

MEMORANDUM

December 1, 2006

To: City Council

From: City Manager

Re: Marine Corp Air Station Protections.

Please find attached four (4) documents. First is the relevant section of the McLeod Farm Annexation Development Agreement (DA) as it pertains to protection of the Marine Corp Air Station (MCAS). The second document is the Exhibit "F" of the same document which is the draft Memorandum of Understanding (MOU) between the City and the MCAS. The third and last document is the letter from the Department of the Navy that allows for the transaction contemplated in the DA and MOU to occur. The last document is a map of the property in question.

The "Transaction" as contemplate is this: the McLeod's donate the Property to the City and the city uses the donated property as the leverage needed for payment to the McLeod Family for the Aviation Easements. The result is the protection for the air station by the purchase of the aviation rights.

Please feel free to call me if you have any questions.

#### 4. Marine Corps Air Station Protections.

Protection of the existing Marine Corps Air Station Beaufort (MCAS) is a priority of the City and Owner. The present Air Installation Compatible Use Zone (AICUZ) plan adopted in 2004 by the City after a Joint Land Use Study (JLUS) may not provide adequate protection against encroachment of uses detrimental to the MCAS facility. Present County ordinances are even less protective. Owner and MCAS representatives initially agreed in meetings to enter into a Memorandum of Agreement (MOU) which provides for, among other things, the prohibition of residential uses in the existing AICUZ footprint, which affects approximately 135 acres; the reduction of density in an additional buffer area extending outward of the existing 65 Ldn line as shown on the existing AICUZ map to 1.0 units to the acre, which affects approximately 65 acres; the substitution of restrictions from the Navy provided Document entitled "Table 2, Air Installations Compatible Use Zones" which include suggested Land Use Compatibility and Noise Reduction Measures, for the provisions regulating uses and noise reduction contained in the current City Ordinances, as well as additional restrictions specifically requested by the military; the transfer of development rights and an avigation easement for portions of the property; a proposed offer of dedication of a portion of the easement area to the City for use as a public park; and the transfer of development rights in exchange for present or future payments from the military and/or an easement partner. Certain provisions of the proposed MOU would require the annexation and approval of this Agreement, and the accompanying Planned Unit Development, by the City to make the offer of dedication feasible. More specific details are found in the provisions of the MOU attached hereto as Exhibit "F".

The military and Owner initially acknowledged and agreed that it might take some time to implement all of the provisions of the proposed MOU and its implementing documentation, and the Owner sought to have the MOU executed to memorialize the general terms of the negotiated agreement. It has now been disclosed to the Owner that the military is not authorized to enter into a MOU with the Owner at this time, although the military has begun the process of implementing the provisions of the MOU. Notwithstanding the military's inability to enter into a MOU with the Owner, Owner agrees that it will abide by the terms of the proposed MOU (as briefly outlined above) regarding placement of uses the military considers incompatible with MCAS and its operations, notwithstanding the fact that all documentation, transfer of land development rights, and payment for development rights may not be completed by the time of the execution of this

Agreement. In the event of a failure by the military to honor the terms of the proposed MOU within a time period of two years from the date of execution of this Agreement, the terms of the MOU will no longer be binding upon the Owner by virtue of this Agreement. In such event, the Owner and City will attempt in good faith to negotiate a mutually acceptable set of uses and restrictions as part of a PUD amendment which must include a procedure for Transferable Development Rights equal to the value of the development rights under the MOU; upon the failure to negotiate such an amendment, the land use and development standard restrictions of the Beaufort County AICUZ Ordinance, and/or the City's AICUZ ordinance (Section 6.7), enacted as of January 1, 2006, will become the applicable standards for the approximately 200 acres that would otherwise be subject to the military's proposed restrictions under the proposed MOU, with the underlying density and allowable uses of the transect zone T-3 described in the PUD.

The implementation of the proposed MOU terms may require a portion of the property or rights in the property to be transferred to either the City or a qualifying non-governmental organization (NGO), consistent with federal requirements. It is agreed that to the extent rights to use the land are granted to the City or a NGO which provide for park land, open space, or sites for government facilities consistent with the AICUZ Table 2 as revised for this Agreement, credit shall be given against the dedication requirements of this Agreement or the McLeod Farms PUD Development Regulations, and/or open space requirements, including active open space as defined in the McLeod Farms PUD Development Regulations, and against park impact fees to the extent available pursuant to the Intergovernmental Agreement between the City and County. The City agrees to cooperate as a facilitating governmental entity as may be required by the military, provided that arrangements are included which provide that City participation in any acquisition which require the expenditure of City funds is wholly discretionary at the City's option.

#### **B. Governmental Services And Capital Improvement Charges.**

Prior to the time that ad valorem taxes generated from the Property are sufficient to provide government services and capital improvements related to such services for residents of the Property, the Owner agrees to make certain lump sum payments to the City to assist the City and handling services to residents of the Property, without burdening other residents of the City. The parties recognize that the need for such funds will not occur until the Property, or portions thereof, are transferred to Developer entities for development purposes. Therefore, Owner agrees that a

**EXHIBIT "F"**  
**TO DEVELOPMENT AGREEMENT**  
**PROPOSED LETTER OF INTENT**

**MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement is entered into between [MCAS ENTITY] ("MCAS") and MCLEOD FARMS, OWNERS("McLeod") regarding the acquisition of development rights related to real property currently owned by McLeod.

The parties hereto agree and understand that the overall site locations affected by this swap have not been finalized as of the date of this Agreement. It is agreed and understood that McLeod will deed in fee approximately 80 - 100 as described on Exhibit A attached hereto to the City of Beaufort. MCAS will acquire by purchase or contribution from McLeod and the City development rights for incompatible residential and/or commercial uses on the approximately 100 acres shown on Exhibit A. In exchange, McLeod will take the following actions with regard to the development of its property: (i) the approximately 100 acres described on Exhibit B attached hereto will not have any residential development; (ii) the approximately 85 -100 acres described on Exhibit C attached hereto will not have residential development with a NLR of less than 30dB, nor, if development commences, a gross density of more than 1.0 single family units per acre; and (iii) McLeod will comply with the non-residential development uses/noise reduction guidelines set forth in OPNAVINST Table 2 (attached) as a substitute for the City of Beaufort's AICUZ uses.

MCAS and McLeod agree that an appraisal will be performed by a mutually agreed upon appraiser or appraisers to determine the fair market value(s) of the real estate interest(s) acquired. Compensation for the real estate interests will be paid to McLeod. Such compensation may include payments over more than one fiscal year. Upon reaching agreement on the aforesaid valuations, MCAS and McLeod will proceed to document the aforesaid exchanges in documentation reasonably acceptable to both parties. This Memorandum of Agreement is a letter of intent subject to the conditions of agreement set forth herein.

Agreed to this \_\_\_ day of May 2006.

MCAS:

McLeod:

Names to be inserted

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



DEPARTMENT OF THE NAVY  
NAVAL FACILITIES ENGINEERING COMMAND SOUTHEAST  
JACKSONVILLE, FL 32212-0030

Rec'd  
TFE  
11-27-06

11011  
OPC4LW

22 NOV 2006

Mr. Scott Dadson  
Beaufort City Manager  
302 Carteret Street  
Post Office Drawer 1167  
Beaufort, South Carolina 29901-1167

Re: Encroachment Partnership between the United States of America and the  
City of Beaufort

Dear Mr. Dadson:

As a follow-up to the meeting held on November 6, 2006, the issues regarding an  
Encroachment Partnership for obtaining restrictive easements for McLeod Farms was presented  
to the Assistant Secretary of the Navy (I&F) for review.

We have been advised that after consultation with both Office of Secretary Defense  
(OSD) and their Counsel it was agreed that in this specific project where the property owner is  
willing to donate a substantial portion of his property value as the City's contribution toward their  
share of the acquisition thereby ensuring that MCAS Beaufort obtains the necessary  
encroachment protection they require on that property may qualify the City's participation as an  
"in-kind service - related to the acquisition" under 10 USC 2684a (d)(3)(C)(ii).

The Navy and Marine Corps look forward to working with you to discuss specific details  
of this acquisition and upon reaching an agreement as to the parties' specific obligations and  
responsibilities a Memorandum of Agreement will be prepared for execution.

If you have any questions you can reach me at 843-820-7492 or Lillie Washington at  
843-820-5719. Our mailing address is Commanding Officer, NAVFAC-Southeast 2155 Eagle  
Drive, N. Charleston, SC 29419-9010. We will contact you shortly to discuss the acquisition  
further.

Sincerely,

  
STEPHEN P. CAMPBELL  
Director, Real Estate Division

cc:  
Sharon Davis  
Marine Corps Headquarters