

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

2521 South Clark Street, Suite 600

Arlington, VA 22202

Telephone: 703-699-2950

October 24, 2005

The Honorable James Hansen
Post Office Box 751
Farmington, UT 84025

Dear Congressman Hansen:

I am delighted to learn of your enthusiasm in publicizing and lobbying for the new legislation proposed by the Commission to expand both its scope and authorities in the future. I also understand that you may have some ideas on how to go about doing this in the most effective way. Appendix R of the BRAC Commission report spelled out the proposed changes to the existing BRAC statute, and I have attached a short summary of it along with the Appendix itself for your review. I have also shared a copy of these materials with the other Commissioners for their input and comment.

Please provide any comments, questions or changes to Ms. Rumu Sarkar, Associate General Counsel, and she will be happy to work with you on making whatever changes you feel are necessary. Please feel free to use Rumu as a resource should you decide to pursue this effort further. I will look forward to hearing from you directly, and please do not hesitate to contact me if you wish to discuss this matter with me.

Sincerely,

Handwritten signature of Anthony J. Principi in cursive script.

Anthony J. Principi
Chairman

Attachments: a/s

Chairman: Anthony J. Principi

Commissioners: The Honorable James H. Bilbray, The Honorable Philip E. Coyle III, Admiral Harold W. Gehman Jr., USN (Ret), The Honorable Jim Hansen, General James T. Hill, USA (Ret), General Lloyd Newton, USAF (Ret), The Honorable Samuel K. Skinner, Brigadier General Sue Ellen Turner, USAF (Ret)

Executive Director: Charles Battaglia

Sarkar, Rumu, CIV, WSO-BRAC

From: Hague, David, CIV, WSO-BRAC
Sent: Friday, October 28, 2005 1:57 PM
To: Battaglia, Charles, CIV, WSO-BRAC
Cc: Cirillo, Frank, CIV, WSO-BRAC; Cook, Robert, CIV, WSO-BRAC; Sarkar, Rumu, CIV, WSO-BRAC
Subject: BRAC STATUTE CHANGES
Attachments: BRAC STATUTE CHANGES.doc

Charlie --

Attached is a summary of the new BRAC statute proposal contained in Appendix R of the Commission report. The summary is the work product of Rumu and Dan Else.

Approaches to changing the statute can be: change it substantially, such as reflected in the summary/Appendix R; or, be more conservative and only make changes such as clearly stating the commission is non-FACA, providing more time between start-up and report due date, and so forth.

Frank and Bob believe that a 50-member commission after the R&A/report period is complete is too large. They may be correct, but the number of staff needed would depend on continuing tasks. Could be 50, probably not more, but could also be less than 50.

Frank questions task #4 on page 2 in which the commission would "monitor and report on the remediation of environmental degradation and its associated costs at BRAC sites." He thinks it would not be appropriate for the commission because it did not validate or defend the DoD cost figures. Bob says "wasn't in our charter at any time, so why now?"

Frank and Bob are also concerned about the draconian nature of item D.1 on page 4. They are right. The fix could be for the commission to determine if there has been substantial compliance with the requirement rather than have an absolute 7-day rule.

Bob raises questions about the "financial toolbox" mentioned on page 3. "Too squishy" he says and "need more information." Several aspects of the proposal, such as the toolbox, are forward-leaning. Dan Else and others are excited about them.

Commissioner Hansen has expressed active interest in promoting a revised BRAC statute. He has already developed a plan of sequencing visits to key Senate and House contacts. Other Commissioners are likely to be interested in selling the idea on the Hill.

Before proceeding with any lobbying activity, we will want to send the summary and a copy of Appendix R with a cover memo from the Chairman to the Commissioners and solicit their views on the subject. Once there is agreement on the major revisions, the process can begin.

The Chairman just departed and said that he would be back on Monday

David



BRAC STATUTE
CHANGES.doc (47 K)

SUMMARY OF PROPOSED BRAC LEGISLATION APPENDIX R OF THE BRAC REPORT (SEPTEMBER 8, 2005)

OVERVIEW. The 2005 Defense Base Closure and Realignment (BRAC) Commission recommends various changes to the existing statute governing its creation, organization, process, and outcome. These recommendations and proposed legislative language are set forth in Appendix R to the BRAC Report submitted to the President on September 8, 2005. The proposed revision of the governing Act, if enacted, would represent a significant change in scope of the BRAC statute.

First, it would expand the Commission's lifespan and mission. Secondly, it would explicitly link reconsideration of the defense infrastructure "footprint" to security threat analysis by the new Director of National Intelligence (DNI) and the periodic study of the nation's defense strategy known as the Quadrennial Defense Review (QDR).

In addition, it would also formalize BRAC consideration of international treaty obligations undertaken by the United States, such as the scheduled demilitarization of chemical munitions. By passing legislation containing the Commission's recommended language, Congress would authorize the Secretary of Defense to conduct a 2014-2015 BRAC round, should the Secretary deem it necessary.

Other recommended provisions would enable the BRAC Commission to suggest new vehicles for the expeditious transfer of title of real property designated for disposal through the BRAC process. In addition, recommended legislative language suggests expanding the requirement for Department of Defense (DoD) release of analytical data and strengthens the penalty for failure to do so. It would increase the responsibilities of the Commission's General Counsel, and would exempt the Commission from the Federal Advisory Committee Act (FACA) while retaining conformity with the Freedom of Information (FOIA) and Government in the Sunshine Acts. The recommended legislation would also make permanent the existing temporary authority granted to the DoD to enter into environmental cooperative agreements with Federal, State, and local entities (including Indian tribes).

Finally, the recommended legislation, while it retains many of the features new to the 2005 round (such as the super majority requirement to add military bases that were not on the Secretary of Defense's original list), it repeals others, such as the existing statutory selection criteria.

A. PLACING THE BRAC PROCESS IN A BROADER SECURITY CONTEXT.

The 2005 BRAC round was the fourth in which an independent commission reviewed recommendations drawn up by the DoD, amended them, and submitted the revised list to the President for approval. While the 2005 process resembled the previous three rounds, it was profoundly different in many respects.

For example, the DoD's analytical process attempted to reduce former rounds' emphasis on individual military departments by enhancing the joint and cross-service evaluation of installations. The BRAC analysis required by the 2005 statute also projected defense needs for the next 20 years, whereas previous BRAC rounds used a much shorter analytical horizon. This requirement encouraged DoD analytical teams to base their assessments on assumptions of the needs of transformed military services, not defense formations created for the Cold War. These assumptions were embodied in the force-structure plan and infrastructure inventory submitted by the Secretary of Defense in 2005.

In its legislative recommendation, the BRAC Commission suggested that a potential 2014-2015 BRAC round be placed in a strategic sequence of defense review, independent threat analysis, and base realignment. The new statute would couple the existing Quadrennial Defense Review (QDR), which is currently required by statute every four years, with consideration of a new BRAC round. If the QDR leads the Secretary of Defense to initiate a new BRAC round, the DNI would produce and forward to Congress an independent threat assessment. This recommended provision is completely new.

B. BRAC COMMISSION. Under the current statute, the BRAC Commission terminates on April 16, 2006. The proposed legislation would extend the life of a subset of the current Commission (consisting of the Chairman, Executive Director, and a staff of not more than 50 people). The continued staff would maintain the Commission's presence and form the core of an expanded staff for a possible 2014-2015 Commission.

In addition, the continued Commission would be tasked to monitor and report on: (1) the use of BRAC appropriations; (2) the implementation and savings of 2005 BRAC recommendations; (3) the execution of privatizations-in-place at BRAC sites; (4) the remediation of environmental degradation and its associated cost at BRAC sites; and (5) the impact of BRAC actions on international treaty obligations of the United States.

C. COMMISSION REPORTS. The proposed law requires the extended BRAC Commission to prepare and submit three reports to Congress and the President: (1) an Annual Report (due October 31 of each year); (2) a Special Report (due on June 30, 2007); and, (3) a Final Report (due on October 31, 2011).

ANNUAL REPORTS. The BRAC Commission would report not later than October 31 of each year on DoD's utilization of the Defense Base Closure and Realignment Account 2005, its implementation of BRAC recommendations, the carrying out of privatizations-in-place by local redevelopment authorities, environmental remediation undertaken by DoD (including its cost), and the impact of BRAC actions on international treaty obligations of the United States.

SPECIAL REPORT. The legislation would authorize the Commission to study and analyze the execution of BRAC 2005 recommendations. This report, undertaken if the Commission considers it beneficial, would be completed not

later than June 30, 2007. It would focus on actions taken and planned for those properties whose disposal proves to be problematic, including:

1. **Properties Requiring Special Financing.** Some properties planned for transfer to local redevelopment authorities or others may require special financial arrangements in the form of loans, loan guarantees, investments, environmental bonds and insurance, or other options. While these financial tools may be exercised by DoD, the proposed legislation contemplates that these authorities may be exercised by an independent public corporation set up by Congress for this purpose.
2. **National Priorities List (NPL) Sites.** NPL sites and other installations present particularly difficult environmental remediation challenges necessitating long-term management and oversight. The proposed legislation contemplates that an independent trusteeship be established to manage these challenged properties that would be the subject of a Special Report to be issued by the Commission.

The 2005 Commission report suggests that this study examine freeing DoD, after a set period, to withdraw from unsuccessful title transfer negotiations with local redevelopment authorities in order to seek other partners. It also envisions potential DoD contracts with private environmental insurance carriers after the completion of environmental remediation in order to mitigate the risk of future liability.

The study may also consider the advisability of crafting a financial "toolbox," similar in concept to the special authorizations granted to DoD in the creation of the Military Housing Privatization Initiative, in order to expedite the disposal of military properties that are being transferred to the private sector. Other alternatives studied could include the creation of public-private partnerships, limited-liability corporations, or independent trusteeships to take title to and responsibility for challenged military properties. The Commission would consult with DoD, the individual military service branches, the Comptroller General of the United States, the Environmental Protection Agency, and the Bureau of Land Management, Department of the Interior, in preparing its study and report.

FINAL REPORT. Existing law requires all BRAC implementation actions to be completed not later than six years after the date that the President transmitted the current Commission's report, or September 15, 2011. The recommended legislation would require the Commission to submit a final report on the execution of these actions not later than October 31, 2011. However, the Commission itself would be authorized to continue in existence until the Secretary of Defense issues a certification for a new BRAC round no later than March 15, 2014. If no such certification is made, then the BRAC Commission

would terminate its operations following the failure to certify, which would terminate the BRAC process under the proposed statute.

D. OTHER CONSIDERATIONS. The recommended legislation includes other provisions suggested by the experience of the 2005 BRAC round.

1. **Submission of Certified Data.** The proposed legislation would require the Secretary of Defense to release the supporting certified data not later than seven (7) days after forwarding his base closure and realignment recommendations to the Congressional defense committees and the Commission. Failure to do so would terminate the BRAC round.
2. **Extension of the BRAC Commission's Analysis and Recommendation Period.** The 2005 Commission report notes that the four (4) months allotted by statute for the Commission to complete its work was shortened considerably by delays in staffing the Commission, the appointment of Commissioners, and the release of DoD certified data, among other considerations. The proposed legislation extends this period to seven (7) months.
3. **Commission Subpoena Power.** The recommended legislation would grant the Commission the power to subpoena witnesses for its hearings.
4. **The BRAC Commission's General Counsel to Serve as the Sole Ethics Counselor.** The Commission recommendation would designate the Commission's General Counsel as its sole ethics counselor. The 2005 Commission found that questions concerning recusal from consideration, potential conflicts of interest, etc., were not materially assisted by consultation with other agency counsel.
5. **Transparency.** Legislation recommended by the 2005 Commission states that the "records, reports, transcripts, minutes, correspondence, working papers, drafts, studies or other documents that were furnished to or made available to the Commission shall be available for public inspection and copying at one or more locations to be designated by the Commission. Copies may be furnished to members of the public at cost upon request and may also be provided via electronic media in a form that may be designated by the Commission." Under the proposed new legislation, the Commission will continue the current practice of opening all unclassified hearings and meetings of the Commission to the public and making official hearing transcripts, certified by the Chairman, available to the public.
6. **Repeal of Existing Law.** The recommended legislation would repeal Sections 2912-2914 of the existing law. These sections authorized the 2005 BRAC round and include, among other provisions, the statutory selection criteria. However, the proposed legislative language provides that new selection criteria may be

proposed and promulgated by the Secretary of Defense for public notice and comment in the *Federal Register* after a new BRAC round is initiated.

SUMMARY. In sum, the proposed legislation recommends that the current BRAC Commission be extended in time and be tasked with issuing annual, special and final reports. These reporting requirements give the 2005 Commission overall monitoring and tracking responsibilities to ensure that the full implementation of its recommendations has taken place. Moreover, this extended 2005 Commission will form the basis of a revitalized Commission with newly appointed Commissioners if an additional BRAC round is authorized for 2014-15.

Secondly, the proposed legislation contemplates the establishment of a new financial “toolbox” to help prepare closed-out military properties for entry into the private sector as well as forming an independent trusteeship to take title to and manage challenged military properties. These new financial tools may be exercised by a newly created public corporation or by DoD, depending on how the underlying legislation is drafted. In the case of challenged properties, the proposed legislation advocates forming an independent trusteeship, thus shifting the legal title from DoD to the trusteeship. In both cases, there is no transfer of DoD’s legal liability to ensure that environmental remediation of these closed out military properties takes place, but legal title to these properties is shifted away from DoD, thus eliminating its administrative burden of managing these properties.

These proposed legislative changes are a paradigm shift, and may be extremely relevant and useful as Congress contemplates the potential need to readjust the nation’s military infrastructure in the next decade.

Attachment: Appendix R

SUMMARY OF PROPOSED BRAC LEGISLATION APPENDIX R OF THE BRAC REPORT (SEPTEMBER 8, 2005)

OVERVIEW. The 2005 Defense Base Closure and Realignment (BRAC) Commission recommends various changes to the existing statute governing its creation, organization, process, and outcome. These recommendations and proposed legislative language are set forth in Appendix R to the BRAC Report submitted to the President on September 8, 2005. The proposed revision of the governing Act, if enacted, would represent a significant change in scope of the BRAC statute.

First, it would expand the Commission's lifespan and mission. Secondly, it would explicitly link reconsideration of the defense infrastructure "footprint" to security threat analysis by the new Director of National Intelligence (DNI) and the periodic study of the nation's defense strategy known as the Quadrennial Defense Review (QDR).

In addition, it would also formalize BRAC consideration of international treaty obligations undertaken by the United States, such as the scheduled demilitarization of chemical munitions. By passing legislation containing the Commission's recommended language, Congress would authorize the Secretary of Defense to conduct a 2014-2015 BRAC round, should the Secretary deem it necessary.

Other recommended provisions would enable the BRAC Commission to suggest new vehicles for the expeditious transfer of title of real property designated for disposal through the BRAC process. In addition, recommended legislative language suggests expanding the requirement for Department of Defense (DoD) release of analytical data and strengthens the penalty for failure to do so. It would increase the responsibilities of the Commission's General Counsel, and would exempt the Commission from the Federal Advisory Committee Act (FACA) while retaining conformity with the Freedom of Information (FOIA) and Government in the Sunshine Acts. The recommended legislation would also make permanent the existing temporary authority granted to the Department of Defense to enter into environmental cooperative agreements with Federal, State, and local entities (including Indian tribes).

Finally, the recommended legislation, while it retains many of the features new to the 2005 round (such as the super majority requirement to add military bases that were not on the Secretary of Defense's original list), it repeals others, such as the existing statutory selection criteria.

A. PLACING THE BRAC PROCESS IN A BROADER SECURITY CONTEXT.

The 2005 BRAC round was the fourth in which an independent commission reviewed recommendations drawn up by the DoD, amended them, and submitted the revised list to the President for approval. While the 2005 process resembled the previous three rounds, it was profoundly different in many respects.

For example, the DoD's analytical process attempted to reduce former rounds' emphasis on individual military departments by enhancing the joint and cross-service evaluation of installations. The BRAC analysis required by the 2005 statute also projected defense needs for the next 20 years, whereas previous BRAC rounds used a much shorter analytical horizon. This requirement encouraged DOD analytical teams to base their assessments on assumptions of the needs of transformed military services, not defense formations created for the Cold War. These assumptions were embodied in the force-structure plan and infrastructure inventory submitted by the Secretary of Defense in 2005.

In its legislative recommendation, the BRAC Commission suggested that a potential 2014-2015 BRAC round be placed in a strategic sequence of defense review, independent threat analysis, and base realignment. The new statute would couple the existing QDR (currently required by statute every four years) with consideration of a new BRAC round. If the QDR leads the Secretary of Defense to initiate a new BRAC round, the DNI would produce and forward to Congress an independent threat assessment. This recommended provision is completely new.

B. BRAC COMMISSION. Under the current statute, the BRAC Commission terminates on April 16, 2006. The proposed legislation would extend the life of a subset of the current Commission (consisting of the Chairman, Executive Director, and a staff of not more than 50 people). The continued staff would maintain the Commission's presence and form the core of an expanded staff for a possible 2014-2015 Commission.

In addition, the continued Commission would be tasked to monitor and report on: (1) the use of BRAC appropriations; (2) the implementation and savings of 2005 BRAC recommendations; (3) the execution of privatizations-in-place at BRAC sites; (4) the remediation of environmental degradation and its associated cost at BRAC sites; and (5) the impact of BRAC actions on international treaty obligations of the United States.

C. COMMISSION REPORTS. The proposed law requires the extended BRAC Commission to prepare and submit three reports to Congress and the President: (1) an Annual Report (due October 31 of each year); (2) a Special Report (due on June 30, 2007); and, (3) a Final Report (due on October 31, 2011).

ANNUAL REPORTS. The BRAC Commission would report not later than October 31 of each year on DoD's utilization of the Defense Base Closure and Realignment Account 2005, its implementation of BRAC recommendations, the carrying out of privatizations-in-place by local redevelopment authorities, environmental remediation undertaken by DoD (including its cost), and the impact of BRAC actions on international treaty obligations of the United States.

SPECIAL REPORT. The legislation would authorize the Commission to study and analyze the execution of BRAC 2005 recommendations. This report, undertaken if the Commission considers it beneficial, would be completed not

later than June 30, 2007. It would focus on actions taken and planned for those properties whose disposal proves to be problematic, including:

1. **Properties Requiring Special Financing.** Some properties planned for transfer to local redevelopment authorities or others may require special financial arrangements in the form of loans, loan guarantees, investments, environmental bonds and insurance, or other options. While these financial tools may be exercised by DoD, the proposed legislation contemplates that these authorities may be exercised by an independent public corporation set up by Congress for this purpose.
2. **National Priorities List (NPL) Sites.** NPL sites and other installations present particularly difficult environmental remediation challenges necessitating long-term management and oversight. The proposed legislation contemplates that an independent trusteeship be established to manage these challenged properties that would be the subject of a Special Report to be issued by the Commission.

The 2005 Commission report suggests that this study examine freeing DoD, after a set period, to withdraw from unsuccessful title transfer negotiations with local redevelopment authorities in order to seek other partners. It also envisions potential DoD contracts with private environmental insurance carriers after the completion of environmental remediation in order to mitigate the risk of future liability.

The study may also consider the advisability of crafting a financial "toolbox," similar in concept to the special authorizations granted to DoD in the creation of the Military Housing Privatization Initiative, in order to expedite the disposal of military properties that are being transferred to the private sector. Other alternatives studied could include the creation of public-private partnerships, limited-liability corporations, or independent trusteeships to take title to and responsibility for challenged military properties. The Commission would consult with DoD, the individual military service branches, the Comptroller General of the United States, the Environmental Protection Agency, and the Bureau of Land Management, Department of the Interior, in preparing its study and report.

FINAL REPORT. Existing law requires all BRAC implementation actions to be completed not later than six years after the date that the President transmitted the current Commission's report, or September 15, 2011. The recommended legislation would require the Commission to submit a final report on the execution of these actions not later than October 31, 2011. However, the Commission itself would be authorized to continue in existence until the Secretary of Defense issues a certification for a new BRAC Round no later than March 15, 2014. If no such certification is made, then the BRAC Commission

would terminate its operations following the failure to certify, which would terminate the BRAC process under the proposed statute.

D. OTHER CONSIDERATIONS. The recommended legislation includes other provisions suggested by the experience of the 2005 BRAC round.

1. **Submission of Certified Data.** The proposed legislation would require the Secretary of Defense to release the supporting certified data not later than seven (7) days after forwarding his base closure and realignment recommendations to the Congressional defense committees and the Commission. Failure to do so would terminate the BRAC round.
2. **Extension of the BRAC Commission's Analysis and Recommendation Period.** The 2005 Commission report notes that the four months allotted by statute for the Commission to complete its work was shortened considerably by delays in staffing the Commission, the appointment of Commissioners, and the release of DoD certified data, among other considerations. The proposed legislation extends this period to seven (7) months.
3. **Commission Subpoena Power.** The recommended legislation would grant the Commission the power to subpoena witnesses for its hearings.
4. **The BRAC Commission's General Counsel to Serve as the Sole Ethics Counselor.** The Commission recommendation would designate the Commission's General Counsel as its sole ethics counselor. The 2005 Commission found that questions concerning recusal from consideration, potential conflicts of interest, etc., were not materially assisted by consultation with other agency counsel.
5. **Transparency.** Legislation recommended by the 2005 Commission states that the "records, reports, transcripts, minutes, correspondence, working papers, drafts, studies or other documents that were furnished to or made available to the Commission shall be available for public inspection and copying at one or more locations to be designated by the Commission. Copies may be furnished to members of the public at cost upon request and may also be provided via electronic media in a form that may be designated by the Commission." Under the proposed new legislation, the BRAC Commission will continue the current practice of opening all unclassified hearings and meetings of the Commission to the public and making official hearing transcripts, certified by the Chairman, available to the public.
6. **Repeal of Existing Law.** The recommended legislation would repeal Sections 2912-2914 of the existing law. These sections authorized the 2005 BRAC round and include, among other provisions, the statutory selection criteria. However, the proposed legislative language provides that new selection criteria may be

proposed and promulgated by the Secretary of Defense for public notice and comment in the *Federal Register* after a new BRAC round is initiated.

SUMMARY. In sum, the proposed legislation recommends that the current BRAC Commission be extended in time and be tasked with issuing annual, special and final reports. These reporting requirements give the 2005 Commission overall monitoring and tracking responsibilities to ensure that the full implementation of its recommendations has taken place. Moreover, this extended 2005 Commission will form the basis of a revitalized Commission with newly appointed Commissioners if an additional BRAC round is authorized for 2014-15.

Secondly, the proposed legislation contemplates the establishment of a new financial “toolbox” to help prepare closed out military properties for entry into the private sector as well as forming an independent trusteeship to take title to and manage challenged military properties. These new financial tools may be exercised by a newly created public corporation or by DoD, depending on how the underlying legislation is drafted. In the case of challenged properties, the proposed legislation advocates forming an independent trusteeship, thus shifting the legal title from DoD to the trusteeship. In both cases, there is no transfer of DoD’s legal liability to ensure that environmental remediation of these closed out military properties takes place, but legal title to these properties is shifted away from DoD, thus eliminating its administrative burden of managing these properties.

These proposed legislative changes are a paradigm shift, and may be extremely relevant and useful as Congress contemplates the potential need to readjust the nation’s military infrastructure in the next decade.

Attachment: Appendix R

Sarkar, Rumu, CIV, WSO-BRAC

From: Sarkar, Rumu, CIV, WSO-BRAC
Sent: Friday, October 21, 2005 10:51 AM
To: 'rochelle.dornatt@mail.house.gov'
Cc: Hague, David, CIV, WSO-BRAC
Subject: Proposed legislative Changes to the BRAC Statute

Attachments: Appendix R.pdf

Hello Rochelle: I attended the CRS conference a few weeks ago where they discussed post-BRAC and BRAC implementation issues, and I enjoyed listening to your questions. Dan Else thought it might be useful to share the proposed legislative changes to the BRAC statute with you directly since it is buried inside the BRAC Report. I have attached Appendix R to this message, and would be happy to learn more of your views on the proposal.

I hope that we actually have the opportunity to meet in person, and please do not hesitate to contact me if I may assist you with anything. Best regards, Rumu



Appendix R.pdf
(250 KB)

Rumu Sarkar
Associate General Counsel
2005 Defense Base Closure and Realignment Commission
2521 South Clark Street, Suite 600, Room 600-18
Arlington, VA 22202-3920
Tel: (703) 699-2973
Cell: (703) 901-7843
Fax: (703) 699-2735

Sarkar, Rumu, CIV, WSO-BRAC

From: Daniel Else [delse@crs.loc.gov]
Sent: Saturday, October 22, 2005 8:53 PM
To: rumu.sarkar@wso.whs.mil
Subject: Rumu, you've already got my seminar text!

I lifted liberally from your executive summary in Annex R in order to write my part of the October 5 CRS report you picked up at the seminar. All I did for the talk was to condense and edit a bit what was in there.

So, if you want to crib from me cribbing from you, all you have to do is pull a copy of that CRS short report. But to save you the trouble, I've done that from your web site (your document 10742 in the E-library) and will paste the relevant wording below. Let me know if this doesn't sound familiar. If you are looking for something more, or you need additional information, give me a call (I'm out until Wednesday, but I have this nasty habit of checking email and voice mail).

By the way, I'd like to do a side-by-side of existing and proposed legislation, but I may not be given the green light. I have, though, pointed out Annex R to several of my clients who might want to look down the road a little.

Dan :-)

Order Code RS22291
 October 5, 2005

CRS Report for Congress
 Military Base Closures: Highlights of the 2005 BRAC Commission Report and Proposed Legislation

Daniel Else
 Specialist in National Defense
 Foreign Affairs, Defense, and Trade

David Lockwood
 Specialist in Foreign Affairs and National Defense Foreign Affairs, Defense, and Trade

...

Recommended Legislation

Overview. The 2005 Defense Base Closure and Realignment Commission recommends various changes to the existing statute governing its creation, organization, process, and outcome. The proposed revision of the governing Act, if enacted, would arguably represent a significant change in scope of the BRAC law. It would expand the Commission's lifespan and mission. It would explicitly link reconsideration of the defense infrastructure "footprint" to security threat analysis by the new Director of National Intelligence (DNI) and the periodic study of the nation's defense strategy known as the Quadrennial Defense Review.

It would also formalize BRAC consideration of international treaty obligations undertaken by the United States, such as the scheduled demilitarization of chemical munitions. By passing legislation containing the Commission's recommended language, Congress would authorize the Secretary of Defense to conduct a 2014-2015 BRAC round, should he or she deem it necessary.

Other recommended provisions would enable the Commission to suggest new vehicles for the expeditious transfer of title of real property designated for disposal through the BRAC process. In addition, recommended legislative language suggests expanding the requirement for Department of Defense release of analytical data and strengthens the penalty for failure to do so. It would increase the responsibilities of the Commission's General Counsel and would exempt the Commission from the Federal Advisory Committee Act (FACA) while retaining conformity with the Freedom of Information (FOIA) and Government in the Sunshine Acts. The recommended legislation would also make permanent the existing

temporary authority granted to the Department of Defense to enter into environmental cooperative agreements with Federal, State, and local entities (including Indian tribes).

Finally, the recommended legislation, while it retains many of the features new to the 2005 round (such as the super majority requirement), it repeals others, such as statutory selection criteria.

Placing BRAC in the Broader Security Context. The 2005 BRAC round was the fourth in which an independent commission reviewed recommendations drawn up by the Department of Defense, amended them, and submitted the revised list to the President for approval. While the 2005 process resembled the previous three rounds, it was profoundly different in many respects.

For example, the DOD's analytical process attempted to reduce former rounds' emphasis on individual military departments by enhancing the joint and cross-service evaluation of installations. BRAC analysis in 2005 also attempted to project defense needs out to 20 years whereas previous rounds used a much shorter analytical horizon.

This encouraged DOD analytical teams to base their assessments on assumptions of the needs of transformed military services, not formations created for the Cold War. These assumptions were embodied in the force-structure plan and infrastructure inventory submitted by the Secretary of Defense.

In its legislative recommendation, the Commission suggested that a potential 2014- 2015 BRAC round be placed in a strategic sequence of defense review, independent threat analysis, and base realignment. The new statute would couple the existing Quadrennial Defense Review (QDR, currently required every four years) with consideration of a new BRAC round. If the QDR leads the Secretary of Defense to initiate a new BRAC round, the DNI would produce and forward to Congress an independent threat assessment.

BRAC Commission. Under current statute, the BRAC Commission terminates on April 16, 2006. The proposed legislation would extend the life of a subset of the current Commission (Chairman, Executive Director, and staff of not more than 50). The continued staff would maintain the Commission's documentation and could form the core of an expanded staff for a possible 2014-2015 Commission.

In addition, the continued Commission would be tasked to monitor and report on: (1) the use of BRAC appropriations; (2) the implementation and savings of 2005 BRAC recommendations; (3) the execution of privatizations-in-place at BRAC sites; (4) the remediation of environmental degradation and its associated cost at BRAC sites; and (5) the impact of BRAC actions on international treaty obligations of the United States.' Commission Reports. The proposed law requires the prolonged Commission to prepare and submit three reports to Congress and the President: an Annual Report, a Special Report (due on June 30, 2007), and a Final Report (due on October 31, 2011).

Annual Reports. The Commission would report not later than October 31 of each year on Department of Defense utilization of the Defense Base Closure and Realignment Account 2005, implementation of BRAC recommendations, the carrying out of privatizations-in-place by local redevelopment authorities, environmental remediation undertaken by the Department (including its cost), and the impact of BRAC actions on international treaty obligations of the United States.

Special Report. The legislation would authorize the Commission to study and analyze the execution of BRAC 2005 recommendations. This report, undertaken if the Commission considers it beneficial, would be completed not later than June 30, 2007. It would focus on actions taken and planned for those properties whose disposal proves to be problematic, including:

Properties Requiring Special Financing. Some properties planned for transfer to local redevelopment authorities or others may require special financial arrangements in the form of loans, loan guarantees, investments, environmental bonds and insurance, or other options.

National Priorities List (NPL) Sites. NPL sites and other installations present particularly difficult environmental remediation challenges necessitating long-term management and oversight.

The 2005 Commission report suggests that this study examine freeing the Department, after

a set period, to withdraw from unsuccessful title transfer negotiations with local redevelopment authorities in order to seek other partners. It also envisions potential Department contracts with private environmental insurance carriers after the completion of remediation in order to mitigate risk of future liability.

The study may also consider the advisability of crafting a financial "toolbox," similar in concept to the special authorizations granted to the Department of Defense in the creation of the Military Housing Privatization Initiative, in order to expedite the disposal of challenging properties. Other alternatives studied could include the creation of publicprivate partnerships, limited-liability corporations, or independent trusteeships to take title to and responsibility for properties³ The Commission would consult with the Department of Defense, the military departments, the Comptroller General of the United States, the Environmental Protection Agency, and the Bureau of Land Management, Department of the Interior, in preparing its study and report.

Final Report. Existing law requires all BRAC implementation actions to be completed not later than six years after the date that the President transmitted the current Commission's report, or September 15, 2011. The recommended legislation would require the Commission to submit a final report on the execution of these actions not later than October 31, 2011.

Other Considerations. The recommended legislation includes other provisions suggested by the experience of the 2005 round.

Submission of Certified Data. The proposed legislation would require the Secretary of Defense to release the supporting certified data not later than seven (7) days after forwarding his base closure and realignment recommendations to the congressional defense committees and the Commission. Failure to do so would terminate the BRAC round.

Prolongation of Commission Analysis and Recommendation Period.

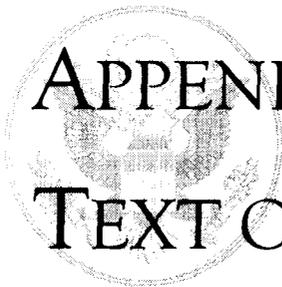
The 2005 Commission report notes that the four months allotted by statute for the Commission to complete its work was shortened considerably by delays in staffing the Commission, the appointment of Commissioners, and the release of Defense Department certified data, among other considerations. The proposed legislation extends this period to seven (7) months.

Commission Subpoena Power. Recommended legislation would grant the Commission the power to subpoena witness for its hearings.

Commission General Counsel as Sole Ethics Counselor. The Commission recommendation would place into statute the designation of the Commission's General Counsel as its sole ethics counselor. The 2005 Commission found that questions concerning recusal from consideration, potential conflicts of interest, etc., were not materially assisted by consultation with other agency counsel.

Transparency. Legislation recommended by the Commission states that the "records, reports, transcripts, minutes, correspondence, working papers, drafts, studies or other documents that were furnished to or made available to the Commission shall be available for public inspection and copying at one or more locations to be designated by the Commission. Copies may be furnished to members of the public at cost upon request and may also be provided via electronic media in a form that may be designated by the Commission." It continues the current practice of opening all unclassified hearings and meetings of the Commission to the public and provides for official transcripts, certified by the Chairman, to be made available to the public.

Repeal of Existing Law. The recommended legislation would repeal Sec. 2912-2914 of the existing law. These sections authorized the 2005 round and include, among other provisions, the statutory installation selection criteria.



APPENDIX Q

TEXT OF 2005 DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FINAL AND APPROVED RECOMMENDATIONS

A BILL TO MAKE RECOMMENDATIONS TO
THE PRESIDENT UNDER THE DEFENSE BASE
CLOSURE AND REALIGNMENT ACT OF 1990

A Bill to Make Recommendations to the President Under the Defense Base Closure and Realignment Act of 1990
Chapter XI. Reserved for Additional Recommendations of the Commission

193. NAVAL AIR STATION OCEANA, VIRGINIA BEACH, VA²⁵⁶

- a. Realign Naval Air Station Oceana, Virginia by relocating the East Coast Master Jet Base to Cecil Field, Florida**, if the Commonwealth of Virginia and the municipal governments of Virginia Beach, Virginia, and Chesapeake, Virginia, fail to enact and enforce legislation to prevent further encroachment of Naval Air Station Oceana by the end of March 2006, to wit, enact state-mandated zoning controls requiring the cities of Virginia Beach and Chesapeake to adopt zoning ordinances that require the governing body to follow Air Installation Compatibility Use Zone (AICUZ) guidelines in deciding discretionary development applications for property in noise levels 70 dB Day-Night, average noise Level (DNL) or greater; enact state and local legislation and ordinance to establish a program to condemn and

²⁵⁰ By Motion 193-4A, the Commission added the recommendation "Naval Air Station, Oceana, VA. Realign Naval Air Station Oceana, Virginia by relocating the East Coast Master Jet Base to Cecil Field, Florida, if the Commonwealth of Virginia and the municipal governments of Virginia Beach, Virginia, and Chesapeake, Virginia, fail to enact and enforce legislation to prevent further encroachment of Naval Air Station Oceana by the end of March 2006, to wit, enact state-mandated zoning controls requiring the cities of Virginia Beach and Chesapeake to adopt zoning ordinances that require the governing body to follow Air Installation Compatibility Use Zone (AICUZ) guidelines in deciding discretionary development applications for property in noise levels 70 dB Day-Night, average noise Level (DNL) or greater; enact state and local legislation and ordinance to establish a program to condemn and purchase all the property located within the Accident Potential Zone 1 areas for Naval Air Station Oceana, as depicted for 1999 AICUZ pamphlet published by the U.S. Navy; codify the 2005 final Hampton Roads Joint Land Use Study recommendations; legislate requirements for the cities of Virginia Beach and Chesapeake to evaluate undeveloped properties in noise zones 70 dB DNL or greater for rezoning classification that would not allow uses incompatible under AICUZ guidelines; establish programs for purchase of development rights of the inter-facility traffic area between NAS Oceana and NALF Fentress; enact legislation creating the Oceana-Fentress Advisory Council; and if the State of Florida appropriates sufficient funds to relocate commercial tenants presently located at Cecil Field, Florida, appropriates sufficient funds to secure public-private ventures for all the personnel housing required by the Navy at Cecil Field to accomplish this relocation and turns over fee simple title to the property comprising the former Naval Air Station Cecil Field, including all infrastructure improvements that presently exist, to the Department on or before December 31, 2006, if the Commonwealth of Virginia and the municipal governments of Virginia Beach, Virginia, and Chesapeake, Virginia, decline from the outset to take the actions required above or within six months of the Commonwealth of Virginia and the municipal governments of Virginia Beach, Virginia, and Chesapeake, Virginia, failing to carry through with any of the actions set out above, whichever is later. The State of Florida may not encumber the title by any restrictions other than a reversionary clause in favor of the State of Florida and short-term tenancies consistent with the relocation of the Master Jet Base to Cecil Field.

If the Commonwealth of Virginia and the municipal governments of Virginia Beach, Virginia, and Chesapeake, Virginia, fail to take all of the prescribed actions and the State of Florida meets the conditions established by this recommendation, the units and functions that shall relocate to Cecil Field will include but are not limited to all of the Navy F/A-18 strike fighter wings, aviation operations and support schools, maintenance support, training, and any other additional support activities the Navy deems necessary and appropriate to support the operations of the Master Jet Base"

By Motion 193-4A, the Commission also made an "Additional Statement of the Commission," directing that:

The BRAC 2005 report language shall state: "It is the sense of the Commission that the Secretary of Defense deviated from the BRAC criteria by failing to consider NAS Oceana for closure or realignment. The long-standing and steadily worsening encroachment problem around NAS Oceana, without strong support from state and city governments to eliminate current and arrest future encroachment, will in the long term create a situation where the military value of NAS Oceana will be unacceptably degraded. The remedies presented to the Commission thus far have been unconvincing. It is also the sense of the Commission that the future of naval aviation is not Naval Air Station Oceana. The Commission urges the Navy to begin immediately to mitigate the noise encroachment and safety issues associated with flight operations around the Virginia Beach area by transitioning high-density training evolutions to other bases that are much less encroached, such as Naval Outlying Field Whitehouse, Florida, or Kingsville, Texas.

The Secretary of Defense is directed to cause a rapid, complete due diligence review of the offer of the State of Florida to reoccupy the former NAS Cecil Field and to compare this review against any plan to build a new master jet base at any other location. This review is to be completed within six months from the date that the BRAC legislation enters into force and is to be made public to the affected states for comment. After review of the states' comments, which shall be submitted within 120 days after publishing the review, the Secretary of Defense shall forward to the oversight committees of Congress the review, the state comments, and his recommendation on the location of the Navy's future Atlantic Fleet Master Jet Base."

A Bill to Make Recommendations to the President Under the Defense Base Closure and Realignment Act of 1990

Chapter XI. Reserved for Additional Recommendations of the Commission

purchase all the incompatible use²⁵⁷ property located within the Accident Potential Zone 1 areas for Naval Air Station Oceana, as depicted for 1999 AICUZ pamphlet published by the U.S. Navy and to fund and expend no less than \$15 million annually in furtherance of the aforementioned program;²⁵⁸ codify the 2005 final Hampton Roads Joint Land Use Study recommendations; legislate requirements for the cities of Virginia Beach and Chesapeake to evaluate undeveloped properties in noise zones 70 dB DNL or greater for rezoning classification that would not allow uses incompatible under AICUZ guidelines; establish programs for purchase of development rights of the inter-facility traffic area between NAS Oceana and NALF Fentress; enact legislation creating the Oceana-Fentress Advisory Council; it shall be deemed that the actions prescribed to be taken by the Commonwealth of Virginia, and the Cities of Virginia Beach, and Chesapeake respectively, by the end of March 2006 have not been taken in their entirety, unless the Department of Defense Inspector General²⁵⁹ so certifies in writing to the President and oversight committees of Congress by June 1, 2006²⁶⁰; and if the State of Florida appropriates sufficient funds to relocate commercial tenants presently located at Cecil Field, Florida, appropriates sufficient funds to secure public-private ventures for all the personnel housing required by the Navy at Cecil Field to accomplish this relocation and turns over fee simple title to the property comprising the former Naval Air Station Cecil Field, including all infrastructure improvements that presently exist, to the Department on or before December 31, 2006, if the Commonwealth of Virginia and the municipal governments of Virginia Beach, Virginia, and Chesapeake, Virginia, decline from the outset to take the actions required above or within six months of the Commonwealth of Virginia and the municipal governments of Virginia Beach, Virginia, and Chesapeake, Virginia, failing to carry through with any of the actions set out above, whichever is later. The State of Florida may not encumber the title by any restrictions other than a reversionary clause in favor of the State of Florida and short-term tenancies consistent with the relocation of the Master Jet Base to Cecil Field. It shall be deemed that the actions prescribed to be taken by the State of Florida and the City of Jacksonville respectively by the end of 31 December 2006 have not been taken in their entirety unless the Department of Defense Inspector General²⁶¹ so certifies in writing to the President and oversight committees of Congress by June 1, 2007.²⁶²

If the Commonwealth of Virginia and the municipal governments of Virginia Beach, Virginia, and Chesapeake, Virginia, fail to take all of the prescribed actions and the State of Florida meets the conditions established by this recommendation, the units and functions that shall relocate to Cecil Field will include but are not limited to all of the Navy F/A-18 strike fighter wings, aviation operations and support schools, maintenance support, training, and any other additional support activities the Navy deems necessary and appropriate to support the operations of the Master Jet Base.

²⁵⁷ By a motion offered by Commissioner Hill on August 26, 2005, the Commission struck the language "nonconforming use" and inserted in its place "incompatible use".

²⁵⁸ By a motion offered by Commissioner Skinner August 24, 2005, the Commission inserted the language "and to fund and expend no less than \$15 million annually in furtherance of the aforementioned program".

²⁵⁹ As a technical correction, the Commission deleted the language "Comptroller General of the Government Accountability Office" from the additional recommendation and inserted in its place the language "Department of Defense Inspector General," to correct a legal error. The language that would have required the Comptroller General to certify the fulfillment of the conditions established by this recommendation conflicted with *Bowsher v. Synar*, 478 U.S. 714 (1986), and *INS v. Chadha*, 462 U.S. 916 (1983). By designating the Department of Defense Inspector General, in the place of the Comptroller General, the intent of the recommendation will be fulfilled.

²⁶⁰ Amendment by Chairman Principi August 26, 2005 "It shall be deemed that the actions prescribed to be taken by the Commonwealth of Virginia, and the Cities of Virginia Beach, and Chesapeake respectively, by the end of March 2006 have not been taken in their entirety, unless the Comptroller General of the Government Accountability Office certifies in writing to the President and oversight committees of Congress by June 1, 2006."

²⁶¹ As a technical correction, the Commission deleted the language "Comptroller General of the Government Accountability Office" from the additional recommendation and inserted in its place the language "Department of Defense Inspector General" to correct a legal error. The language that would have required the Comptroller General to certify the fulfillment of the conditions established by this recommendation conflicted with *Bowsher v. Synar*, 478 U.S. 714 (1986), and *INS v. Chadha*, 462 U.S. 916 (1983). By designating the Department of Defense Inspector General in the place of the Comptroller General, the intent of the recommendation will be fulfilled.

²⁶² Amendment by Chairman Principi 26 August 2005 "It shall be deemed that the actions prescribed to be taken by the State of Florida and the City of Jacksonville respectively by the end of 31 December 2006 have not been taken in their entirety unless the Comptroller General of the Government Accountability Office certifies in writing to the President and oversight committees of Congress by June 1, 2007."

Sarkar, Rumu, CIV, WSO-BRAC

From: Fetzer, William, CIV, WSO-BRAC
Sent: Friday, October 21, 2005 8:51 AM
To: Fetzer, William, CIV, WSO-BRAC; Battaglia, Charles, CIV, WSO-BRAC
Cc: Cook, Robert, CIV, WSO-BRAC; Cirillo, Frank, CIV, WSO-BRAC; Schaefer, James, CIV, WSO-BRAC; Sarkar, Rumu, CIV, WSO-BRAC; Hanna, James, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Hill, Christine, CIV, WSO-BRAC; Meyer, Jennifer, CIV, WSO-BRAC; McCreary, Robert, CIV, WSO-BRAC
Subject: VA Beach reaction
Attachments: Beach leaders start to Renege.doc

FYI, The Navy's base study director, Kelly Gray called me today. He is proceeding with his analysis, but understands that the way ahead for the Navy is murkier without an option in FLA. The City of VA Beach and their politicians are already speculating that they will not have to comply with the condemnation and purchase clause of the BRAC recommendations. See attached press release.



Beach leaders start
to Renege....

VR, Bill

Beach leaders, residents react cautiously to Cecil decision

The Virginian-Pilot (Norfolk, VA)
 Jon W. Glass And Marisa Taylor
 October 20, 2005

VIRGINIA BEACH --- City and state officials said they will huddle with lawyers today to begin assessing whether they still must comply with a series of conditions imposed by the Defense Base Realignment and Closure Commission for keeping jets at Oceana Naval Air Station.

The most onerous condition requires the city and state to condemn and buy about 3,400 homes, and many businesses, in high-risk accident-potential zones around the master jet base.

"It's a little premature to say we don't have to comply with the order," said state Sen. Kenneth W. Stolle, R-Virginia Beach. But, he added, "I think it's nothing but good news for us."

City leaders and residents reacted cautiously Thursday after the mayor of Jacksonville, Fla., announced he will stop pursuing Oceana's jets.

"My first reaction is caution -- to stay the course and not jump at anything," Virginia Beach Mayor Meyera E. Oberndorf said at a news conference at her Kempsville home. "Maybe inside a voice is saying, 'You can smile a little bit.'"

At best, Jacksonville's decision means the fighter jets will stay at Oceana and the threat of having to condemn homes and businesses around the base will go away.

But nobody was willing to say that Thursday.

"I think it's much too soon to rule anything in or out," Oberndorf said.

"I hope we can throw the 'poison pills' out of the BRAC order and then plot a course for us to co-exist with the Navy to protect their ability to train and to protect people's property rights," said Stolle, who is chairman of a state commission appointed by Gov. Mark R. Warner to assess the BRAC conditions and recommend how to proceed.

Residents in the affected accident-potential zones said they were encouraged Thursday but in no mood to celebrate.

"I think it's a dim light at the end of the tunnel, but I wouldn't bet the ranch on it," said David Gracie, a homeowner in Nottingham Estates.

Marian Linett, who lives in nearby Cheltenham Square, also remained skeptical.

"I'll believe it when they put it in writing that they're not going to touch my house," she said. "I don't trust any of them."

Joe Ferrara, a Cheltenham Square resident, said, "I feel some relief, but I wouldn't call it a great sense of relief. The city has taken so many unexpected turns that I have no idea what course they're going to take."

The mayor and other City Council members hinted that condemnation would be a dead issue if the BRAC mandate becomes invalid. The Navy, they said, has never asked that existing homes be condemned.

"Fundamentally, there's no will on council to condemn people's homes," Councilman James L. Wood said.

Councilman Richard Maddox, the only council member who rejected the BRAC demands from the outset, said he believes Virginia Beach has no reason to try to condemn or buy property in the accident zones.

"The mayor and the City Council of Jacksonville listened to their citizens and said no to BRAC," Maddox said. "It's time that the city of Virginia Beach did the same thing."

Councilman Jim Reeve said he had come to the same conclusion shortly before Jacksonville Mayor John Peyton's announcement.

"If compliance means throwing people out of their homes, I don't agree with it," Reeve said.

Reeve said he hopes the Beach City Council will decide soon how to proceed.

"The lives of over 3,000 families are on hold," Reeve said. "We've got to make our position known."

Even if Jacksonville's action gets Virginia Beach off the BRAC hook, council members said they will pursue plans to restrict the development of new homes and other incompatible development around Oceana.

The city agreed to do that before the BRAC demands through a joint land-use study with the Navy.

In May, the City Council endorsed the land-use study. It calls for restricting new homes in moderate and high jet-noise zones around Oceana, including the resort area. The study also calls for buying undeveloped property under the flight path between Oceana and the Navy's training field in Chesapeake.

Regardless of BRAC, Councilman Bob Dyer said, the Navy's long-term plans to stay at Oceana will depend on how well the city controls future growth.

"If anything, we've got to work harder to establish a better working relationship to keep the Navy here," Dyer said. "If we've learned one lesson out of this, it's that we've got to listen to the Navy. We can't take anything for granted."

Beach leaders, residents react cautiously to Cecil decision

The Virginian-Pilot (Norfolk, VA)

Jon W. Glass And Marisa Taylor

October 20, 2005

VIRGINIA BEACH — City and state officials said they will huddle with lawyers today to begin assessing whether they still must comply with a series of conditions imposed by the Defense Base Realignment and Closure Commission for keeping jets at Oceana Naval Air Station.

The most onerous condition requires the city and state to condemn and buy about 3,400 homes, and many businesses, in high-risk accident-potential zones around the master jet base .

“It’s a little premature to say we don’t have to comply with the order,” said state Sen. Kenneth W. Stolle, R-Virginia Beach. But, he added, “I think it’s nothing but good news for us.”

City leaders and residents reacted cautiously Thursday after the mayor of Jacksonville, Fla., announced he will stop pursuing Oceana ’s jets.

“My first reaction is caution - to stay the course and not jump at anything,” Virginia Beach Mayor Meyera E. Oberndorf said at a news conference at her Kempsville home. “Maybe inside a voice is saying, ‘You can smile a little bit.’”

At best, Jacksonville’s decision means the fighter jets will stay at Oceana and the threat of having to condemn homes and businesses around the base will go away.

But nobody was willing to say that Thursday.

“I think it’s much too soon to rule anything in or out,” Oberndorf said.

“I hope we can throw the ‘poison pills’ out of the BRAC order and then plot a course for us to co-exist with the Navy to protect their ability to train and to protect people’s property rights,” said Stolle, who is chairman of a state commission appointed by Gov. Mark R. Warner to assess the BRAC conditions and recommend how to proceed.

Residents in the affected accident-potential zones said they were encouraged Thursday but in no mood to celebrate.

“I think it’s a dim light at the end of the tunnel, but I wouldn’t bet the ranch on it,” said David Gracie, a homeowner in Nottingham Estates.

Marian Linetti, who lives in nearby Cheltenham Square, also remained skeptical.

“I’ll believe it when they put it in writing that they’re not going to touch my house,” she said. “I don’t trust any of them.”

Joe Ferrara, a Cheltenham Square resident, said, “I feel some relief, but I wouldn’t call it a great sense of relief. The city has taken so many unexpected turns that I have no idea what course they’re going to take.”

The mayor and other City Council members hinted that condemnation would be a dead issue if the BRAC mandate becomes invalid. The Navy, they said, has never asked that existing homes be condemned.

“Fundamentally, there’s no will on council to condemn people’s homes,” Councilman James L. Wood said.

Councilman Richard Maddox, the only council member who rejected the BRAC demands from the outset, said he believes Virginia Beach has no reason to try to condemn or buy property in the accident zones.

“The mayor and the City Council of Jacksonville listened to their citizens and said no to BRAC,” Maddox said. “It’s time that the city of Virginia Beach did the same thing.”

Councilman Jim Reeve said he had come to the same conclusion shortly before Jacksonville Mayor John Peyton’s announcement.

“If compliance means throwing people out of their homes, I don’t agree with it,” Reeve said.

Reeve said he hopes the Beach City Council will decide soon how to proceed.

“The lives of over 3,000 families are on hold,” Reeve said. “We’ve got to make our position known.”

Even if Jacksonville’s action gets Virginia Beach off the BRAC hook, council members said they will pursue plans to restrict the development of new homes and other incompatible development around Oceana.

The city agreed to do that before the BRAC demands through a joint land-use study with the Navy.

In May, the City Council endorsed the land-use study. It calls for restricting new homes in moderate and high jet-noise zones around Oceana, including the resort area. The study also calls for buying undeveloped property under the flight path between Oceana and the Navy’s training field in Chesapeake.

Regardless of BRAC, Councilman Bob Dyer said, the Navy’s long-term plans to stay at Oceana will depend on how well the city controls future growth.

“If anything, we’ve got to work harder to establish a better working relationship to keep the Navy here,” Dyer said. “If we’ve learned one lesson out of this, it’s that we’ve got to listen to the Navy. We can’t take anything for granted.”