

**MEMORANDUM OF UNDERSTANDING
BETWEEN
JOINT BASE LANGLEY-EUSTIS (LANGLEY AIR FORCE BASE (AFB))
AND THE
CITY OF HAMPTON, VIRGINIA**

1. Purpose.

This Memorandum of Understanding (MOU), dated the // day of *May*, 2012 sets forth the process and principles by which the 633d Air Base Wing Commander, Langley AFB (the Air Force (AF)) and the City of Hampton (the City) will respond to discretionary development applications for land lying within the footprint of the City's Air Installations Compatible Use Zones (AICUZ) Overlay Ordinance. This MOU fulfills a recommendation of the Hampton-Langley Joint Land Use Study (JLUS), which was approved by the Hampton City Council in October of 2010.

Furthermore, this MOU seeks to implement the recommendations of the JLUS by stating, in detail, the respective responsibilities and expectations of the AF and City in the review of discretionary development applications for property within the footprint of the City's AICUZ Overlay Ordinance. Nothing within the MOU shall be construed as a limitation or waiver of the AF's rights and privileges as a landowner to comment upon any City action or decision that may impact the AF in any way.

2. Authority.

Under AF Instruction (AFI) 32-7063, Air Installation Compatible Use Zone Program, dated 13 September 2005, paragraph 1.3.11.2, and AF Handbook (AFH) 32-7084, AICUZ Program Manager's Guide, dated 1 March 1999, paragraph 2.6.2.1.3.1.

3. Background.

In October 2010, the Hampton City Council adopted the Hampton-Langley JLUS and directed the City staff to take appropriate measures to implement its recommendations. The JLUS, in which the Cities of Hampton, Newport News and Poquoson and the County of York participated with the technical assistance of the AF, recommended, among other things, that the City establish an AICUZ Overlay District based on the 2007 AICUZ map to protect public health, safety and welfare, and prevent encroachment that would degrade military operations. It also recommended that the City implement appropriate Comprehensive Plan and related zoning ordinance changes. The JLUS also recommended that the City and the AF prepare and adopt an MOU outlining a procedure for responding to proposed development projects.

4. Responsibilities.

a. The AF will:

(1) Evaluate proposals for development and redevelopment of land covered by the City AICUZ Overlay Ordinance according to the applicable compatible land use criteria, the current Hampton Community Plan and City Zoning Ordinance, except as otherwise stated herein;

(2) Evaluate incompatible development in a manner consistent with the AF's priorities and concerns, which were identified by the JLUS Military Influence Area;

(3) Submit an annual report to the Hampton City Council providing a summary of the status of Langley AFB, the air operations conducted there, AICUZ-related matters and other issues of significance to the AF and the City; and

(4) As permitted by the constraints of national security, force protection and operational requirements, keep the City apprised of developments and proposed changes to the AF AICUZ Program, research and studies related to aircraft and their operations at Langley AFB, modifications to rules governing sound mitigation and any significant change to Langley AFB's mission requirements.

b. The City will:

(1) Consistent with the installation commander's authority and responsibility under AFI 32-7063 and the intent of the JLUS, direct all inquiries and discussion concerning such matters to the Air Base Wing Commander or designee at Langley AFB. Should the City desire to communicate on these subjects with higher authority in the Departments of the AF or Defense, the matter will be addressed to the Air Base Wing Commander for first endorsement;

(2) Continue to implement and adhere to the recommendations of the JLUS;

(3) Apply the AICUZ Overlay Ordinance in a consistent manner, according to its terms;

(4) For land within the AICUZ accident potential and noise zones of 70 dB and higher, provide the applicant with a land use application package and reasonable use exception supplemental form, which shall be completed by the applicant and received by the City before the matter is placed on the Planning Commission agenda. Upon receipt of a completed land use application package, the City shall provide a copy to the AF;

(5) In determining whether there exists an alternative reasonable use of the subject property that is deemed "compatible" in the AICUZ Overlay Ordinance, consider the following factors:

- (a) The economic viability of alternative uses deemed "compatible" in the AICUZ Overlay Ordinance;
 - (b) The compatibility of land uses on adjacent and other properties in the vicinity of the subject property with alternative uses deemed "compatible" in the AICUZ Overlay Ordinance, AFI 32-7063 and AFH 32-7084;
 - (c) The treatment of other similarly situated properties, including the existence of conditions that may reasonably distinguish the proposed incompatible use;
 - (d) The extent to which alternative uses deemed "Compatible" in the AICUZ Overlay Ordinance and AFI conform to applicable recommendations of the Community Plan;
 - (e) The topography of and environmental conditions upon the property;
 - (f) The size of the property and the extent to which a portion of the property can reasonably be developed with a compatible use; and
 - (g) In cases when the proposed development lies within more than one noise contour, the extent to which proposed uses can be shifted to an area for which the use is deemed compatible.
- (6) The parties may also consider such other facts or circumstances, consistent with applicable law and good zoning practice, as may be necessary or advisable in order that a full and complete recommendation can be made to the Planning Commission and the City Council for authoritative action by those bodies.

5. Communication.

a. In order to ensure that full and adequate discussions between the AF and the City take place before discretionary zoning applications within the boundaries of either the City AICUZ Overlay Ordinance or the AF AICUZ Program are heard by the Planning Commission or City Council, the AF and the City will follow the procedures set forth in this Section. Neither party's policies nor discretion shall be superseded or limited by these procedures, which are set forth to ensure that there is a uniform process by which the parties can work toward a mutual understanding of their respective positions on discretionary development applications.

b. When the City receives a completed discretionary development application for a use in the AICUZ Overlay District, the City will provide the AF with copies of the application and all supporting material, including, without limitation, the completed land use application package. Staff representatives of the AF and the City will thereafter meet or correspond at least thirty (30) days before the meeting of the Hampton Planning Commission at which the application will first be considered. The application, including the reasonable use exception supplemental form, shall serve as the basis for discussion between the parties. The land use application package will be the principal document of reference in any written communication

sent from the AF to the City in which the AF's final evaluation of the development proposal is contained.

c. The primary purpose of these staff meetings shall be to determine whether the proposed development complies with the applicable provisions of the AICUZ Overlay Ordinance and to report thereon to the Planning Commission and City Council.

d. Issues and questions of "reasonable use" shall first be evaluated according to the requirements of Virginia and federal law necessary for the City to prevail in a hypothetical lawsuit arising from the development proposal. This standard shall be the principal method of analysis. However, in addition to the potential impact on Langley AFB, the issue of "reasonable use" may be further discussed in terms of other municipal planning and land use principles and the particular conditions and criteria unique to the proposal, even if such principals would tend toward a conclusion that an incompatible use should be recommended. Similarly, whether a proposed use is at the lowest reasonable density or intensity will be discussed and determined on a case-by-case basis.

e. After initial meetings, if either party feels that further meetings should be held with respect to the application, the parties' representatives, which may include the City Manager and Air Base Wing Commander, shall meet to address issues critical to either party and assure open communications.

f. The City's evaluation of discretionary development applications within the purview of this MOU shall contain the applicable language from the AICUZ Overlay Ordinance and, if applicable, the JLUS Study, and shall also set forth any AF comments or recommendations with respect to the application, based upon statements or communications from or authorized by the Air Base Wing Commander.

6. Amplifying Documents.

In order to further delineate specific responsibilities, amplifying documents may be entered into by the parties. No subsequent document shall be deemed to contravene this MOU, except as expressly stated therein, but any further understanding may provide such technical clarification as will ensure complete understanding of the parameters of this MOU.

7. Review & Termination.

This MOU shall be reviewed annually and amended, as the parties may by agreement deem appropriate, to include changes to AICUZ-related provisions of the Community Plan or City Zoning Ordinances or to AF directives. Either party may, at any time, terminate this MOU by notifying the other, in writing.

8. Effective Date.

This MOU shall become effective immediately upon the signature of all parties.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

UNITED STATES AIR FORCE

By: KDM Date: 30 Apr 12
KORVIN D. AUCH, Colonel, USAF
Commander, 633d Air Base Wing

CITY OF HAMPTON

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

By: Chadson Date: 5/9/12

By: Mary B. Bunting Date: 5/11/12
MARY BUNTING
City Manager, Hampton, Virginia