



## CHAPTER 2 LIFE AFTER BASE CLOSURE

The Defense Base Closure and Realignment Act of 1990 provides the Defense Base Closure and Realignment Commission the statutory authority to review and analyze recommendations from the Secretary of Defense for base closures and realignments. After six years of base closings (the 1988 round under Public Law 100-526, and the 1991 and 1993 rounds under the current law), the Commission has accumulated much information, heard many suggestions, and learned many lessons about how the Federal government can more effectively assist communities affected by base closures to recover from the economic consequences of a base closure.

The Commission believes that in addition to making recommendations to close or realign military bases during the 1995 round, it is also appropriate to undertake two other tasks not mandated in its charter. These tasks are:

- 1) to examine the current status of reuse programs and regulations; and,
- 2) to make recommendations to the President, Congress, and communities for improving the Federal government's performance in fostering a timely, successful transition of bases from military use to civilian reuse.

This Commission will cease to exist, under current law, on December 31, 1995. The disruption visited upon hundreds of communities by its decisions, however, will continue for many years to come. The purpose of this section of the Commission's report is to offer suggestions to improve the interaction among Federal, state, and local officials, as well as the private sector, that is so critical to economic development.

### OVERVIEW OF THE CURRENT REUSE PROCESS

#### *Key Elements*

In this report, "reuse" refers to the new use of a former military base intended for productive civilian activities.

*The Local Redevelopment Plan:* Critical to the reuse process is a comprehensive redevelopment plan which contains various options the community intends to use to create jobs and effect economic recovery. The plan is developed by local community representatives who are recognized by the Department of Defense to carry out the redevelopment plan. The plan is also used as the basis for a federally required environmental impact analysis.

*Property Disposal Process:* Normally, the General Services Administration (GSA) is responsible for Federal property disposal. Pursuant to statutory direction, however, the Administrator of GSA has delegated the authority to dispose of military facilities to the Secretary of Defense, who has redelegated the authority to the Secretaries of the military departments.

Once the disposing military department determines it no longer needs to retain real property on a closing base, priority claims for use of the property go to DoD entities, and then to other federal agencies. If no federal agency requests the property, it is declared surplus. State and local governmental entities, including redevelopment authorities, may acquire the property through direct sales, public benefit conveyance, or economic development conveyance.

Transfers of property on those bases that will be closed under the 1995 Base Realignment and Closure (BRAC) process are exempted from claims on behalf of homeless care providers that receive priority in other Federal property transfers. Transfers of property at bases closed in previous BRAC rounds are also eligible for this alternate process if the local redevelopment authority opts for it. In such cases, a community reuse plan must balance the needs of the homeless with other community and economic development needs.

*Public Benefit Conveyance.* Under a public benefit conveyance, closing base property may be transferred by the disposing military department in conjunction with other Federal agencies, for use by the local community at minimal or no cost for certain specified purposes. Examples include property used for airports, parks, schools, health care, ports, or prisons. In many cases, the continued presence of significant public services on former bases can provide an anchor to attract additional development.

*Economic Development Conveyance.* As an incentive to provide immediate jobs and to speed up economic redevelopment, the disposing military department may sell or lease all or portions of the real property, either at or below the fair market value, to a local redevelopment authority.

The disposing military department may also negotiate terms and conditions of payment for the property with the local redevelopment authority, and may transfer the property with or without initial payment, or with only partial payment at the time of transfer. In addition, the property may be transferred for in-kind services, such as environmental restoration, or exchanged for other real property. Generally, DoD and the local redevelopment authority share any net profits in cases where property is conveyed without an initial cost and is subsequently leased or sold.

*Environmental Restoration.* Environmental restoration of military bases is often the most difficult obstacle to civilian reuse. A transfer of real property by deed cannot be made until environmental cleanup is completed, or a clean-up remedy is in place and operating successfully. As a result of this prohibition, leasing base closure property to communities and businesses in advance of transfer has become a common practice. It is a means of giving communities and businesses early access to the property so that they may begin the economic redevelopment process.

In preparation for reuse, each major closing base has a BRAC cleanup team of experts from the DoD, the Environmental Protection Agency (EPA), and the state regulatory agencies. The team is responsible for expediting and improving environmental response actions in order to facilitate disposal and reuse, while protecting human health and the environment. Generally, DoD does not accelerate cleanup if the property is not likely to be used by the community or another user. The team also solicits public input on cleanup plans and on progress of the plans from community members of the local Restoration Advisory Boards.

The DoD BRAC account is the exclusive source of funds for environmental restoration at closing bases. This account is funded by annual appropriations and by proceeds from the sale of base closure properties. According to DoD, as of March 31, 1995, of the 252 military installations closed in the 1988, 1991, and 1993 BRAC rounds, there have been 24 negotiated or public sales (adding \$69.4 million to the account), and three sales via economic development (adding \$59.2 million to the account).

The issues of air quality and the reduction of air pollutants present a unique problem for some communities that are impacted by base closures. Communities which do not meet Federal standards for air quality are required to reduce air emissions in state implementation plans under the Clean Air Act.

Presently, there is no guarantee that the air emission credits available to the closing bases will be made available for reuse to the communities. The DoD may wish to retain the credits for its other installations in the same air district. This raises at least one major emission credits issue which continues to be unresolved: should air emission credits be retained for base reuse as personal property, or does DoD have priority claims on the credits and, therefore, may retain them for its own use elsewhere? At this writing, emissions trading rules have yet to be issued by DoD.

### *Federal Agencies and Reuse*

Many Federal departments and agencies provide programs that in some way directly or indirectly impact reuse activities. Although not inclusive, the following provide some major reuse programs.

*The Department of Defense* is the primary agency for setting overall policies relating to reuse at closing bases. It has delegated the responsibility for transferring and leasing base closure properties to each of its military departments. The DoD is also responsible for preparing environmental impact analyses, and for cleanup of contaminants at military bases.

The DoD retains responsibility for cleaning up any contamination caused by DoD that is discovered subsequent to transfer. It is not responsible, however, for cleanup of contaminants caused by future users. Additionally, DoD indemnifies transferees (owners or leasees) for any damages caused by contamination associated with DoD activities.

The DoD's Office of Economic Adjustment (OEA) offers technical assistance to local communities on how to organize for reuse activities. It also provides limited economic development planning grants as transitional assistance.

*The Department of Commerce's* (DOC) Economic Development Administration (EDA) provides grants to help communities implement comprehensive and innovative economic development strategies in response to base closures, including projects involving architectural and utility renovations, and overall industrial developments.

*The Department of Education* (DOEd) offers programs to certain former military and civilian personnel.

*The Department of the Interior* (DOI) ensures compliance with the Endangered Species Act. Many military bases have extensive wetland areas, and many have wildlife habitats.

*The Department of Labor* (DOL) provides retraining services and other readjustment services to communities for defense workers, particularly civilians at closing bases.

*The Environmental Protection Agency* (EPA) is the regulatory agency that oversees DoD's completion of environmental remedial investigations and feasibility studies, sets cleanup schedules, and selects environmental remedies for military bases on the National Priority List. The EPA concurs on DoD's identification of uncontaminated property, and participates as a member of the BRAC Cleanup Team at closing bases.

*The Federal Aviation Administration* (FAA) determines whether military airfield components are part of the National Airspace System, and if they should be retained within this system. The FAA

also assists communities with design criteria and procedures when converting military airfields to civil aviation use.

*The Small Business Administration* (SBA) provides loan guarantees and management and technical assistance to small businesses impacted by base closings.

### ***Legislative and Administrative Changes Affecting Reuse Activities***

In recent years, Congress has passed, and the Executive Branch has implemented, far-reaching new laws to assist impacted communities. The DoD, EPA, DOL, and other Federal agencies have also adopted innovative regulatory and policy changes that provide a variety of assistance to impacted communities, their workers, and businesses. The most significant of the changes are discussed below.

- 1) The Community Environmental Response Facilitation Act (CERFA) was enacted in 1992 to release uncontaminated property for early reuse. It amends the basic legal framework (Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA, also known as the Superfund law) for the identification, restoration, and transfer of contaminated military properties. CERFA requires that uncontaminated parcels of land at closing bases be identified, and allows these clean parcels to be transferred while long-term cleanup of contaminated parcels continues. In addition, CERFA allows the transfer of property by deed when the cleanup remedy is in place and operating successfully.
- 2) On July 2, 1993, President Clinton announced a Five Point Plan to redevelop communities affected by base closures and realignments. The major goals of the plan are to create expeditious community redevelopment, and to foster new jobs in communities facing base closings. The plan was designed to offer communities: a) jobs-centered property disposal; b) larger Federal grants for economic development planning and technical assistance; c) on-site base transition coordinators as community ombudsmen; d) easy access to transition and redevelopment help; and e) fast-track environmental remediation for base reuse.
- 3) In 1993, Congress adopted a series of legislative provisions introduced by Senator Pryor of Arkansas during consideration of the National

Defense Authorization Act for Fiscal Year 1994. These provisions, referred to as the Pryor Amendments, incorporate and expand the President's Five Point Plan. The Pryor Amendments permit the Secretary of Defense to transfer or lease all or portions of closing military bases to communities at or below fair market value or—in some cases—at no cost, and to negotiate terms and conditions of payments for properties. The legislation also permits the military departments to sell a parcel of land for the cost of cleanup or in exchange for cleanup at a closing base. In addition, the Pryor Amendments allow certain personal property—any property except land, fixed-in-place buildings, ships and Federal records—to be retained at the closing base to facilitate reuse, if there is no military need for the property.

- 4) The Base Closure Community Redevelopment and Homeless Assistance Act, enacted into law on October 25, 1994, deleted the statutory requirement of the Stewart B. McKinney Homeless Assistance Act to give priority claims for excess base closure properties to organizations that provide housing and services to the homeless. The new law balances local economic and community development needs with needs of the homeless in a way that is supportive of overall redevelopment efforts.
- 5) Legislation was included in the National Defense Authorization Act of 1995 to prohibit the Pentagon and the Commission, in their base closure and realignment decision-making processes, from penalizing communities that begin early reuse planning for redevelopment. In addition, this legislation also permitted DoD to provide financial assistance to communities for early reuse planning.

## HEARINGS AND SITE VISITS

The Commission held two public hearings in Washington, D.C. to address reuse issues and activities. During the first hearing, the Commission received testimony from Senator David Pryor of Arkansas, from local governmental officials and representatives of various organizations involved with reuse activities.

During the second hearing, the Commission received testimony from representatives of Executive Branch departments and agencies responsible for implementing reuse programs and activities.

The Commission also received letters, documents, and information about the reuse process from a variety of other sources, including Members of Congress and concerned citizens. Finally, the Commission staff conducted three fact-finding site visits, made numerous office visits, and maintained an active dialogue with community groups and organizations.

## FINDINGS

- 1) The Commission believes that the Executive Branch has recognized the difficulties communities face when military bases are closed or realigned. The Executive Branch and Congress have worked to reform the reuse process, and to provide financial and manpower assistance to the affected areas. The Commission found that as a result of the joint efforts, major achievements have been accomplished, such as the acceleration of cleanup efforts for contaminated sites on closing military bases, and improved local determination for the consideration of needs of the homeless in the reuse process.
- 2) The Commission found that DoD, through the military departments and defense agencies, has a continuing responsibility to clean up contaminated property at defense facilities. This obligation remains the same whether a base is closed pursuant to the base closure statutes or remains an open base. Federal agencies, including DoD, are precluded, however, from transferring property to another owner until that property is cleaned up. Specifically, section 120(h) of CERCLA requires DoD to include in the deed of sale a covenant that "all remedial action necessary to protect human health and the environment...has been taken." To promote interim reuse while cleanup continues, DoD needs clear statutory authority that it can enter into long term leases of land that is not suitable for transfer. While the land should be leased only if there is no threat to public health and safety, long term leases are key to beginning the reuse process. DoD and EPA have already put into place a mechanism to determine when land is suitable to lease. However, DoD should be provided clear authority to enter into long term leases. Without long term leases, financing for redevelopment is difficult to obtain, and reuse is delayed.

- 3) Clearly, environmental cleanup is very costly. Funding levels for environmental restoration programs are declining. This could mean postponement of environmental cleanup, presenting further difficulties for impacted communities. The Commission notes that Congress is considering reduced funding levels for other Federal programs that are essential to communities for economic recovery, such as the OEA and EDA programs, and job training and retraining programs. The Commission feels strongly that adequate funding is crucial to programs that: a) assist in environmental restoration; b) help communities organize for reuse, and offer economic development planning grants and economic devastation grants; c) provide job training and retraining; and d) offer infrastructure and aviation improvements, and overall industrial development. A reduction of funding for any of these programs will cause a significant setback for communities that are working to recover from base closures.
- 4) Recently, the General Services Administration issued a ruling that would prevent DoD from making property available to a local redevelopment authority if the DoD continues to use the property, and DoD is interested in leasing rather than retaining ownership of the property. In some instances, when a base closes, some tenants remain on the base in an enclave. Oftentimes, these tenants are reserve or guard units with strong ties to the community. The units are left with the responsibility to maintain the small parcel of Federal property that is an island in the middle of the community's redevelopment effort. Should the DoD tenants decide to move outside of the base closure process, the community would be unable to acquire the property under the base closure statutes and would have to revert to acquiring the property under normal procedures of the Federal Property Act. The Commission believes that in some limited circumstances, it may be in the best interests of the communities and the remaining DoD tenants to allow the property to be transferred to the reuse authority, which would in turn lease the property back to the tenants for a token amount, generally \$1 per year.
- 5) The Commission received testimony from many communities that the property disposition process is insensitive to local concerns. The communities believe that in some instances, properties selected for Federal uses leave communities with a hodgepodge of disjointed parcels unsuitable for the development of any cohesive plan.
- 6) The Commission found that achieving sufficient environmental cleanup in a timely fashion presents one of the greatest obstacles in the entire reuse process. During the March 16, 1995, Commission hearing, numerous witnesses expressed concern about delay in environmental cleanup at closing bases that hampers communities engaged in economic redevelopment. The Commission believes that after public health concerns have been addressed, the most commercially viable properties should be given priority for site investigation and cleanup.
- 7) The Commission heard testimony that there are frequent delays in the formal screening of real property at closing bases that have been deemed excess to the needs of DoD and surplus to the needs of the Federal government. Notwithstanding statutory deadlines for completing the screening process, the system is often unnecessarily slow and cumbersome.
- 8) On April 6, 1994, DoD issued an interim final rule, and on October 26, 1994, issued an amendment to the rule which, together, implement the President's Five Point Plan, the Pryor Amendments, and the Homeless Assistance Act Amendments. The interim final rule provides guidance to DoD on its authority to give priority to early reuse of real and personal properties on closing military bases in order to stimulate and encourage community reinvestment and speedy job creation. The interim final rule amendment clarifies the application process and criteria to be used to evaluate applications for real properties on the bases. The Commission found that as of this writing, the final rule to implement essential reuse programs has not been promulgated.
- 9) The Commission found that allocating air emission credits or planning offsets presents problems for some communities located in areas which do not meet Clean Air Act standards for air quality. Military installations that remain open or expand in the same air basin may need air credits or planning offsets that could be used by communities to attract businesses and revitalize economic activities at losing bases. The Commission found the issue

of who should retain the air emission credits or offsets, the community or DoD, continues to be unresolved.

- 10) Officials of the Environmental Protection Agency told the Commission they believe some military departments do not retain senior environmental staff throughout the BRAC cleanup process. The EPA testified that its experience shows as bases downsize for closure, they often lose the most experienced environmental cleanup personnel. According to EPA, an experienced and knowledgeable BRAC Cleanup Team is a significant element in the speedy environmental cleanup at a closing base.
- 11) Most major closing bases have an on-site Base Transition Coordinator (BTC) who works with the local community as an ombudsman. Base Transition Coordinators often serve as a conduit between the community and Federal departments and agencies. The Commission found that, far too often, decisions by BTCs at the local level are revoked by higher headquarters.
- 12) The Commission found that while many communities value the importance of advance planning for the transition of closed bases to civilian use, a significant number of communities delayed early planning for fear it would be counted against them in the base closure and realignment decision-making process. The Commission found that over the years, seminars have been held, information has been printed and disseminated, discussions have been had, and just last year, legislation was enacted, all with the intent to inform the public that early planning for base closings is a wise decision, and that decision-makers will not use their early planning against them. Nevertheless, the Commission found that many communities continue to delay advance reuse planning to avoid a perception that the community is preparing for a potential base closure or realignment.
- 13) Many local officials in areas where major military installations are located believe base closures will result in severe economic disruption to their local communities. For many of them, the military bases are the largest employers. Moreover, the Commission recognizes that generally, urban areas tend to attract reuse activities more easily than rural areas because urban areas tend to have a more diverse economy and a greater demand for those services and the real estate that a redeveloped military base can offer.

## RECOMMENDATIONS

### TO CONGRESS:

- 1) The Commission believes certain legislative changes to the statutory cleanup process could benefit the communities by returning property to productive reuse and save money in the long run. These changes were suggested initially by DoD, and in some instances, in conjunction with EPA:
  - a) Allow DoD to take into consideration the long-term, anticipated land use when making cleanup decisions. According to DoD, this would facilitate the transfer of property and yield better coordinated cleanups and reuse plans.
  - b) Provide flexibility in the choice of remediation methods—permanent solutions may not make sense in all instances.
  - c) Provide EPA with discretionary authority—similar to that enjoyed by private sites—not to place closing military bases on the National Priority List (NPL) if, in EPA's judgment, sufficient progress is being made towards cleanup.
  - d) Clarify section 120(h) of CERCLA to allow long term lease of contaminated property at closing military bases. This would help to speed up the return of bases to productive reuse, and ensure DoD access to the property to perform the required remediation.
  - e) Amend CERFA to clarify that storage of hazardous material does not automatically prevent a parcel of land from being clean, if the amount of material stored was either minimal or if there was no release. According to DoD, the current statutory language excludes many residential areas from being considered clean parcels because domestic hazardous materials, such as paint and home heating oil, were stored for more than a year.
- 2) The Commission recommends that Congress provide adequate funding levels to those programs that are determined to impact critically on community planning and economic development (including the OEA and EDA programs), and job training and retraining (various Labor Department programs).
- 3) The Commission recommends Congress carefully review and support DoD funding levels to meet its environmental obligations to clean up contamination and prevent future contamination.

The Commission believes Congress should provide adequate funding levels for environmental restoration activities at closing bases.

- 4) The Commission recommends a change in the property disposal law to allow all parties demonstrating an interest in property at closing bases to come to the table at the same time, bringing their needs and requests for evaluation. This would allow for planned reuse decisions that meet the needs of the local community, and would retain within the Executive Branch the ability to obtain property for beneficial public uses. The current system permits former military bases to be "picked apart" by other Federal agencies, which have first call on the most desirable portions of the installation.

#### ***TO THE EXECUTIVE BRANCH:***

- 1) The Commission recommends DoD clean up the most commercially viable contaminated base areas first, and the least desirable contaminated areas later, as long as the sites are stabilized and no public health threats are imminent.
- 2) The Commission recommends DoD and other Federal government departments and agencies adhere to the statutory deadlines for completing the screening process of surplus real property at closing bases.
- 3) The Commission urges the General Services Administration to reconsider its interpretation of the Federal Property Act to allow the transfer and leaseback of base closure property in certain limited circumstances where there are economic advantages to the community and to the DoD tenants. If the GSA determines that it does not have authority under the Federal Property Act to approve the transfer and leaseback of the property, then the Commission urges GSA to pursue a legislative initiative that would allow this type of transaction.
- 4) The Commission recommends DoD act expeditiously to promulgate the final rules and regulations required to implement the President's Five Point Plan to stimulate and encourage community reinvestment and speedy job creation.
- 5) The Commission recommends DoD act expeditiously to promulgate an emissions trading policy which would clarify who retains air emission credits when base closing properties are transferred from military departments to

communities.

- 6) The Commission recommends DoD and EPA identify factors that will encourage senior DoD environmental cleanup personnel to remain at closing bases throughout the cleanup process.
- 7) The Commission recommends Base Transition Coordinators (BTC) be given authority to make and implement more local decisions in a timely fashion. The DoD should establish a better working relationship with the BTCs to avoid frequent revocations from the Pentagon, a problem that can be an obstacle to speedy economic development.
- 8) Since early community planning is so crucial to successful community redevelopment, the Commission urges DoD to take a more proactive role and work more aggressively with public and private organizations in developing strategies that will help communities use advanced reuse planning as a tool rather than seeing it as an obstacle.

#### ***TO COMMUNITIES:***

It is far easier to identify what legislative and policy steps Congress and the Executive Branch might take to assist communities in making a successful economic transition after base closure than it is to direct suggestions to the hundreds of diverse communities. Nonetheless, some changes in community attitudes and activities can also make a large contribution to improving the quality of life after closure.

- 1) Communities are encouraged to contact the various Federal departments and agencies that are mentioned earlier in this report for assistance in the reuse process. As an example, DoD's Office of Economic Adjustment (OEA) provides technical assistance and grants to communities that wish to do advance reuse planning. OEA can help the community form a committee of appropriate public and private sector representatives to plan, coordinate, and implement economic adjustment efforts. A request for assistance can be made to the Director, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, Virginia 22202-2884. OEA can be reached by telephone at 703/604-6020. Communities are also encouraged to contact the Commerce Department's Office of Economic Conversion Information (listed below) for a list of successful base closings that can serve as a model. In

- addition, both offices can offer other important and relevant information about closing bases.
- 2) Early organization is crucial to a community. Should the community decide to fight to keep a base open, the Commission recommends that concurrently, the community organize and work just as hard toward developing a contingency civilian reuse plan as early as possible, and not wait for base closure to occur.
  - 3) Early formation of a local redevelopment authority is critical to early development of a comprehensive redevelopment plan. Membership should be kept to a manageable size, and should not exclude any key elements of the community. This is the body that must develop the base reuse plan.
  - 4) The local redevelopment authority should be well organized and speak as a single body from the time of its initial approach to the Federal government, and throughout the reuse process. Community and jurisdictional disagreements may cause confusion for those who have to work and communicate with the redevelopment authority, and may prohibit the group from reaching its goal of reuse of the closing base in a timely fashion. In many instances, failure to develop a reuse plan is the result of unresolved local disagreements.
  - 5) The Commission recommends that the local redevelopment authority solicit early support for its community reuse plan from surrounding impacted jurisdictions.
  - 6) It is crucial for the local redevelopment authority to identify as early as possible all real and personal properties it wishes to retain for reuse. Additionally, it is crucial for the authority to work with the disposing military department to resolve issues surrounding the properties, such as tenant use of utilities, and responsibilities for property maintenance.
  - 7) It is important for local redevelopment authorities to work with the disposing military department in developing an effective marketing strategy for reuse of the base.
  - 8) The Commission recommends the free services of the Office of Economic Conversion Information in Washington, D.C. to communities, individuals, and businesses who seek information about the Federal reuse process and activities. This is a Federal clearinghouse that is cosponsored by the Departments of Commerce and Defense. The clearinghouse can be reached by telephone at 1-800-345-1222. (Participating Federal Depository Libraries are also available at this number.) The hearing impaired may access the clearinghouse by dialing 1-202-501-0868 TDD. A request for information can be made to: The Office of Economic Conversion Information, Economic Development Administration, Room 7231, U.S. Department of Commerce, Washington, D.C. 20230-0001.