

**KUTAK ROCK LLP**

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RICHMOND  
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GEORGE R. SCHLOSSBERG  
[george.schlossberg@kutakrock.com](mailto:george.schlossberg@kutakrock.com)  
(202) 828-2418

**MEMORANDUM**

TO: BILL FETZER, SENIOR ANALYST, NAVY-MARINE CORPS TEAM

FROM: GEORGE R. SCHLOSSBERG *G. Schlossberg / 19 July 2005*

DATE: JULY 14, 2005

RE: RESPONSE TO NAS OCEANA QUESTIONS

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Thank you for taking the opportunity to meet with representatives from the NAS Oceana community today. Following our discussions, you asked several questions to which we promised to respond; in addition, we offered to send you electronic copies of our package. Attached is the following responsive information:

1. Fact Sheet and Inter-Office Memorandum describing City's Review and Approval of Near-Post Project.
2. Four Pane AICUZ Map.
3. Air Easements Map and the Map of Easement Purchases by Navy around NAS Oceana.
4. 1999 AICUZ Map.
5. Combination Map Showing Development Constraints Around NAS Oceana.

If you have any questions, please call me directly at 202-828-2418 or by e-mail at [george.schlossberg@kutakrock.com](mailto:george.schlossberg@kutakrock.com).

G.R.S.

sem

Enclosures: as stated

**KUTAK ROCK LLP**

RESPONSE TO NAS OCEANA QUESTIONS

July 14, 2005

Page 2

cc. w/o enclosures: Barry Steinberg  
Lucien L. Niemeyer  
Art Collins  
Bob Matthias  
Miguel E. Cosío

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(202) 828-2418

MEMORANDUM

TO: BILL FETZER, SENIOR ANALYST, NAVY-MARINE CORPS TEAM  
FROM: GEORGE R. SCHLOSSBERG *G. Schlossberg/Hilary Joekel*  
DATE: JULY 15, 2005  
RE: FOLLOW-UP RESPONSE TO NAS OCEANA QUESTIONS

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Thank you again for taking the opportunity to meet with representatives from the NAS Oceana community yesterday. Pursuant to your request, this memorandum and attached documents serve to answer your outstanding questions.

The proposed height of the buildings on the Near Post site are seventy (70) to seventy-five (75) feet, or five (5) to six (6) stories.

Attached is the following responsive information:

1. Letter from the Navy regarding the Near Post site.
2. Conclusion report of the staff of the Planning Commission on the Near Post site.

If you have any questions, please call me directly at 202-828-2418 or by e-mail at [george.schlossberg@kutakrock.com](mailto:george.schlossberg@kutakrock.com).

G.R.S.

haj

Enclosures: as stated

## **FACT SHEET ON REZONING FOR NEAR POST, LLC IN VIRGINIA BEACH ON NOVEMBER 25, 2003**

1. The property is 5.9 acres in size and located on Laskin Road, a major gateway to the Oceanfront Resort Area.
2. The property was occupied by the Seashire Inn, as an old, rundown, under-performing eyesore that was a detriment to the surrounding community. There were 52 units in the old motel. It was obvious that this property needed to be cleaned up and that private initiative was going to redevelop the property one way or another.
3. Without any rezoning or other City Council action, the property could have been redeveloped into 256 hotel or motel units, or, a combination of 86 lodging units and 85 multifamily condo units. Under such a method, the City would have no opportunity to intervene to stop it.
4. On November 25, 2003, the City Council rezoned the property to allow 90 multifamily condominium units, and attached to its approval the requirement to use sound attenuation measures. The applicant's name was Near Post LLC. The City Council saw that as a significant improvement over what could have happened without its approval. By increasing the allowed residential density by a mere 4 units, the opportunity to increase the number of hotel units by nearly 200 was eliminated.
5. The project has since been reduced in size to 78 units. So, the City Council and staff action actually reduced the residential density allowed on the site by 7 units and eliminated all possibility of lodging use.



DEPARTMENT OF THE NAVY

NAVAL AIR STATION OCEANA  
1750 TOMCAT BOULEVARD  
VIRGINIA BEACH, VIRGINIA 23460-2168

✓  
IN REPLY REFER TO:  
5726  
Ser 32/0220  
June 5, 2003

Ms. Faith Christie  
Planning Department  
City of Virginia Beach  
2405 Courthouse Drive  
Building 2, Room 100  
Virginia Beach, VA 23456

Dear Ms. Christie:

Thank you for the opportunity to comment on the rezoning request by Near Post LLC and their proposed apartment construction on Laskin Road. The site is located in Accident Potential Zone Two (APZ-2) and in the 70-75 decibel (dB) day-night average (Ldn) noise zone. The Navy's Air Installations Compatible Use Zones Program states that residential land use is not compatible and should be prohibited in this zone.

The Navy acknowledges the landowner's desire to develop their property, but I urge you to deny their request. We would view residential development at this site as an encroachment upon operations at Naval Air Station Oceana. If you have any questions, please contact my Community Planning Liaison Officer, Mr. Ray Firenze at (757) 433-3158.

Sincerely and very respectfully,

  
T. KELLEY  
Captain, U.S. Navy  
Commanding Officer

Copy to:  
COMNAVREG MIDLANT  
The Honorable Mayor Meyera Oberndorf  
Virginia Beach City Council  
Virginia Beach Planning Commission

property, or shall relocate the water line subject to the approval of the Department of Public Utilities.

**Staff Evaluation:** *The proffer is acceptable. It insures that the existing five-inch water line running along the northern boundary of the property will be relocated subject to the approval of Public Utilities or an easement for maintenance and repair recorded.*

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**City Attorney's  
Office:**

The City Attorney's Office has reviewed the proffer agreement dated July 25, 2003, and found it to be legally sufficient and in acceptable legal form.

## Evaluation of Request

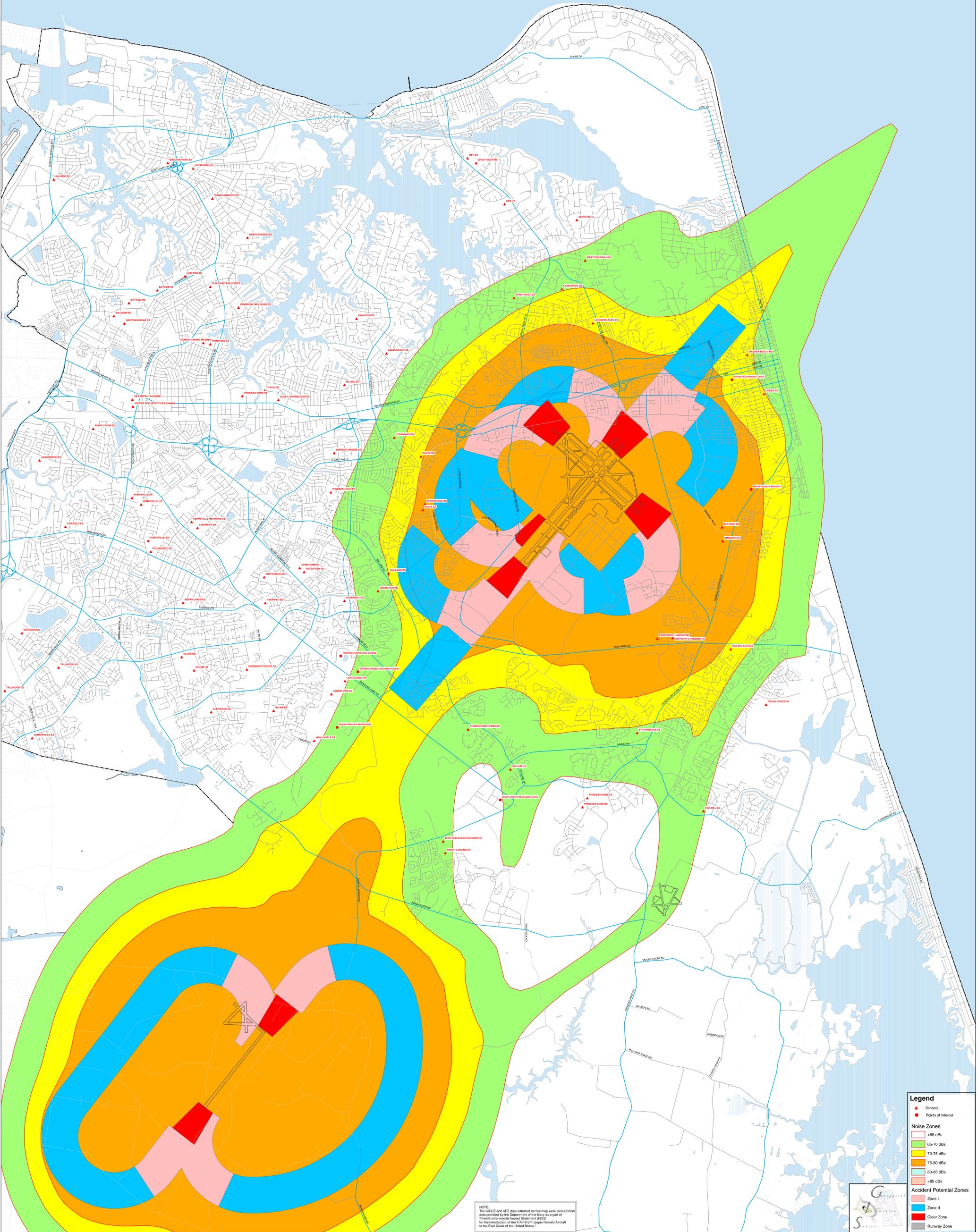
The request to rezone the site from H-1 Hotel District, B-2 Community Business District, B-1 Business District and R-40 Residential District to Conditional A-36 Apartment District and to develop 90 condominium units, associated parking and recreational area is recommended for approval as proffered.

- \* The proposed development represents a dramatic reduction in the number of units compared to what could be built by-right on the site with the existing H-1 Hotel zoning (90 units under this proffered rezoning versus up to 264 under the H-1 zoning). This is significant considering the fact that the site is situated within the 70 to 75 dB AICUZ and Accident Potential Zone II.

The applicant worked with staff to produce a project that furthers the upscale vision for the Laskin Road Corridor. The building heights along Laskin Road and Oriole Drive are varied to create visual relief and to lessen the 'wall' effect that large buildings can establish along roadways. The proposed landscaping and ornamental fencing along the roadways will soften the eye level vision of the proposed buildings. The proposed building materials are of high quality and are complementary of one another. The buildings are situated on the site to take advantage of the expansive views of the golf course and waterways. Several existing entrances from Laskin Road will be eliminated. The redevelopment of the site will present a positive image for the surrounding area and this gateway to the Oceanfront Resort Area. Therefore, staff recommends approval of the request as proffered.



1999 AICUZ



NOTE:  
The AICUZ and APZ data reflected on this map were derived from data provided by the Department of the Navy as a part of "Final Environmental Impact Statement (FEIS) for the Introduction of the F-18 E/F (Super Hornet) Aircraft to the East Coast of the United States."

**Legend**

- Schools
- Points of Interest

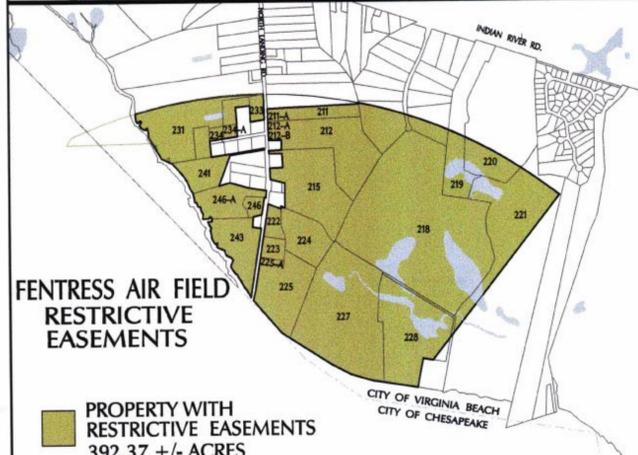
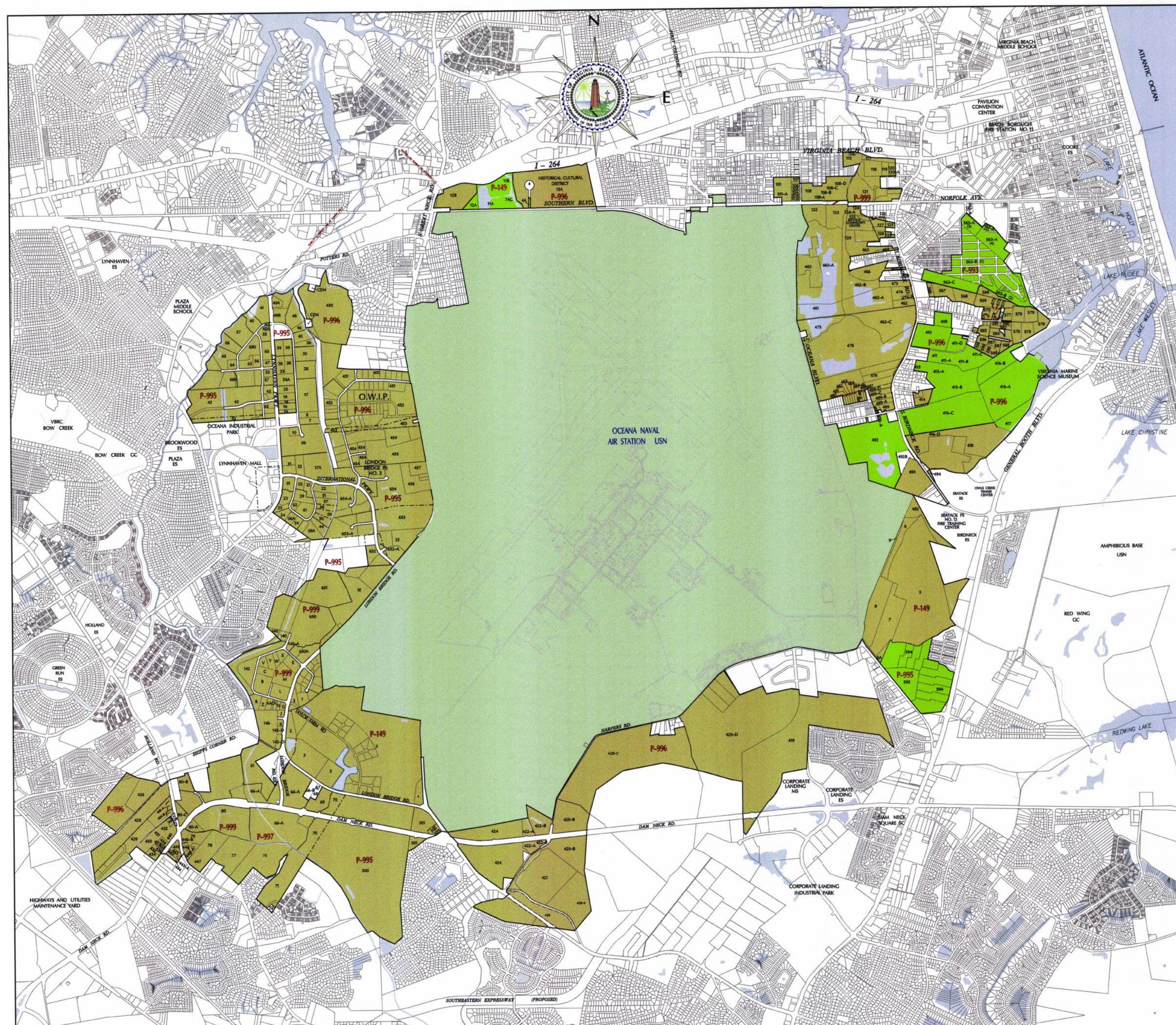
**Noise Zones**

- <65 dBs
- 65-70 dBs
- 70-75 dBs
- 75-80 dBs
- 80-85 dBs
- >85 dBs

**Accident Potential Zones**

- Zone I
- Zone II
- Clear Zone
- Runway Zone





**DISCLAIMER:**  
THIS DRAWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT INTENDED AS, AND THE GOVERNMENT DOES NOT WARRANT THAT THE DRAWING IS ACCURATE. A VARIETY OF RESTRICTIVE EASEMENTS WERE USED IN THIS AREA, SO AUTHORIZATION FOR A PROPOSED USE ON ONE PARCEL IS NOT INTENDED AND SERVES NO BASIS FOR AUTHORIZED USE OR THE IMPLICATION OF AUTHORIZED USE ON ANOTHER PARCEL. OFFICIAL ACCURATE DRAWINGS AND SPECIFIC INFORMATION ABOUT EACH PARCEL, ITS ENCUMBRANCES AND RESTRICTIONS CAN BE RESEARCHED AT THE CIRCUIT COURT OF THE CITIES OF CHESAPEAKE AND VIRGINIA BEACH, VA.

- PROPERTY WITH RESTRICTIVE EASEMENTS 3901.39 ACRES
- PROPERTY OWNED IN FEE SIMPLE 472.94 ACRES
- N.A.S. OCEANA 5,242 +/- ACRES

MAP SHOWING  
**PROPERTY WITH RESTRICTIVE EASEMENTS**  
prepared by  
**Center for GIS**  
Geospatial Information Services  
Department of Communications & Information Technology  
**City of Virginia Beach**

- PLANIMETRIC INFORMATION PREPARED FOR THE CITY OF VIRGINIA BEACH BY MD STATES ENGINEERING INC. COMPILED IN 1986 USING PHOTOGRAMMETRIC INSTRUMENTS WITH SPRING 1986 PHOTOGRAPHY.
- REVISIONS & UPDATES FROM APPROVED HIGHWAY & SITE PLANS MAY BE INCORPORATED ON THIS MAP. THERE IS NO SIGNIFICANCE TO UNSHADED BUILDINGS.
- **NOTE DISCLAIMER:** ALL WARRANTIES, EXPLICIT AND OTHERWISE, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO ACCURACY OF THE DATA SHOWN HEREON AND MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND ALL INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE DATA SHOWN ON THIS MAP ARE EXPRESSLY DISCLAIMED.
- MERIDIAN SOURCE IS BASED ON VIRGINIA STATE PLANE COORDINATES, SOUTH ZONE (N.A.D.-1983) VALUES ARE EXPRESSED IN INTERNATIONAL FEET (ONE FOOT EQUALS 0.3048 METERS.)

SCALE: N.T.S. DATE: March 24, 2004



# CITY OF VIRGINIA BEACH

Department of Planning  
Director's Office  
(757) 427-5801  
Fax (757) 426-1762

## ***INTER-OFFICE MEMORANDUM***

***November 24, 2003***

**TO: James K. Spore, City Manager**

**FROM: Robert J. Scott, Planning Director**

**SUBJECT: Application of Near Post for the November 25, 2003 Agenda**

The United States Navy has presented findings and recommendations to the City regarding the AICUZ program. The purpose of these recommendations by the Navy are laudable and are supported by the City through its Comprehensive Plan and other land use planning documents.

The method of implementing these recommendations is the local land use planning program. The local land use program consists of a number of components, including the Zoning Ordinance. The ability of the City Council to use zoning is outlined in Section 15.2-2283 of the Code of Virginia, which specifies that

ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other dangers; (vii) to encourage economic development activities that

MEMO: James K. Spore

Page 2

provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; and (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

There are, therefore, a number of purposes to the Zoning Ordinance. Also, there are a number of factors that the Code of Virginia specifies must be considered in creating zoning districts, changing zoning districts, and implementing the Zoning Ordinance:

Zoning ordinances and districts shall be drawn and applied with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services, the conservation of natural resources, the preservation of flood plains, the preservation of agricultural and forestal land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality.

Thus, during Staff's evaluation of proposals to change zoning districts and during the deliberation of the Planning Commission and City Council in considering such changes, there are a number of factors that must be considered. The use of zoning and land use planning requires that reasonable goals be balanced with one another. The City Council thus must consider a wide range of elements.

On November 25, the City Council will be considering the application of Near Post, L.L.C. to change the zoning on a parcel located on Laskin Road from H-1 Hotel District, B-2 Community Business District, B-1 Business District and R-40 Residential District to Conditional A-36 Apartment District. The purpose of the request is to redevelop the site for 90 multiple-family dwelling units, parking and associated recreational amenities.

Staff, in its evaluation of this request, considered a wide range of matters, as required by the Code of Virginia, including housing needs, land use plans, adopted goals and policies, transportation issues, economic considerations, and others. Within that group of considerations were the comments of the United

MEMO: James K. Spore

Page 3

States Navy, which is provided an opportunity to comment on all such requests evaluated by the Staff. As noted in the Staff's report for this matter, the United States Navy provided comments to the Staff during the evaluation of the proposal reporting that "residential land use is not compatible" within the 70 to 75 dB Ldn AICUZ. The United States Navy "would view residential development of this site as an encroachment upon operations at Naval Air Station Oceana".

Staff considered this comment during its evaluation and gave it great weight. In the final analysis, however, Staff found the following facts to be significant:

- (a) First, the subject site currently consists of three parcels, the largest of which is used for a motel with 52 units (zoned H-1 Hotel). The other two parcels are currently used for a Hardees restaurant (zoned B-2 Business) and a vacant, vegetated area associated with the Cavalier Golf Course (zoned B-1 Business and R-40 Residential).
- (b) Second, "by-right," the subject site could be developed as follows:
  - i. Within the H-1 Hotel District portion of the site, all of the uses permitted in H-1 such as hotels, parks and public buildings and recreational and amusement facilities. The existing hotel site could, therefore, be redeveloped with a hotel / motel consisting of 256 units without City Council review or approval. As an alternative, this portion of the site could, under an option provided in the Zoning Ordinance, be developed with a mix of lodging and dwelling units. That alternative would generate 86 lodging units (hotel) and 85 multiple family units (apartments) together on the site, and could also be accomplished without City Council review or approval.
  - ii. Within the B-1 and B-2 Business District portion of the site, all of the uses permitted in the B-1 and B-2 such as offices, retail, restaurants, public buildings, and automotive sales and service.
  - iii. Within the R-40 Residential District portion of the site, all of the uses permitted in the R-40 such as single-family dwellings, golf courses, churches and public grounds and buildings.
- (c) Third, the proposal submitted by Near Post and proffered with the requested change of zoning would result in a total of 90 dwellings in condominium form of ownership. This represents a dramatic reduction in the number of units compared to what could be built

MEMO: James K. Spore

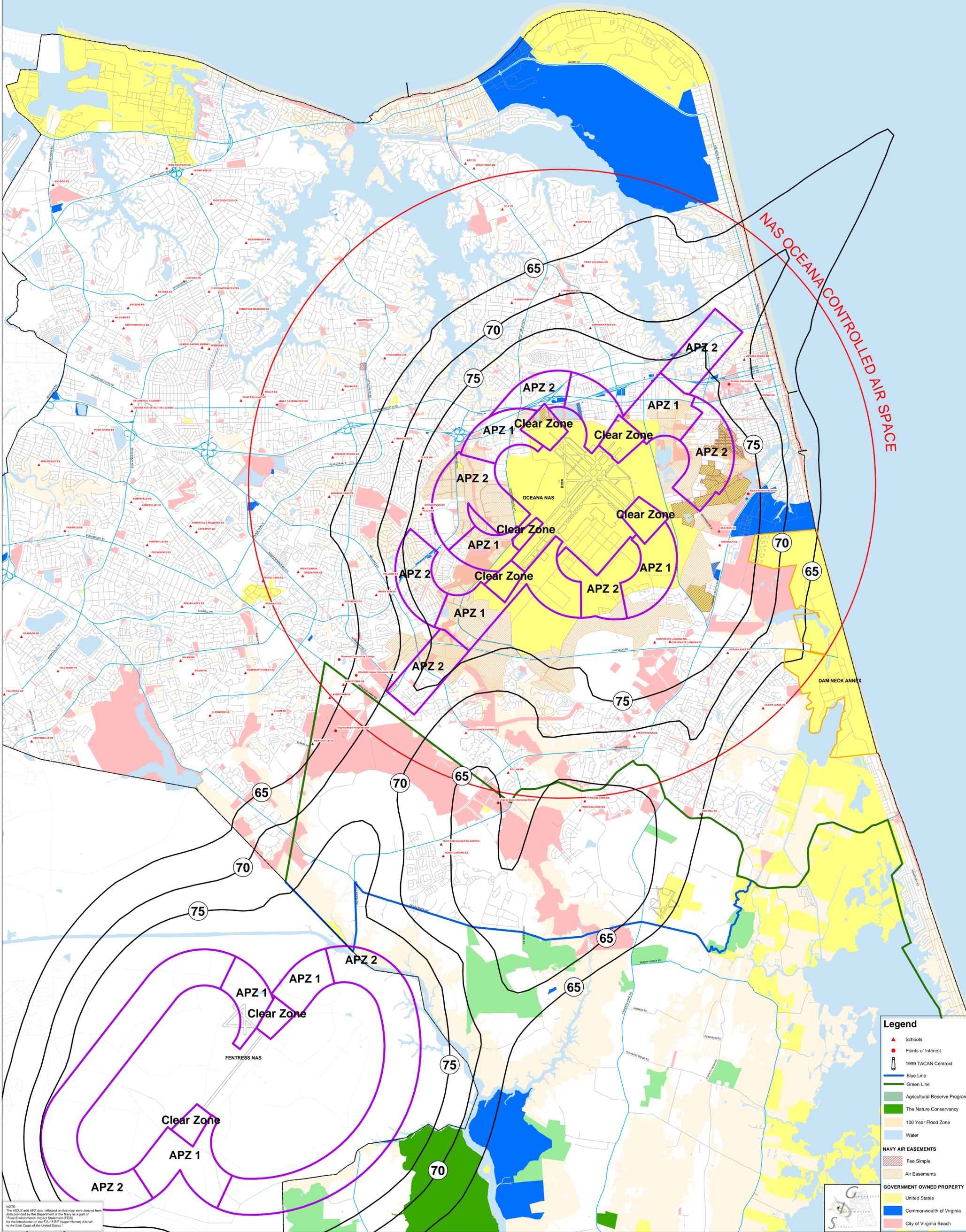
Page 4

by-right on the site with the existing H-1 Hotel zoning. By-right, the existing motel site could be redeveloped to accommodate up to 256 hotel/motel units or 86 hotel/motel units mixed with 85 dwelling units without City Council review or approval. Staff believes that this is significant considering the fact that the site is situated within the 70 to 75 dB AICUZ and Accident Potential Zone II. The number of people potentially residing on the subject site at any one time is dramatically reduced by through the requested change of zoning.

- (d) Finally, any new construction that occurs on the site will be required to install sound attenuation measures consistent with the City's Airport Noise Attenuation and Safety Ordinance.

These findings were factored in with the other comments, plans, ordinances, and considerations provided to Staff during the evaluation of this change of zoning request. In the final analysis, Staff concluded that when all the factors are balanced with each other, the public health, safety and welfare are significantly enhanced by the proposal proffered by the applicant, and that as a result, the proposal is acceptable and should be approved.

# 1999 AICUZ and Other Development Constraint Impacts



NOTE:  
The AICUZ and APZ data reflected on this map were derived from  
data provided by the Department of the Navy as a part of  
"Final Environmental Impact Statement (FEIS)  
for the Introduction of the F-15B (EF) (Super Hornet) Aircraft  
to the East Coast of the United States."

**Legend**

- ▲ Schools
- Points of Interest
- 1999 TACAN Centroid
- Blue Line
- Green Line
- Agricultural Reserve Program
- The Nature Conservancy
- 100 Year Flood Zone
- Water

**NAVY AIR EASEMENTS**

- Fee Simple
- Air Easements

**GOVERNMENT OWNED PROPERTY**

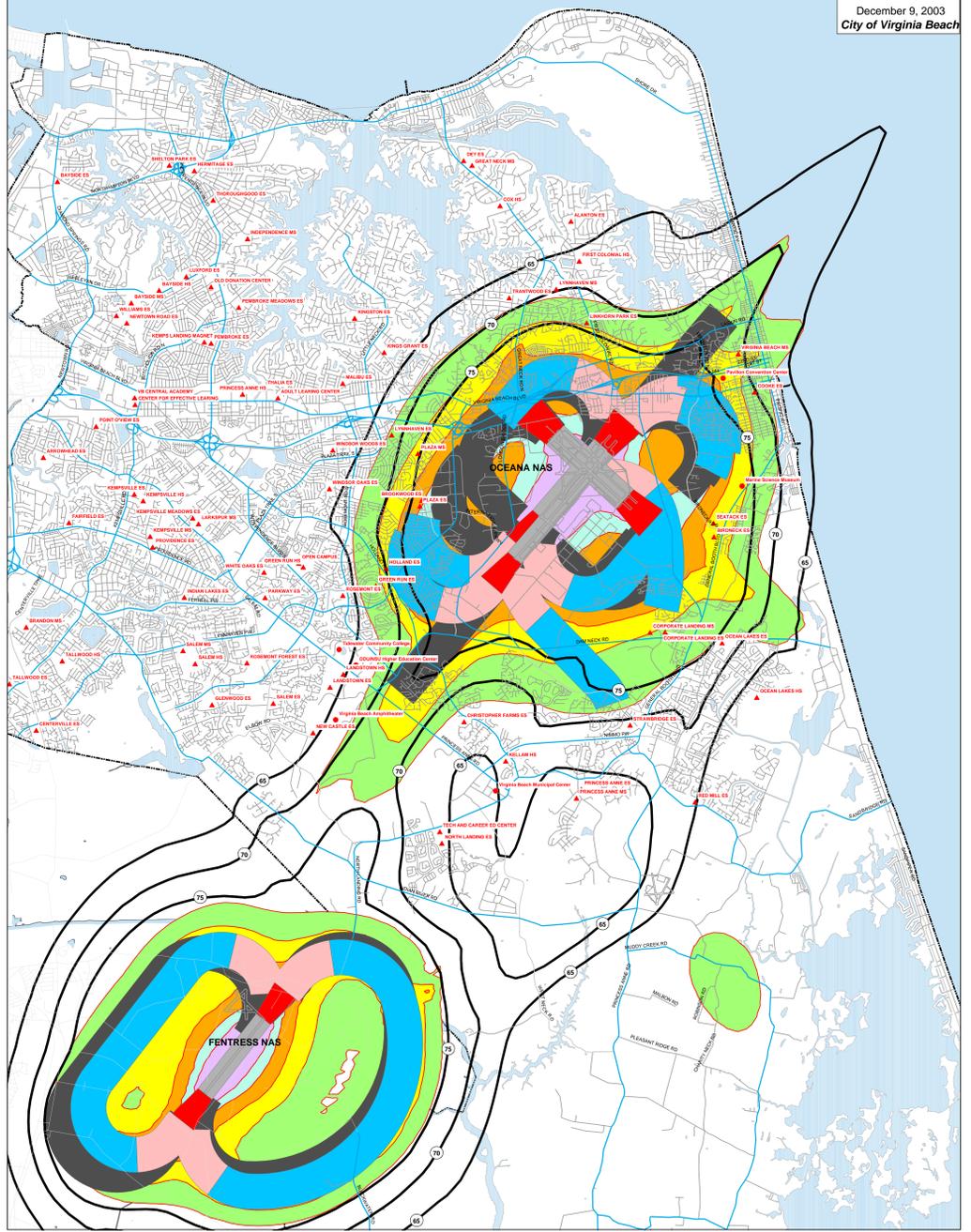
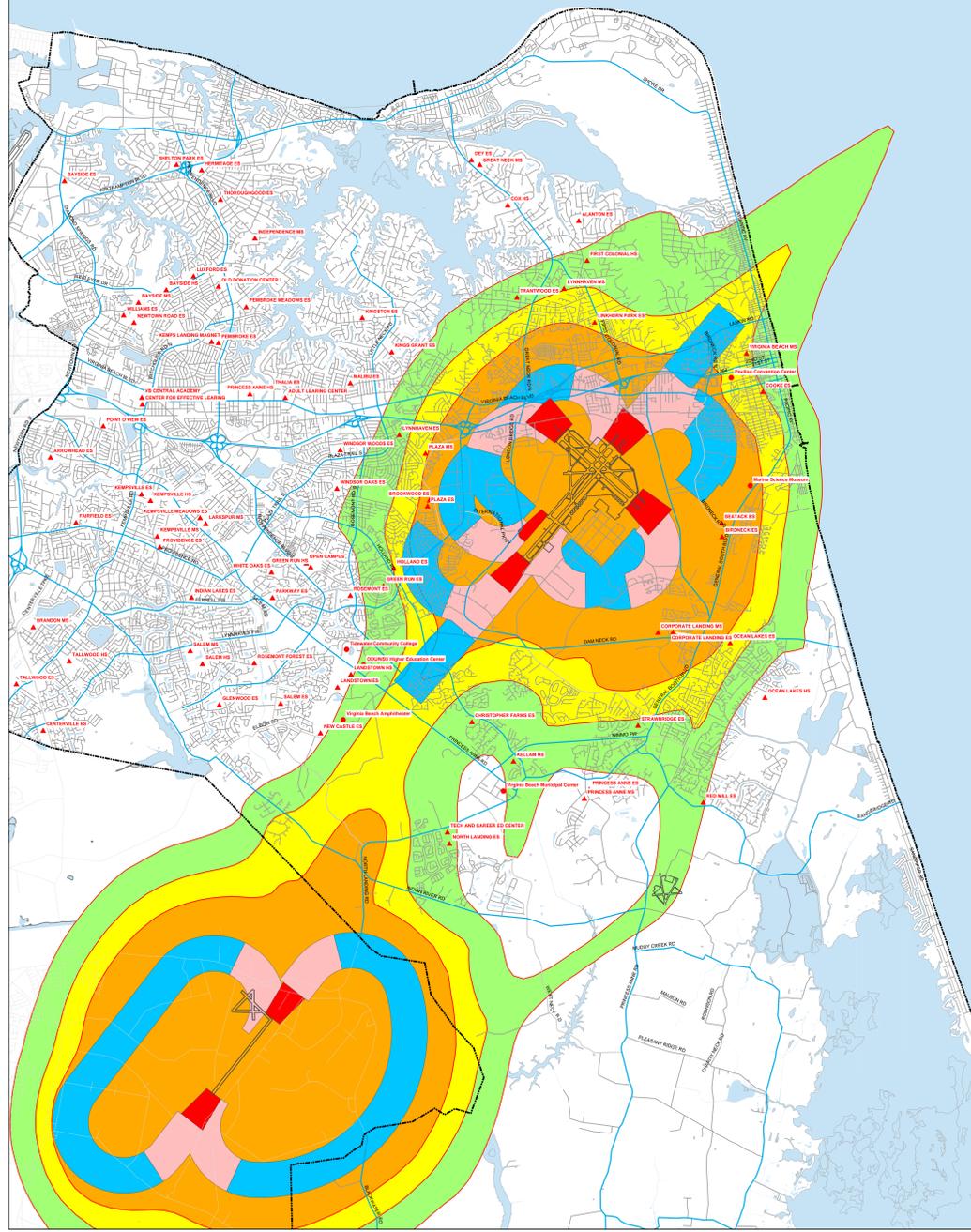
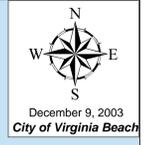
- United States
- Commonwealth of Virginia
- City of Virginia Beach



1999 AICUZ

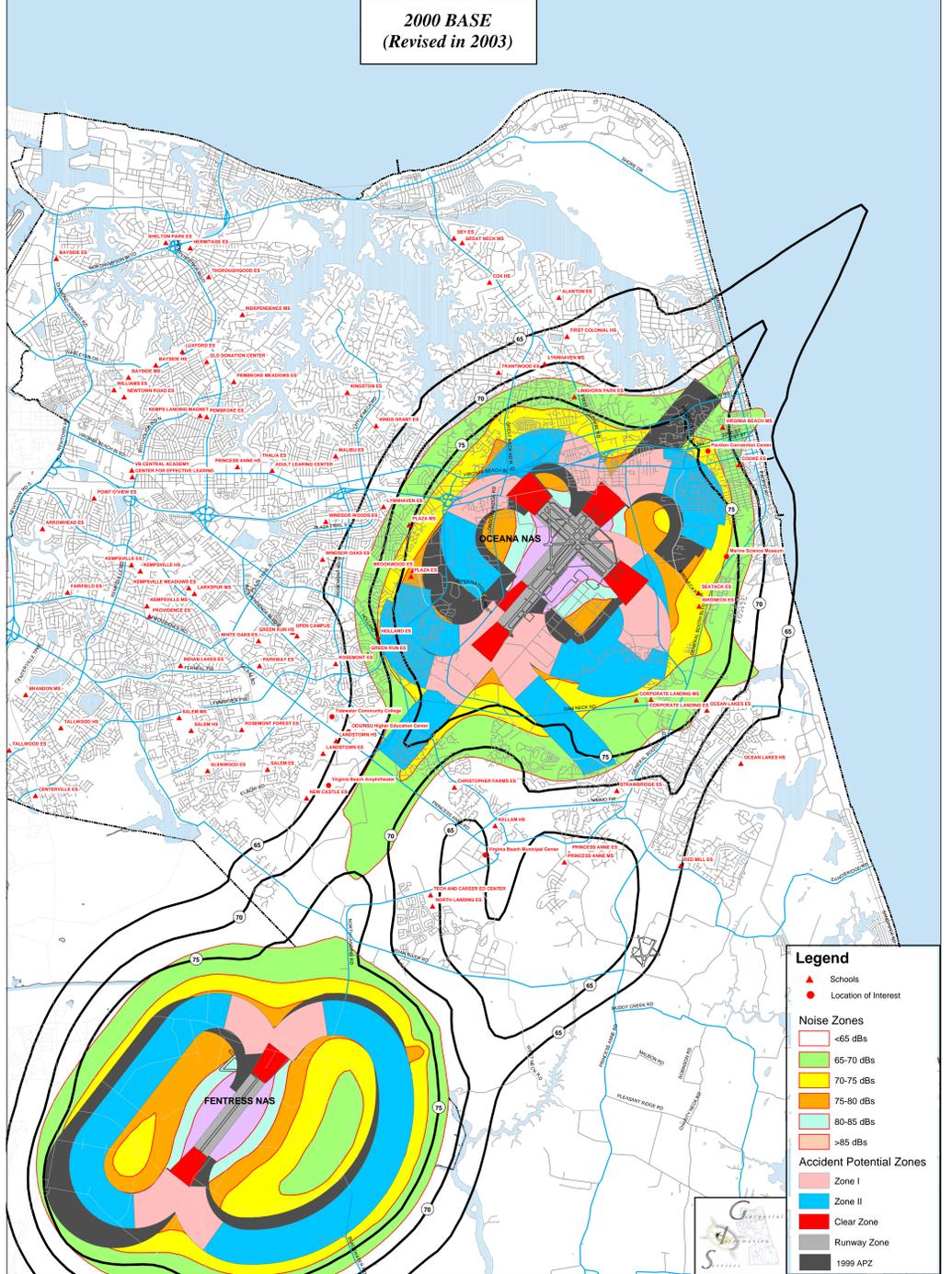
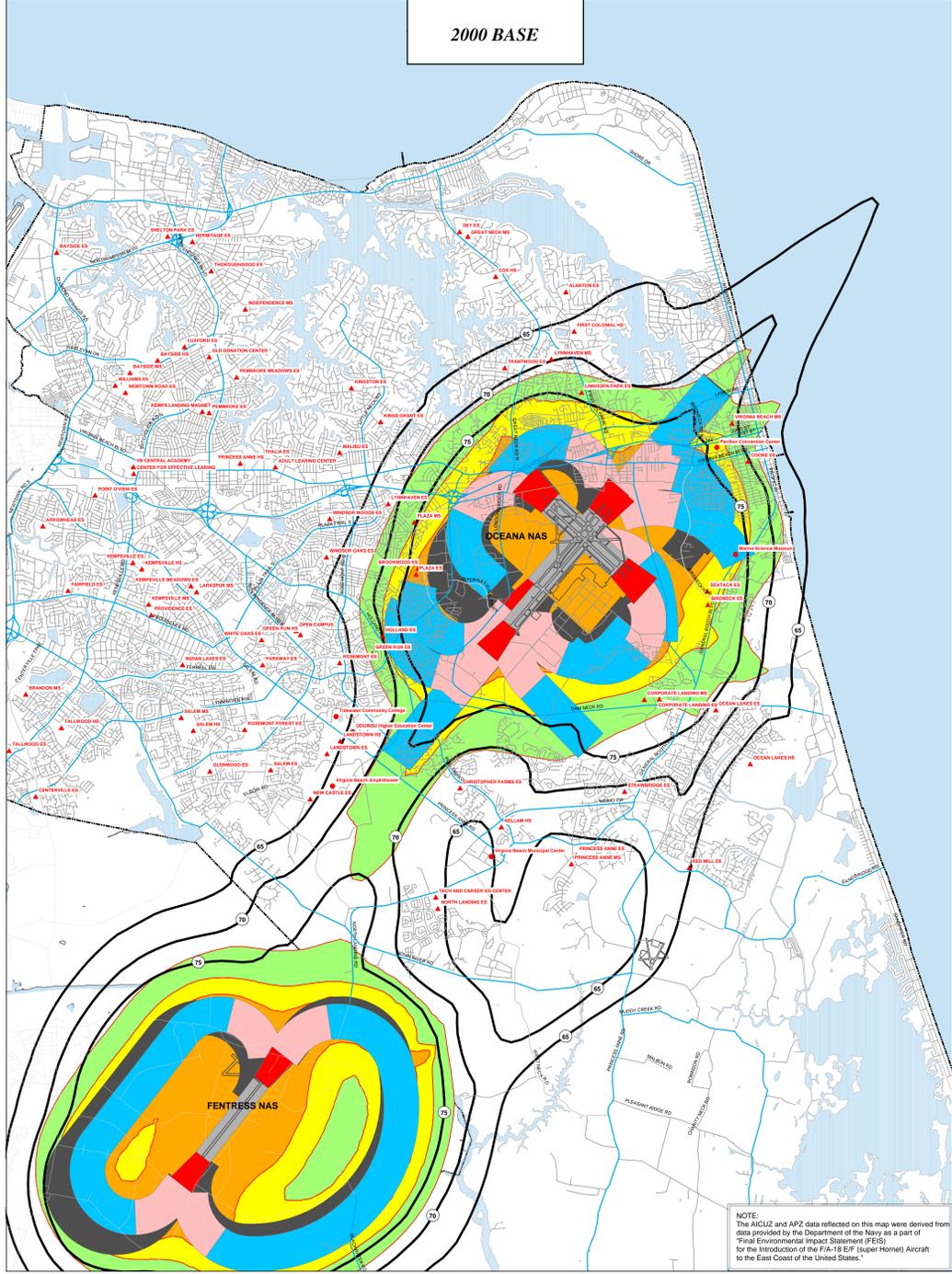
1999 AICUZ Compared to Others

Option 6 (2003)  
With Outlying Field



2000 BASE

2000 BASE  
(Revised in 2003)



NOTE: The AICUZ and APZ data reflected on this map were derived from data provided by the Department of the Navy as a part of "Final Environmental Impact Statement (FEIS) for the Introduction of the F/A-18 E/F (Super Hornet) Aircraft to the East Coast of the United States."

**Legend**

- Schools (Red triangle)
- Location of Interest (Red triangle)

**Noise Zones**

- <65 dBs (Light green)
- 65-70 dBs (Yellow-green)
- 70-75 dBs (Yellow)
- 75-80 dBs (Orange)
- 80-85 dBs (Red-orange)
- >85 dBs (Red)

**Accident Potential Zones**

- Zone I (Light blue)
- Zone II (Dark blue)
- Clear Zone (Red)
- Runway Zone (Black)
- 1999 APZ (Black outline)