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# Navy maps raise doubts

SUBHED: Land-use rules could be changed by expansion of noise, accident zones

CUTLINE:

for the two side-by-side comparisons of noise boundaries: A comparison of noise contours from aircraft operations at Naval Air Station Key West's Boca Chica field show the boundary has extended westward since the 1977 AICUZ, left, was adopted by the county in 1989. The figure below shows current noise impacts on the Lower Keys.

BOXES: WHAT IT MEANS

## NOISE ZONES

According to the AICUZ, there are 1,937 acres of property within the noise zone 2 and 3 boundaries, which are subject to limited land-use recommendations. Of that, 617 undeveloped acres were purchased by the Navy in the 1980s.

What's considered incompatible land use?

Residential development, schools, hospitals, nursing homes, outdoor music shells and amphitheaters.

The following uses are allowed to a degree, some with caveats:

Manufacturing and industrial uses, transportation, communication and utilities, retail sales and other commercial uses, agriculture and farming.

## ACCIDENT ZONES

The AICUZ does not include an assessment of acreage affected by the new accident zone contours, but makes clear recommendations regarding land use in the areas.

Accident potential zones, or APZs, I and II, have "a measurable potential for aircraft accidents," according to the AICUZ.

Wed, Feb 9, 2005

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Allowable uses in APZ II include limited residential construction — 1 single family home or duplex per acre, some types of manufacturing, commercial and industrial uses.

In APZ I, residential use is considered incompatible, as are many types of commercial and industrial uses including shopping centers, restaurants, government and educational uses.

Uses considered appropriate in APZ I, some with caveats, include: Transportation, communication and utility services, agricultural uses, limited types of manufacturing, limited wholesale and retail trade operations, warehouses, nature exhibits and recreational venues such as water parks, golf courses and riding stables, parks and some cultural and entertainment venues.

BY LAURIE KARNATZ  
 Citizen Staff

More than three weeks after Monroe County officials learned of new Navy maps outlining acceptable land-use practices in the Lower Keys, no one seems to know what the actual impacts will be.

The new maps, provided to county officials in mid-January, expand the air safety zones around the Navy's Boca Chica airfield to include the southern half of Key Haven, a large portion of south Stock Island, and a small part of Key West along South Roosevelt Boulevard.

Part of a new Air Installations Compatible Use Zone, or AICUZ, the maps indicate residential development is not appropriate for hundreds of acres of property around the Boca Chica airfield, including much of south Stock Island.

That could hamper future development plans for Stock Island, a proposed 43-home project on Key Haven, and numerous other projects, said Keys businessman Ed Swift.

"I think the question is if you have these areas, how are we going to be able to build in the future?" Swift said. "And is that going to matter when we already have all those people living there anyway?"

County staff has said they were unaware of the new AICUZ. The Growth Management Division was not provided a copy of the 156-page document and maps until mid-January, though it appears to have been approved by policy makers in Washington nearly a year ago.

Navy staff said county officials should have known it was being developed because it was discussed during a court case regarding limited land use — caused by the 1977 AICUZ — on Rockland Key.

"It's fair to suggest all of the decision makers in the county may not have been aware [of the AICUZ update]," said Naval Air

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Station Key West Commander Jim Scholl. "There were some in the county who knew about it. Due to staff turnover, we may not have done as good a job as we should have."

On Friday, county staff was still awaiting a legal opinion from land-use counsel on whether the maps must to be used when making future planning decisions.

"Part of the research," said Assistant County Attorney Bob Shillinger, "is that we want to make sure we're taking into account how it's been applied throughout the country because it is a national issue."

Without a legal review, county Planning Director Marlene Conaway on Thursday said she couldn't be sure of the ramifications.

"I don't think we're bound to it," Conaway said, "but ... I don't know where the state's going to come down on it."

**Conflicting information**

The U.S. Navy says the maps and other information in the Air Installations Compatible Use Zone are merely recommendations. A number of local governments across the nation, including Virginia Beach, Va., are currently wrangling with officials of adjacent military bases over implementation of new, expanded AICUZ boundaries.

In Monroe, existing land-use rules, approved by the state Department of Community Affairs, include the 1977 version of the maps in the county's land-use plan. The language adopting the older version, though still being analyzed by legal staff, appears to indicate that any new maps supersede the older version and automatically become part of the land-use plan.

Some officials and local attorneys have already indicated a legal challenge could result if the county automatically adopts the new maps and uses them to limit development.

Said Swift, a former county commissioner, "When land use is affected or changed, you usually go into a public forum. ...I think the public, the people who live in the [affected] homes have got to have a say at some point."

According to former County Attorney Jim Hendrick, who specializes in land-use issues, "There is no legal validity to the argument that whatever the Navy adopts as a map it becomes ipso facto a county regulation. The county cannot delegate its legislative authority to any other board or body."

That may not forestall implementation of the map in county land-use rules. The state Legislature last year adopted legislation designed to protect the state's military installations and forestall any possible withdrawal of military forces in the state by finding it "desirable for the local governments ... to cooperate with military installations to encourage compatible land use, help prevent incompatible encroachment, and facilitate



the continued presence of major military installations in this state."

Aref Joulani, the county's senior planner for development review, in a report submitted Friday, said the 2004 legislative action "requires affected local governments to amend their comprehensive plans to achieve compatibility of adjacent or closely proximate lands with military installations."

The Navy's Scholl, in a Jan. 12 letter to County Administrator Tom Willi, echoed Joulani's comments.

"As you know, the Florida Legislature recently adopted a broad range of revisions to the Florida Statutes to address compatibility of development with military installations. These revisions highlighted the importance of the AICUZ in local planning."

The same law requires local planning agencies to notify military officials of any proposed changes to land-use rules that would affect property near a military installation, and to "take into consideration" and forward to the state Department of Community Affairs any comments provided by military officials. The DCA has oversight of all land-use issues in the Keys.

It also directs local planning agencies to include a representative of an adjacent military installation as an ex officio, nonvoting member of the planning board. Conaway said the Scholl has been invited to appoint a Navy representative to join the county Planning Commission.

Another state law says land-use plans "shall include criteria to be used to achieve the compatibility of adjacent or closely proximate lands with military installations."

The key word of that phrase is "shall." According to Black's Law Dictionary, sometimes used to determine intent of words used in the law, "shall" means "a duty to; more broadly, is required to."

Good maps make good neighbors

The AICUZ, in use at military bases across the nation, is designed to ensure the safety of residents and base operations by limiting certain uses in areas deemed at risk for accidents or high noise levels. Local governments are not required by the Department of Defense to abide by AICUZ, but are strongly encouraged do so.

The guidelines for suggested land use restrictions are not limited to the Florida Keys, but are used in AICUZ across the nation.

"The whole AICUZ program is designed to keep good relations between the Navy and community for making good land-use decisions and making sure we don't end up with situation where we have unintended consequences for bad planning," said Scholl.

The new AICUZ for NAS Key West expands the boundaries of high accident potential and noise zones westward, taking in a more highly populated area than the 1977 AICUZ that has been part of the county's land-use plan since 1989.

Included in the new area is the southern half of Key Haven and the southeastern side of Stock Island.

"I think we have a lot of air space here. And a lot of open water," said Swift. "I don't know what the rationale is for expanding the AICUZ and moving it over the populated areas."

While only a small portion of Key Haven, including Enchanted Island, is included in the potential accident zone, a much larger area is included in the zone 2 noise contour, which, according to the AICUZ, "is an area of moderate impact where some land use controls are needed."

Residents of Stock Island have been reporting increased aircraft noise — though noise complaints to the Navy's public information office have actually decreased — for the past year.

A small portion of southeast Stock Island is in the zone 3 noise contour, which is "the most severely impacted area and the area that requires the greatest degree of compatible land use controls," according to the AICUZ.

The purpose of the guidelines is "not to preclude productive use of the land around Naval air facilities, but to recommend compatible future use of the land that is protective to human health, safety and welfare," according to the NAS Key West AICUZ.

"Certain land uses are considered strictly incompatible in very high noise areas" and the accident potential zones. "Other land uses are considered compatible under certain conditions."

The new AICUZ maps, even if included in the county land-use plan, have limited effect on existing land use including residences and businesses within their boundaries. However, the titles for those properties could be required to carry a disclaimer, called a fair disclosure statement.

That's already done for all properties within the 1977 AICUZ boundaries.

But the effect of the new maps on the county's ability to create new affordable housing in the Lower Keys could be massive, said Swift, a longtime affordable housing advocate.

"Losing a major part of Stock Island to affordable housing is a major, major disaster," he said. "It's a major disaster that we can ill afford. Come on, we don't have any place to go."

Said NAS Key West Commander Scholl, "It's not suggested that you can't put property in these noise areas, but if the decision is made, we want protections put in place."

If housing is approved within the so-called noise contours, the AICUZ recommends noise abatement. That, said Swift, could increase the cost enough to preclude affordable housing.

In fact, if the maps had been in existence several years ago, said Swift, the county's new affordable housing complex on Stock Island, Meridian West, "could never have been built or could not have been built affordably."

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**Coming tomorrow: How other communities are coping with military base impact on land-use planning.**

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*Published on Sunday, February 6, 2005*

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