

City of Chesapeake Naval Auxiliary Landing Field Fentress Encroachment Protection Acquisition Program

I. Background

The Council of the City of Chesapeake (“City Council”) has historically recognized that certain land uses are not compatible with the military flight operations at Naval Auxiliary Landing Field (NALF) Fentress. In 1990, as the City of Chesapeake began to experience accelerated growth, the City Council adopted the Fentress Airfield Overlay District to discourage residential development in the most intense Air Installations Compatible Use Zones (AICUZ) noise contours. The goal of the AICUZ program and the Fentress Airfield Overlay is to protect the health, safety and welfare of those residents living near military airfields, while preserving the operational efficiency of military flight missions. In addition, special regulations within the Fentress Airfield Overlay District are designed to encourage uses that are compatible with the Navy operations at NALF Fentress, such as commercial and light industrial uses. Originally, the Fentress Airfield Overlay District included all properties within the City located within the AICUZ noise contours equal to or greater than 75 LdN. Over the years, as development activity continued, the City Council expanded the Fentress Airfield Overlay District to include all properties located wholly or partially within AICUZ noise contours equal to or greater than 65 dB DNL. In addition to regulations that encourage compatible uses, the District now requires that certain noise attenuation standards be met and that full disclosures of noise and other impacts be made on plats, leases and purchase contracts. The City Council also amended the Fentress Airfield Overlay District to incorporate several recommendations of the 2005 Joint Land Use Study (JLUS) and, in response to the 2005 Base Realignment and Closure (BRAC) Commission proceedings, the City Council incorporated the U.S. Navy’s land use compatibility tables into the Overlay District ordinance. The Fentress Airfield Overlay District ordinance may be found in Section 12-400 et seq. of the Chesapeake Zoning Ordinance. A map of the U.S. Navy AICUZ noise contours for NALF Fentress is attached hereto (the AICUZ noise contours are subject to change by the U.S. Navy at any time based on military necessity) and may be found on the City’s website at:

http://www.cityofchesapeake.net/Assets/documents/departments/planning/Maps/plan_dev/Fentress-AICUZ.pdf.

The City Council has continued to adopt and implement legislative policies to secure the military mission of NALF Fentress, as well as protect nearby residents from negative impacts incident to naval aviation operations at Fentress. In 2005, the City Council adopted the JLUS final report (“JLUS Report”). Next, in response to the 2005 BRAC Commission directive, the City of Chesapeake worked closely with the Commonwealth and the City of Virginia Beach to develop ordinances and programs to increase protection of Naval Air Station (NAS) Oceana and NALF Fentress from encroachment. The City Council adopted a comprehensive amendment of the Fentress Airfield Overlay District; implemented a program for land acquisition in the Interfacility Traffic Area (ITA); entered into an agreement with the U.S. Navy for the acquisition of property rights under the REPI Program; further refined the compatible land use tables; and in 2013 entered into a Memorandum of Understanding with the U.S. Navy to provide for joint review of discretionary land use applications in the AICUZ noise contours.

As a direct result of the BRAC Commission directives, including the requirement to “rollback” encroachment on NAS Oceana in the City of Virginia Beach, the Commonwealth of Virginia provided \$7.5 million annually matched by the City of Virginia Beach for a total \$15 million per year dedicated to property acquisitions from willing sellers. The program has been ongoing since its initiation and has resulted in the purchase of hundreds of acres of land. The 2014 Session of the General Assembly in its most recent budget proposal allocates a grant to the City of Chesapeake, to be matched by the City of Chesapeake for Fiscal Year 2015 (July 1, 2014 – June 30, 2015) for encroachment protection. Based on earlier versions of the state budget, the City of Chesapeake budgeted \$2.5M in its Fiscal Year 2015 budget for acquisitions under the program, however funds expended in excess of the grant would not be matched by the state under the current state budget that is scheduled for gubernatorial action at this time.

II. Purpose – Office of Veterans Affairs and Homeland Security Matching Grant

The City of Chesapeake has adopted this Acquisition Program in accordance with the recommendations set forth in the JLUS Report and the mandates set forth by Chapter 653 of the 2008 Virginia Acts of Assembly. The Program applies to all properties in the Interfacility Traffic Area (ITA), which for purposes of this Program includes property located partially or

wholly within the AICUZ Noise Contours of 65 LdN to over 75 LdN, the Clear Zone and Accident Potential Zones (APZs) 1 & 2 adjacent to NALF Fentress (collectively known as “the Area of Interest” as shown on the attached map entitled “NALF Fentress Encroachment Protection Acquisition Program”); additionally, properties that are contiguous to and under common ownership with properties in the Area of Interest are also eligible for acquisition under the program. The purpose of the Acquisition Program is to acquire property interests from willing sellers in order to prevent further development encroachment on NALF Fentress and to mitigate or eliminate current incompatible uses. Property interests may include fee simple title or perpetual conservation/restrictive use easements by the City.

III. Eligibility Criteria and Additional Evaluation Criteria

Eligibility for acquisition under this Program will be limited to properties subject to the following criteria:

- Properties must be located in the Area of Interest;
- A property located entirely outside the Area of Interest will be eligible for acquisition if (a) the property is a part of, or contiguous to, the property within the Area of Interest, (b) the property is under common ownership with a property or properties within the Area of Interest, and (c) acquisition of the property furthers the objectives of compatible land use under the Fentress Airfield Overlay District.
- A parcel or a combination of adjacent parcels must be 6 acres or more;
- Properties already encumbered by a perpetual conservation easement are not eligible unless offered for sale in fee simple;
- Properties on which the U.S. Navy has acquired restrictive use easements are not eligible unless offered for sale in fee simple or subject to more restrictive limits on development than those purchased by the Navy;
- All city taxes and fees shall be paid in full prior to application;
- Clear title to the property and acceptable environmental conditions exist or can be established to the City’s satisfaction;
- The property has been developed for an incompatible use (such properties will require fee simple acquisition or conservation easement with rights to terminate the incompatible use and demolish any buildings or structures supporting such use) or the property is subject to

potential development for an incompatible use. Incompatible uses shall be determined using the Tables 1 & 2 set out in Section 12-406 of the Chesapeake Zoning Ordinance; and

- Funding for the acquisition is available.

Additionally, the City will apply the following evaluation criteria in acquiring properties under the program:

- Properties located closer to the landing airfield will be given priority;
- Properties with higher density and residential populations will be given priority;
- Properties located within the suburban overlay established by the City's Comprehensive Plan will be given priority; and
- Properties offered for sale in fee simple at or below the proposed value determined by the City Assessor to become effective for taxation purposes on July 1, 2014 will be given priority.

Notwithstanding the foregoing, the City Council retains full discretion to acquire property interests from willing sellers as deemed necessary to further the goals and objectives of this Program. In recognition that funding is limited, applicants are encouraged to apply early and schedule pre-application meetings with Planning Department staff.

IV. Funding

In accordance with the 2014 – 2016 Budget proposed by the Virginia General Assembly, the Commonwealth will provide a grant to be matched by the City of Chesapeake to be used to prevent adverse impacts on military operations and employment levels caused by the potential and actual encroachment of incompatible land uses on NALF Fentress. Such funds shall be used to purchase from willing sellers fee simple or perpetual conservation/restrictive use easement interests in properties located within the Area of Interest. Additionally, such funds may be used to cover the City's costs to obtain appraisals, conduct title searches, obtain ALTA surveys and subdivision plats as appropriate, perform environmental studies, pay settlement and permitting costs, and pay costs associated with demolition, including without limitation, asbestos survey and removal costs.

V. Acquisition Requirements

The following criteria shall apply to all acquisitions under this Program:

1. The property must be located, in whole or in part, in the Area of Interest. However, a property located entirely outside the Area of Interest may be included in the acquisition program if the following criteria are met: (a) it is a part of, or contiguous to, the property within the Area of Interest, (b) under common ownership within the Area of Interest, and (c) furthers the objectives of compatible land use under the Fentress Airfield Overlay District.
2. Both developed and undeveloped property will be considered for acquisition; however in the case of property developed for incompatible land uses, the City will either acquire the property in fee simple or a conservation easement that includes the right to terminate the incompatible use and demolish any buildings or structures used in support of such incompatible use.
3. Acquisitions will be voluntary by the property owner and subject to i) available funding, ii) City Council approval, and iii) City Council appropriation of sufficient funding for the purchase and costs associated therewith.
4. Independent appraisals will be conducted as necessary to determine the market value of the property. The City will select a certified appraiser and bear the cost of its appraisal. In the event a property owner would like a second appraisal of the property to be considered, the owner's appraiser must be an MAI certified appraiser duly licensed to perform appraisals in the Commonwealth of Virginia. The owner will bear the responsibility and cost of obtaining the second appraisal. Any certified appraisal obtained by the owner will be considered in determining the final offer price on the property. If a contract to purchase the property is fully executed the cost of the City's appraisal will be included in the purchase price. Notwithstanding the foregoing, the City may exercise its discretion to negotiate a mutually-agreeable purchase price with an owner.
5. The City of Chesapeake will be the contract purchaser and owner of the property if purchased in fee simple. The Chesapeake City Attorney's Office, with assistance from the City Manager's Office and his designees, will be responsible for setting the contract

purchase price in accordance with the appraisal, obtaining bids for due diligence matters including title search, surveys, environmental studies, assessments, and demolition and facilitating the closing.

6. The City of Chesapeake will prepare the purchase agreement and conduct the closing, including deed preparation, affidavits, and Form 1099s; however, the City Attorney will not provide legal representation to the landowner or any other person at closing or otherwise. Nothing herein shall prevent the landowner from hiring an independent attorney to represent his or her interests at any time during the acquisition process.
7. The following due diligence and contract provisions will be followed:
 - a. If an IRC Section 1031 exchange is contemplated, the landowner's intention to effect such an exchange must be addressed in the sales agreement.
 - b. A Phase I ESA is required to be performed before closing. If a Phase II ESA is subsequently required, the owner may extend the due diligence period. If the results of the Phase II ESA require site characterization or a remediation plan pursuant to environmental laws or in the interest of public health and safety, the City reserves the right to renegotiate the purchase price or terminate the sales agreement. The cost of the Phase I ESA and, if required, the Phase II ESA, shall be paid by the City.
 - c. If property is residential and building(s) must be demolished under this Program as incompatible use, an asbestos survey may be required. The cost of the demolition and the asbestos survey will be borne by the City.
 - d. If the owner wants to remove fixtures or other improvements, the owner's right to do so must be addressed in the sales agreement.
 - e. No tenancies, other than tenancies for agricultural uses approved by the City Council, will be allowed on any property acquired by the City in fee simple. The owner will compensate any existing tenant and/or tenants of the property, if applicable, for damages the tenant or tenants may suffer and sustain by reason of the conveyance agreed to in the sales agreement and owner will hold harmless the City from any and all claims that may be made by said tenant or tenants by reason of such conveyance. The owner shall warrant that there will be no tenancies,

other than tenancies for agricultural uses approved by the City Council, on the property at that time of settlement.

- f. No long-term financing of the purchase price will occur.
- g. Splitting of proceeds contrary to deed ownership requires indemnification by all record owners.
- h. Property must be in clean condition free of trash and debris.
- i. The sales agreement is subject to approval by the City Council and appropriation of adequate funding for the purchase and the costs associated therewith. Settlement will occur 30 days after expiration of a due diligence period, resolution of environmental, survey and/or title issues, or as soon thereafter as may be reasonably practicable. Title searches may take up to 30 days. If clear title is not established, the City may terminate the sales agreement subject to the requirements in Article VI, Section 1 below.
- j. Settlement will be conducted by the City Attorney at the Office of the City Attorney, City Hall, Sixth Floor, 306 Cedar Road, Chesapeake, Virginia 23322 unless the parties mutually agree upon another location.

VI. Settlement Requirements.

1. The owner agrees to convey the property to the City at Settlement by a properly executed and delivered General Warranty Deed with English covenants of title, free of all mortgages, security interests, parties in possession, encumbrances, tenancies, and liens (for taxes or otherwise), but subject to all easements, restrictions, rights-of-way and encroachments of record, which do not affect the use of the property by the City or render the title unmarketable. If the property does not abut a public road, title to the property must include a recorded easement providing access thereto. If the title examination reveals a title defect of a character that can be remedied by legal action or otherwise within a reasonable period of time, the owner, at the owner's sole cost and expense, shall promptly take such action as is necessary to cure such defect. If the defect is not cured within 60 days after the owner received notice of defect, then either party may terminate the sales agreement at the expiration of such 60 day period.

2. The owner shall supply, at Settlement, all affidavits and any other documents required by the City's title insurance company for the issuance of policy of insurance, including, but not limited to, an affidavit in a form acceptable to the City, and signed by the owner, that no labor or materials have been furnished to the property within the statutory period for the filing of mechanics' or materialman's liens against the property. If labor or materials have been furnished during the statutory period, the owner shall deliver to the City Attorney, at Settlement, an affidavit signed by the owner and the person(s) furnishing the labor or materials that the costs thereof have been paid.
3. All rents, interest, taxes, utilities, and other appropriate items shall be prorated as of the date of Settlement. Assessments, general or special in nature, pending or confirmed, shall be paid or satisfied in full by the owner at Settlement.
4. The City shall bear the cost of performing any studies required by the City under due diligence, preparing the deed, obtaining a title report for the property, its own attorneys' fees and all other closing costs associated with Settlement including all recording costs, except for transfer taxes. Qualified Intermediary fees under IRC §1031 shall be paid from sales proceeds and reflected on the Settlement statement.
5. The owner shall pay grantor's tax, the recording fees for documents related to the resolution of title defects or issues, including, but not limited to, fees for obtaining certificates of satisfaction, if any. The owner shall pay for its own survey costs, attorney fees, and brokerage fees and costs outside of Settlement. The owner shall pay its prorated portion of real estate taxes, including rollback taxes, and stormwater utility fees.
6. In accordance with instructions by the Department of the Treasury, Internal Revenue Service for Form 1099-S, the owner is required by law to provide the City Attorney, 306 Cedar Road, Chesapeake, Virginia 23322 with his/her correct taxpayer identification number.
7. The owner will also provide the City with other documents necessary for the City to comply with the Commonwealth of Virginia's approval and reporting requirements.

VII. No Rights Created.

This policy shall not confer property rights on any property owner, lessee or any third party. All offers to purchase a property in fee simple or to purchase a perpetual conservation/restrictive

use easement shall be revocable by either party until i) adequate funding has been secured and appropriated; ii) the purchase agreement is approved by the City Council and, if necessary, the by the Commonwealth of Virginia; and iii) the purchase agreement is fully executed by the City and landowner.