not be implemented, as currently proffered.

In order to respond to this new information, the applicant requested at the June 8, 2022 Council meeting that the application be deferred to the August 10, 2022 Council meeting. Since the June 8<sup>th</sup> meeting, the applicant's environmental consultant, Wetland Studies and Solutions, Inc. (WSSI) has disputed WRA's conclusion about the connection of the CBPD wetlands, stating that the surface flow connection was disrupted because a pipe did not exist that would connect the flow from the southern side to the northern side of Commander Shephard Boulevard. WRA has since confirmed that the subject pipe does exist and is further studying whether or not the flow is disrupted at this point. However, based on the applicable Virginia Department of Conservation and Recreation (DCR) guidance, the presence of a pipe/culvert under Commander Shepard Blvd. would be immaterial to the surface flow connection discussion. That guidance states that connected non-tidal wetlands shall continue to be an RPA feature even when the wetlands are interrupted by permitted man-made obstructions (such as roads, utility lines and crossings, etc.) occurring after October 1, 1989. In other words, the RPA should be determined based on the condition of the RPA feature that existed prior to the permitted construction of Commander Shepard Blvd., and the development activity cannot be used to remove or diminish the RPA. For that reason, the entire wetland should be treated

as an RPA feature and subject to the 100-foot RPA buffer as WRA concluded. This segment of Commander Shepard Blvd. was constructed/completed in 2012/2014, well after the 1989 date.

Should the applicant continue to contest the presence of the CBPD features or seek an encroachment into the buffer to maximize the development, the Board of Zoning Appeals (BZA) would be the governing body to consider either request. If the applicant chooses to appeal the Zoning Administrator's determination that the wetlands are a Chesapeake Bay Preservation District feature, the appeal should be brought forward and decided prior to amending the concept plan. As such, this appeal to the BZA would need to occur prior to amending the proffers at a future City Council meeting.

Alternatively, should the applicant either agree with the Zoning Administrator's determination or the BZA upholds the determination, and the applicant continues to propose development within the area restricted by the Chesapeake Bay Preservation District, the request for an exception to the district should come after the rezoning process. The proffer statement should include two conceptual plans with the applicant's preferred concept being contingent upon not only City Council's acceptance of it as a proffer but also the Board of Zoning Appeals approving the necessary exception to the Chesapeake Bay Preservation District. The second conceptual plan would depict the development while respecting the required Chesapeake Bay Preservation District buffer. The exception request needs to come after the rezoning decision because one of the criteria for review of the exception is whether the exception is necessary, and the exception cannot be necessary for a use and development type which is not permitted. In other words, someone cannot get an exception for something that is not otherwise permitted. If City Council denies the rezoning application, then there would be no need for the applicant to proceed with the exception request. Other criteria for an exception to be granted is that it is the minimum necessary for relief and that the conditions are not self-created.

In addition to the Community Plan, the Hampton-Langley Joint Land Use Study (JLUS), adopted in October 2010 by the Hampton City Council and updated and amended in 2018, formed the basis of the AICUZ overlay district to protect public health, safety and welfare and prevent encroachment that would degrade or jeopardize military operations. A Memorandum of Understanding between JBLE-Langley and the City of Hampton Virginia implemented the recommendations of the JLUS by providing a systematic procedure for responding to discretionary development applications for land lying within the City's AICUZ Overlay District. City of Hampton Resolution 18-0314 endorsed the Hampton-Langley Air Force Base JLUS Addendum: Resiliency and Adaptation, dated August 2018, as it protects the mission of JBLE-Langley, encourages compatible land use around the base, and helps to sustain economic growth within the City and region. In keeping with these agreements, staff reached out to JBLE-Langley and their staff provided the following comments on the development proposal:

- The JBLE-Langley North Flightline District Area Development Plan (ADP), currently under final draft review, includes the relocation of the 08 runway 1,100 LF to the

west onto lands primarily owned by the City and/or JBLE, increasing installation operational resiliency and negating future potential adverse impacts to JBLE's mission from sea level rise and other climate change effects. Permitting the proposed development of Westview Landings could preclude the future relocation of the existing runway northward and westward, impacting the JBLE-Langley flying mission. The proposed runway shift to the west would result in the JBLE-Langley Runway Clear Zone and APZs shifting further to the west and the current noise levels on and adjacent to the subject property would increase to the 70-75 Day Night Average Level (DNL) decibel (dB) range based on current noise levels. If the proposed development and proposed runway shift were both permitted, then the development site would then be just inside or on the outer boundary of APZ I, increasing the risk to potential occupants of the apartment community.

- The majority of the proposed development currently lies within the 65-70 dB DNL noise contour. Per the JBLE AICUZ Study, Table A-2: Recommended Land Use Compatibility for Noise Zones (Tab 2), there are no housing types recommended for Day-Night Average Sound Level (DNL) 65-69 and DNL 70-74 Noise Zones. If residential uses were approved, noise attenuation measures would have to be incorporated into the design and construction and would require further evaluation to determine compatibility."
- The proposed development would be mainly surrounded by single family and institutional districts which are separated from the existing commercial area at the Big Bethel/Hampton Roads Parkway intersection by Interstate 64. The rezoning of the site would be considered incompatible with the surrounding existing land uses. In addition, the proposed development site is immediately adjacent to the city's Langley Flight Approach District 5 (LFA-5). This district limits the concentration of people living in the area beneath the flight approach to prevent negative impacts on aircraft operations (City of Hampton Zoning Ordinance 2017). This is reflected in the City's land use regulations for LFA-5 as allowing a maximum of one residential structure per acre that may have two units if one is owner-occupied or a group home housing no more than eight residents. All other housing units including apartments, row housing, single units, semi-detached, and non-owner-occupied duplexes both side by side and one above the other are not recommended.

In summary, LAFB staff has stated the proposed development conflicts with the recommendations of JLUS and would signal a departure from established planning efforts aimed at improving the quality of life for those living near the base, as well as the safety for both Airmen and their neighbors outside the gate (full LAFB staff comments attached to this package). It would potentially harm the base's ability to adapt and respond to potential expanded missions as well as physical impacts to the installation from sea level rise and recurring flooding.

The applicant has proffered 13 conditions with the application. These proffers include limiting use to multifamily residences, and accessory uses, substantial conformance with the concept plan and building elevations, building materials, community amenities, landscape buffer along the western and southern boundaries, and site lighting. However, these proffers do not successfully address the City's fundamental land use policy conflicts presented by this application.

In summary, the proposed application is:

- Not consistent with the City's adopted land use policy as articulated in the Hampton Community Plan (2006 as amended);
- Not consistent with the adopted recommendations contained in the adopted Joint Land Use Study;
- An approximate 537% increase in density over what can be developed under the existing R-11 zoning which is inappropriate given the site location;
- The concept plan is not compliant with the CBPA regulations. Although the proposed development does not impact the identified wetlands feature, it does not reflect the required 100 foot Resource Protection Area (RPA) buffer, which must be applied to the wetlands feature. This buffer would necessitate significant changes to the proposed concept plan as proffered.

As mentioned, high density residential is permitted within a MD-3 District with an approved use permit. While staff is recommending denial of the proposed applications, should rezoning and use permit applications be approved, staff recommends five (5) conditions be attached to the use permit, addressing the proffers from RZ21-00012, issuance of permit, on-site management, and compliance with the Zoning Ordinance.

Staff recommends **DENIAL** of Rezoning Application No. 21-00012.

Staff recommends **DENIAL** of Use Permit Application No. 22-00001.