

MEMORANDUM

TO: Regional Steering Committee on Homelessness and Housing
FROM: HomeBase
RE: The “How-To’s” of Base Closure in 2005
DATE: September 16, 2005

Base closures announced

Congress enacted the Base Closure Community Redevelopment and Homeless Assistance Act (1994 Base Closure Act) in 1994 (P.L. 103-421, 108 Stat. 4346 (1994)). The 1994 Base Closure Act governs the disposition of surplus federal property on military bases and requires that this process take into consideration the needs of the homeless population.

In May of this year, the Department of Defense (“DoD”) recommended the closure of 33 major military bases in 22 states. The Base Closure Act requires that the needs of homeless persons be considered in determining how to reuse closed military bases, which often include a significant number of housing units.

In our region, the DoD recommended the closure of the **Naval Weapons Station Seal Beach in Concord** and the **Onizuka Air Force Station in Sunnyvale**. The Base Closure Commission (discussed in more detail below) recommended the closure of Onizuka but the Concord Weapons Station is slated to remain open.

Under the laws that regulate the procedure of military base closures, programs that deal with homelessness have certain rights. The 1994 Base Closure Act removed base closure properties from the McKinney Act and created its own special surplus property act for homelessness. The Base Closure Act requires a balancing of the needs of the homeless population in that area with the economic needs of the wider community.

Timeline of the base closure process

Of the 180 military base closures recommended by the DoD on May 13, 2005, 33 were major bases (for a full list see <http://www.brac.gov/process.asp>). On July 1, the Comptroller submitted a detailed analysis of the DoD’s list to the Congressional Armed Services Committee. On September 8, 2005, the Base Closure Commission (“Commission”) transmitted its closure and realignment recommendations to the President. The commission voted to close the Onizuka Air Force Station in Sunnyvale. The Concord Naval Weapons Station Seal Beach is currently slated to remain open, although some positions are scheduled to be transferred to other installations. At Detachment Concord, the Inland portion of the base is slated to be closed, and the Tidal Area transferred to the Department of the Army.

The President has until September 23, 2005 to approve or disapprove the recommendation. If he approves, the list is sent to Congress. The list is binding unless both houses of Congress pass a joint resolution of disapproval within 45 days. If the report is returned to the Commission

because the President disapproves, the Commission has until October 20, 2005 to resubmit its report to the President. If the report is returned to the Commission and then re-submitted to the President, the President must transmit his approval and certification of resubmitted report to Congress by November 7, 2005. Should the President fail to approve or transmit either the initial or revised Commission recommendations by the above dates, the Base Realignment and Closure (BRAC) process will be terminated. While it is possible that there is enough concern in Congress that they will choose to change the process and devise new legislation, this is highly unlikely. Definitive base closures will be known by the end of this year.

Priorities in the base closure process: the federal screening process and the LRA

Once the base closures and realignments are announced, federal agencies are the first to be allowed to express their interest in the base property; they have 60 days to express their interest (“the federal screening process”). This year in particular, the federal Department of Homeland Security will likely be interested in these properties.

While the federal screening process is going on, each community should form a Local Redevelopment Authority (“LRA”) to convert the base to non-military uses (32 CFR 174, 24 CFR 586). The LRA is any authority that the state or local government has established and that the DoD recognizes as the entity responsible for developing the reuse plan for the property. The LRA is typically in the jurisdiction in which the property is located. The DoD publishes the name of the LRA and contact information in the *Federal Register*.

The LRA leads the planning process. The LRA and the Navy engage in discussions as to how to plan for the ultimate disposition of the base. Upon the conclusion of the federal screening process, LRAs are to conduct outreach efforts (by advertising in the local newspaper that property is available, for example) and design a comprehensive plan for reuse of BRAC property, culminating in a redevelopment plan. The redevelopment plan is not binding upon the DoD; indeed, it is the DoD that is ultimately responsible for preparing an environmental impact analysis under the National Environmental Policy Act (“NEPA”), in which it must examine all reasonable disposal alternatives, and make its own disposal decisions. Nonetheless, it is worth noting that the DoD is statutorily obligated to give the LRA’s redevelopment plan considerable weight in making its own disposal determinations.

The notice of interest submission

Pursuant to the 1994 Base Closure Act, the Secretary of Defense is now directed to publish notice of the available property and to submit information on that property to HUD and any LRA. When the LRA advertises the availability of this military surplus property, State and local government agencies as well as nonprofit agencies, which are eligible to acquire the property at no cost, may then submit a **notice of interest**. The LRA will give tours of the property to show what is available. This is the best time for the interested agencies to ask questions and anticipate possible problems, such as environmental contamination of the site and possible abatement strategies. If an agency is interested in acquiring **buildings** (and not just undeveloped land), it is highly recommended that engineers be hired in order to thoroughly review the property.

Under BRAC, the **notice of interest requires** a comprehensive description of the need for the property, the needs of the homeless people in the area, the coordination with other providers and agencies, those agencies' technical and financial capability to provide the services, and the suitability of the property for services contemplated.

The redevelopment plan

After the LRA conducts outreach to the community, it has 270 days to create the **redevelopment plan** during which the LRA negotiates with the government or nonprofit agency and creates a legally binding agreement (based upon the notice of interest). The LRA's redevelopment plan **must consider “the interests in the use to assist the homeless of the building and property at the installation that are expressed in the notices submitted to the development authority....”** (Defense Base Closure and Realignment Act, § 2905(b)). BRAC has few limits on how the property helps homeless people – it can meet the needs of homeless people directly or through cash or assistance. This plan could help the homeless in the community by, among other things:

- Creating jobs or offer job assistance training on the former military base;
- Selling the property for commercial uses and put the money from the sales into a trust fund to support rental subsidies or other assistance to homeless people; or
- Selling the property and buy other property in a more appropriate location that could be used to serve the homeless in that community.

Approval of the LRA redevelopment plan

The LRA next submits the plan to the Secretary of HUD and the Secretary of Defense for review. The Secretary of HUD is authorized to review the plan, to negotiate with the LRA for changes, and ultimately must determine, based on statutorily prescribed factors, whether the plan is acceptable. Upon HUD approval, the base redevelopment plan, including any homeless assistance component and agreement to implement no cost homeless assistance property conveyances, are submitted to DoD. Again, it would appear that DoD, giving “substantial deference to the redevelopment plan concerned,” may develop its own disposal plan.

Given how unusual this process is (and how infrequently it occurs – only once every 10 years), it is recommended that sophisticated legal representation on behalf of homeless service agencies be retained for the duration of this process, especially someone well-versed in real estate, transactional, and corporate law to help file the notice of interest and legally binding agreement.

Recommendations for Acquiring Property to Serve the Homeless

Plan for this process now if there's a possibility of a base closure in your community:

1. Start talking to other service providers and government entities about what needs could be fulfilled through the redevelopment process.
2. Review the community's consolidated plan and talk with members of the Continuum of Care to determine how to maximize the value of the property to the homeless population.
3. Keep an eye on the National Law Center on Homelessness and Poverty (NLCHP) web site (www.nlchp.org); they will post any developments in the base closure process, including the

sites recommended for closure when they become public. You may also download their free report; describing, in more detail, the base closure process, and detailing over 60 programs that have used base closure property to serve homeless people.

4. When a base closure is advertised by the LRA in your area, submit a timely notice of interest with the LRA after it publishes the advertisement. The notice of interest will be due between 3 and 6 months of when the LRA publishes the ad. NLCHP recommends strongly that you get sophisticated legal and engineering advice to help you negotiate this process.

Recent News on Surplus Federal Property (But not Military Base Closures):

In the Interagency Council on Homelessness' meeting Sept. 13, 2005 a key federal housing policy development was announced in support of the Administration's goal of ending chronic homelessness. United States Department of Health and Human Services (HHS) Assistant Secretary for Planning and Evaluation (ASPE) Dr. Michael O'Grady announced to Council members that the Department, responding both to the Administration's goal and the needs of communities, will in the future consider permanent supportive housing as an eligible use for federal surplus property under the McKinney-Vento Title V program.

The Department will publish a notice for review and comment this fall to operationalize the change. The policy change will reverse the approach in place since the creation of the property program in 1987, under which eligible uses for surplus property have been emergency shelter, transitional programs, and supportive services. According to HHS, this policy change will expand the options available to communities to better meet the needs of disabled individuals and families who are experiencing homelessness. More information on Title V federal surplus property can be found on HUD's website: <http://www.hud.gov/offices/cpd/homeless/programs/t5/index.cfm>

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