

*Don - take a look
at this*

Adding bases to the Secretary's list for consideration and review.

H.

The steps below apply to changes to the Secretary of Defense's list of military installations recommended for closure or realignment that would add an installation for closure and/or realignment or expand the extent of a realignment already recommended by the Secretary.

If, after review and analysis of certified data received from the Department of Defense, information obtained during base visits and regional hearings, and other public input, and consideration of the Comptroller General's report submitted on 1 July, there are quantifiable reasons that the Commission wants to consider and review making a change in the recommendations of the Secretary of Defense that would add a military installation to the Secretary's list of installations recommended for closure or realignment, then, according to controlling law -----

- The Secretary of Defense is notified of the possible additions to his list and is given 15 days to submit an explanation why the bases were not on it.
- Commissioners vote in public session after receiving input from the Secretary of Defense and if seven commissioners vote to add installations then they are added to the Secretary's list.
- Notice of proposed additions to the Secretary's list is published in the Federal Register at least 45 days before 8 Sep 2005.
- At least two commissioners conduct installation visits and regional hearing on the proposed additions.

Then the Commission must, in order to actually place the proposed additions on the list to the President:

Determine that the Secretary deviated substantially from the force-structure plan and final criteria, and

Determine that the additions being considered are consistent with the force-structure plan and final criteria.

Commissioners vote in final deliberations on the entire list, including additions. Seven commissioners must agree on additions. A simple majority is required for approval and disapproval of closures or realignments recommended by the Secretary.

MEMORANDUM TO CHAIRMAN COURTER

FROM: Sheila C. Cheston, General Counsel

RE: Proposed Amendments to the "Procedural Rules of the
Defense Base Closure and Alignment Commission"

I recommend that before the Commission begins to consider proposed "adds" on Friday, May 21, 1993, the Commission vote to adopt the following amendments to its Procedural Rules. These amendments are intended largely to clarify what I understand was the Commission's original intent when it adopted the Rules in 1991, and in 1993 without objection.

1. Amend Rules 5 and 6 by inserting the word "eligible" to make clear that for the enumerated purposes, a quorum is "a majority of the eligible Commission members serving at that time;" and, similarly, that certain action will be by "a majority vote of the eligible Commission members serving at that time." ("Eligible" would exclude Commission members recused from participating in a particular vote.)

2. Amend Rule 6 further to make clear that a majority vote is required to reject a recommendation of the Secretary (that is, to find that the Secretary deviated substantially) or to add a military installation to the Secretary's list (either as a proposed change or as a final change). In other words, in the event of a tie on these issues, the Secretary's recommendation will stand.

A proposed motion to adopt these changes is attached.

TO: CHAIRMAN COURTER
FROM: MARY ANN HOOK, D.G.C.
DATE: MARCH 27
RE: TALKING POINTS FOR ADDS PROCESS

In regards to adding bases to a list for consideration and review, I want to clearly define our process we are undertaking:

If there are quantifiable reasons that the Commission wants to consider and review new bases for eventual add-ons, substitutions or changes to the Secretary of Defense's list, we have the following steps that we must take according to our law, section 2903.(C) and (D) and Commission policy.

These steps apply to all Commission "changes" to the Secretary's list including adding installations for closure and/or realignment and those which we propose increasing the extent of a realignment already recommended by the Secretary of Defense.

COMMISSION PROCESS TO CHANGE SECRETARY'S RECOMMENDATIONS

- A.1) Vote by a majority of the Commission to put the installations on our list for review and consideration -- thereby providing notice to the community. Commission will also vote on proposed changes regarding increasing the extent of a realignment even though the community is already aware of the Commission's review.* (see comments following)
- A.2) Publish official notice in the Federal Register of all proposed changes by June 1, 1993.
- A.3) Conduct public hearings on the proposed changes - including closures, realignments and increasing the extent of a realignment on the SecDef's list.

Then the Commission must, in order to actually place the proposed changes on the list to the President:

- B.1) Determine that the Secretary deviated substantially from the force-structure plan and final criteria.

AND

- B.2) Determine that the changes being considered are consistent with the force-structure plan and final criteria.

* The statute reads that any proposed change must meet the requirements above, except for the first one, A(1), (the vote to add bases for review and consider) which is our own policy. Do you want our policy to be that we vote on changes that increase the extent of realignment?

Would this vote hamper the commission in any way for practicality reasons?

Is it necessary to provide as much notice to those bases since they are already under consideration. Comments?

Matt believes the burden to notify communities re: extent of realignment is the same as those who are not on the SecDef's list at all that we add for consideration and review.

The "cleanest" way is to adopt a policy for "any and all changes" however since the community already has notice of being on the SecDef list, it may not be required.

Comments?

Draft
reviewed by
MATT

-DRAFT-

To: Chairman Courter
Matt Behrmann

From: Mary Ann Hook

Re: Adds

When the language of a statute can be interpreted two ways, it is appropriate to look for the legislative intent of the bill. } ?

Per discussions with Mr. Courter at 9:00 a.m., March 29, I agreed to look into the legislative intent of the section in question. I discussed the statute requirements with Matt Behrmann, Executive Director, 1991, 1993, Bob Moore, General Counsel, 1991 and reviewed documents from 1991.

Conversation with Bob Moore.

Bob Moore saw no clear cut interpretation of the language. He said that the only "intent" that he recalled was as much notice be given to the communities as possible. He did believe that there must be a basis for consideration for bases as potential add-ons but didn't come to a conclusion on whether it would be substantial deviation or another standard.

Senate Memo: July 16, 1992
Document by Bayer/Effron: Senate Armed Services Committee

Language defines the legislative intent.

The legislation would clarify the procedures the Commission must use in considering for closure or realignment any installations or activities outside the list recommended by the Secretary. The Commission would be required to identify such installations and activities in the Fed Register at least 30 days prior to the submission of the Commission's report to the President and to hold public hearings concerning these additional installations. The legislation would make it clear that the Commission can add installations to the Secretary's list of recommended actions only if the Commission determines that the Secretary deviated substantially from the published force structure plan and final criteria. Any additions to the Secretary's list by the Commission must be consistent with the Department's force structure plan and the final criteria. ?

The statute has the language "proposed adds" when it discusses publication whereas this letter does not include any "proposed adds" language. However, it also does not distinguish between adds to the list to consider and final adds to the Secretary's list.

The sequence of events in this senate memo correspond with Matt Behrmann's recollection on the meaning and intent of Congress. His

interpretation was that adds are to be proposed, published before June 1 and added to SecDef's list after Commission finds substantial deviation and consistency with force structure and final criteria.

It is my opinion that this interpretation is solid based on the recollection of Matt Behrmann and Mr. Courter who both believed that there was not intent to put a harder burden on the Commission to determine that adds meet the substantial deviation test until final votes.

After learning more about the process last year, due to this exercise, I can see that to interpret otherwise would defeat the reason for both adding more time to the Commission's process and to allow the communities time to comment.

Bottom line: Despite the confusion, we are legally fine with all of today's motions and actions for adding bases for consideration. These bases will next be submitted for publication to the Fed Register. These bases may be "added" after that publication and after open hearings are held -- if substantial deviation is found and if the change is consistent with the force structure plan.

The only recommended action may be clarification at the next hearing on when the substantial deviation test is applied by the Commission.

I will devise a timeline to meet the statutory requirements regarding federal register publication and write a draft for our policy interpretation of this section for your review.

Yes. -
devise
some wording
for JAC

Mary Anne:

Good work - Thanks for helping us straight.

Please do devise a timeline and write a draft for our policy interpretation.

Thanks for the note - any support I give you under any circumstance is well earned.

Matt.

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Matt Behrmann

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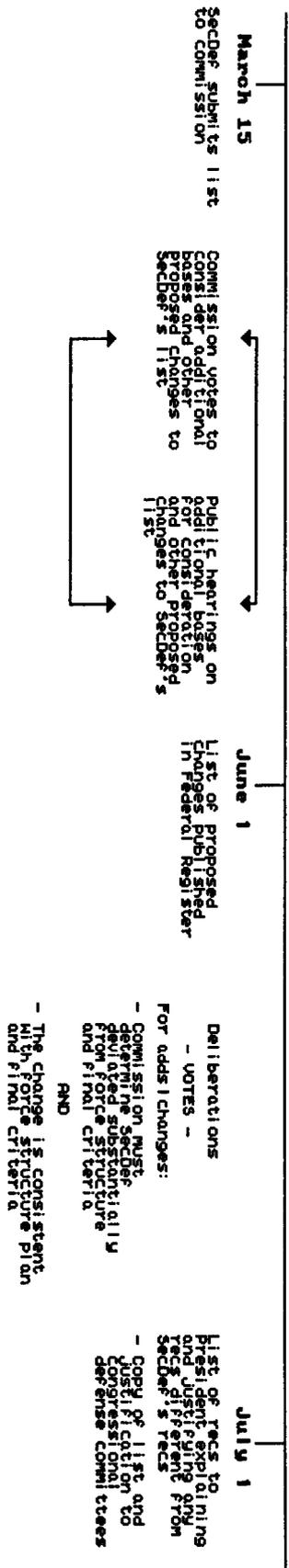
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The only recommended action may be clarification at the next hearing on when the substantial deviation test is applied by the Commission.

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TIME LINE FOR CHANGES



Definition of Changes:

- Add a military installation to SecDef's list for closure
- Add a military installation to SecDef's list for realignment
- Increase extent of realignment of particular installation rec by SecDef

MEMORANDUM TO COMMISSIONERS

FROM: MARY ANN HOOK, DEPUTY GENERAL COUNSEL
DATE: APRIL 6, 1993
RE: ADDING BASES TO LIST FOR CONSIDERATION AND REVIEW

Before a base is discussed and voted on as a base for consideration and review, the Commission General Counsel's office must conduct an extensive legal analysis to identify possible ethic conflicts.

Therefore, please notify the Commission's counsel at least a week prior to making a motion to add a base for consideration and review. Counsel will notify all other Commissioners to allow them time to identify and inform the General Counsel's office of possible conflicts with the bases that can not be foreseen by their financial disclosure forms.

Thank you.

MEMORANDUM TO ALL COMMISSIONERS

FR: Chairman Courter

RE: Questions regarding adding bases for consideration and review

A number of inquiries from both elected officials and the media have been generated in response to our actions of Monday, March 22, 1993 adding four bases to a "consideration list". I thought it might be helpful at this time to explain how I have been answering questions about what we did and how we will add additional bases to our "consideration list".

Commissioners are reminded that we have a completely open process, and I will entertain motions whenever we have a quorum. My explanation of our previous votes and how I recommend proceeding is my explanation and you may or may not find it helpful. As you all know, Peter Bowman has expressed concern that we as a Commission proceed with adds to our "consideration list" in a deliberative and structured way. I believe that the approach I have envisioned and explained to various parties represents a reasonable way to proceed.

QUESTION: What did the votes on March 22 represent, and why were these votes offered so early in your process?

ANSWER: On March 22, the Commission voted to add to a "consideration list" the following bases: McClellan AFB, DLI (Presidio of Monterey), NTC Great Lakes and NAS Agana (Guam).

The "consideration list" will be published in the Federal Register no later than June 1, 1993. The intent of this publication is to give communities in which installations are located reasonable notice that their bases might be voted for additions to or as substitutions for the bases on the Secretary's March 15, 1993 list. This advance notice is designed to provide communities notice that their bases are under consideration by the Commission as alternatives/substitutes. This same notice is required should the Commission place under consideration increasing the extent of a realignment proposed by the Secretary.

Commissioners feel strongly that communities facing possible closure/realignment should be given the maximum amount of notice reasonably possible once they determine that the base in question warrants consideration. It was plainly apparent during the hearings on March 15 and 16 from the testimony of the Secretary of Defense, the Chairman of the Joint Chiefs, and the Service Secretaries that enough information was presented for Commissioners to determine that the 4 bases should be considered. For these reasons, Commissioners voted on March 22 to add the four bases in question.

QUESTION: How will the Commission proceed with adding other bases for consideration or review in the future?

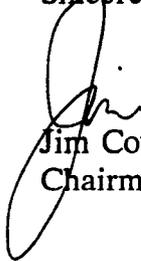
ANSWER: On March 22, the Commissioners made the clearest choices of bases to consider and review based on the testimony given on March 15 and 16. I recommend that after we complete our review of the process, take testimony from the General Accounting Office, and begin to learn base specific issues we will be in an informed position to consider potential adds to our "consideration list".

We should not rush the process!! I would suggest that most bases added to our "consideration list" will be deliberated on May 21, the date the Commission has formally set aside for that purpose. Because this is an open process, motions may be entertained before that date, but, based on the amount of research conducted, I would anticipate such motions will be the exception rather than the rule.

Again, this is the explanation I have offered when questioned on our "consideration list", what it is and how and when we may add to it. I believe this approach addresses the concerns raised by both Peter and Rebecca regarding our moving forward in a structured and deliberative fashion.

I welcome any comments you may have.

Sincerely,



Jim Courter
Chairman

*****DRAFT*****DRAFT*****DRAFT*****

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enc. (3)

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