

**Cowhig, Dan, CIV, WSO-BRAC**

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**To:** Rhoads, Barry  
**Subject:** RE:

Barry -

Have you been in touch with Nicole Bayert? She is the DoD OGC lead on BRAC, including issues of implementation.

We (the Commission staff) can talk to our understanding of the history of "closures" and what we believe the effect to be on leased space, but our understanding would be of no practical import if DoD OGC were not of the same mind. I don't think that the Chairman or the General Counsel will want to get into DoD's business by generating a letter or opinion that might limit DoD's discretion in implementation actions.

From our analysts' discussions with DoD, it looks as though ATFP compliance will likely be one of the biggest discriminating factors in future leases.

V/R

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2005 Defense Base Closure and Realignment Commission  
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**From:** Rhoads, Barry [mailto:brhoads@rheadsc.com]  
**Sent:** Wednesday, September 21, 2005 3:07 PM  
**To:** 'dan.cowhig@wso.whs.mil'  
**Subject:** FW:

Dan: here is a copy of the draft letter I mentioned. I look forward to seeing you on Monday at 1400.

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Barry Rhoads  
Rhoads Group

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**From:** McKnight, Steven  
**Sent:** Wednesday, September 21, 2005 10:35 AM  
**To:** Rhoads, Barry  
**Subject:** RE:

9/22/2005

September \_\_, 2005

Anthony J. Principi  
Chairman, Defense Base Closure and Realignment Commission  
2521 S. Clark St., Ste. 600  
Arlington, VA 22202

Re: BRAC Closure of Leased Facilities

Dear Chairman Principi:

We are writing to request clarification of the legal meaning of Commission decisions to close leased facilities. This clarification is important to facilitating reuse and redevelopment of these facilities.

As you know, the 2005 Defense Base Closure and Realignment Commission received an unprecedented number of recommendations involving the Department of Defense's desire to vacate leased space, especially in the National Capital Region. After due consideration, the BRAC Commission approved many of these recommendations. As a result, many real estate owners and managers who work closely to support DoD missions will be required to seek new tenants, which may include DoD organizations with emerging needs.

Many of the BRAC definitions were developed with the closure and realignment of more traditional military installations in mind. For example, the following definition of close/closure that was developed by the Department of Defense and adopted in Appendix B of the BRAC Commission Report appears only to have been written with military bases owned and operated by the Department of Defense in consideration.

**CLOSE/CLOSURE:** A BRAC action in which all missions or activities of a certain installation have ceased or have been relocated. All personnel positions (military, civilian, and contractor) will either be eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup and disposal of the base, or remaining in authorized enclaves.

We are aware of situations where a closure or realignment decision with regard to a military base has been held to act as a legal bar to certain future uses or occupancies of that base by other DoD agencies or personnel. While this legal holding may make sense with regard to a military base, we believe that it should not apply to leased facilities. By their very nature, leased facilities are meant to be re-let to new tenants. Further, the end of one lease and the start of another lease does not implicate the traditional reuse concerns related to property transfer and environmental cleanup.

During the BRAC process, we raised this concern with BRAC Commission staff. We were told that the staff conferred with the BRAC Commission's Office of General Counsel and were told that there was "no legal prohibition from BRAC law that would limit DoD from leasing a BRAC closed facility in the future."

As a practical matter, however, any unresolved legal issues can serve to paralyze government officials or, at a minimum, result in substantial delay and legal expenses while attempting to resolve the issue. Worse still, we may never realize the extent of lost business opportunities if DoD officials misunderstand the legal impact of the BRAC decisions and fail to consider properties being vacated for future needs.

We would greatly appreciate it if the Commission could publicly reaffirm this legal position in the form of a clarifying legal opinion or letter to the Department of Defense. We believe that this action would benefit all parties involved in meeting DoD facility needs, ultimately serving to expand DoD opportunities and minimize costs to the taxpayers.

Thank you.

Very truly yours,

cc: David Hague, General Counsel  
Defense Base Closure and Realignment Commission