

DCN: 12120

Hague, David, CIV, WSO-BRAC

From: Cirillo, Frank, CIV, WSO-BRAC
Sent: Monday, June 06, 2005 1:37 PM
To: Hague, David, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC; Sarkar, Rumu, CIV, WSO-BRAC
Cc: Sillin, Nathaniel, CIV, WSO-BRAC; Cook, Robert, CIV, WSO-BRAC; Oborn, Tyler, CIV, WSO-BRAC
Subject: RE: Spider Charts - Recommended Final Format for Report/Motions and Deliberations

David: Bob and I met with Andy and Dan today - Bottom line is in the next few days Tyler/Nat will have a consolidated spread sheet, broken out by the 190 with sub lists for each loser and gainer state/base within that recommendation. Thus an easy path to recusals.

Frank

From: Hague, David, CIV, WSO-BRAC
Sent: Monday, June 06, 2005 8:02 AM
To: Cowhig, Dan, CIV, WSO-BRAC; Sarkar, Rumu, CIV, WSO-BRAC
Cc: Cirillo, Frank, CIV, WSO-BRAC
Subject: FW: Spider Charts - Recommended Final Format for Report/Motions and Deliberations
Importance: High

Dan, Rumu --

I spoke with Bob on Sunday about how we might deal with recusals. We will need to work with R&A to make appropriate provision for identifying commissioners who cannot deliberate and vote. It might be that R&A groups together all of the recommendations that everyone can deliberate and vote on, disposes of them and then moves on to the rest, identifying recused commissioners as we proceed.

David

From: Cirillo, Frank, CIV, WSO-BRAC
Sent: Monday, June 06, 2005 7:18 AM
To: 'Ed Brown'; Cirillo, Frank, CIV, WSO-BRAC; Cook, Robert, CIV, WSO-BRAC; Dinsick, Robert, CIV, WSO-BRAC; Hanna, James, CIV, WSO-BRAC; Small, Kenneth, CIV, WSO-BRAC; Van Saun, David, CIV, WSO-BRAC; Robertson, Kathleen, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC; Napoli, Andrew, CIV, WSO-BRAC; MacGregor, Timothy, MAJ, WSO-BRAC; Rhody, Dean, CIV, WSO-BRAC; Fetzer, William, CIV, WSO-BRAC
Cc: Saxon, Ethan, CIV, WSO-BRAC; Sillin, Nathaniel, CIV, WSO-BRAC; 'Cole, Christopher'; Battaglia, Charles, CIV, WSO-BRAC; Carnevale, Diane, CIV, WSO-BRAC
Subject: RE: Spider Charts - Recommended Final Format for Report/Motions and Deliberations
Importance: High

Ed - Thanks for all of the Charts The bottom line has now boiled down to the fact we will be using the number 190 as the baseline of all further actions and motions. That number is precisely the number of numbered recommendations that can be found in the index at the end of Volume I. Part 2. The difference in the 190 and 222 is the inconsistent split out of DoN 29 from a seemingly One to a confusing 11 recommendations in the OSD spreadsheet; and the the similar split out of DoN 37 from an obvious One to an equally inconsistent 23. Thus the difference of net 32 yields the soft 222. The number 190 is consistent with everything we will accomplish.

All: Please see Ethan's and Ryan's spreadsheet in the attached message as we developed Saturday for the bottom line basis for Spider Charts for the report and final deliberations.

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Ethan - Thanks for you and Ryan in pulling this together. Please get with ANSER to sort out the direction they need to take on the graphics but in that regard pull together a R&A/GC/Editor/ANSER meeting to firm all of this up.

Andy - This action will will help your efforts as well, let's you Dan and I speak about an edited piece that will help define the basis of the eventual Bill as well as the Report.

Frank

Ed thanks for your two great summary and inconsistency charts in your e-mail which I reattach below -

TLs please review for a separate meeting on Ed's points.

Frank

Nat: Please set up a TL meeting on Ed's charts at a time when most are here - hopefully this week.

Frank

From: Ed Brown [mailto:edbrown61@verizon.net]

Sent: Sunday, June 05, 2005 8:48 PM

To: Frank Cirillo; Bob Cook; Gary Dinsick; Jim Hanna; Ken Small; Dave Van Saun; Kathleen Robertson

Cc: Ethan Saxon; Nat Sillin

Subject: Spider Charts

All:

Attached is a document that shows some inconsistencies between the DoD report and Appendix D that I found in developing the spider charts completed to date. I would appreciate your comments.

In addition, by my count, there will be a total of 188 spider charts when completed. I still need to do the 39 Army RC transformations and the 5 USAR Command and Control. Two are just too hard -- DFAS and Fleet Readiness Centers. Attached is Nat's spreadsheet updated as of tonight to show completed spider charts.

Ed

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Hague, David, CIV, WSO-BRAC

From: Battaglia, Charles, CIV, WSO-BRAC
Sent: Monday, August 01, 2005 5:36 PM
To: Hague, David, CIV, WSO-BRAC; 'Philip Coyle'; Principi, Anthony, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC
Cc: Sarkar, Rumu, CIV, WSO-BRAC
Subject: RE: Preparing for our next BRAC votes

Phil, you have now heard from the Chairman and from David Hague. So much for a coordinated response. That being said, let me say that we are very sensitive to the need for very clear, transparent and readily understood recommendations for the big mark-up session and we are working very earnestly to that end especially given the size and complexity of the recommendations. Tony and I met with David Berteau in early May and his knowledge of BRAC is very impressive. I have added my comments to some of his comments:

From: Hague, David, CIV, WSO-BRAC
Sent: Monday, August 01, 2005 4:24 PM
To: 'Philip Coyle'; Principi, Anthony, CIV, WSO-BRAC; Battaglia, Charles, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC
Cc: Sarkar, Rumu, CIV, WSO-BRAC
Subject: RE: Preparing for our next BRAC votes

Commissioner Coyle -- Thank you for forwarding Mr. Berteau's email. I will be available at your convenience to discuss Mr. Berteau's concerns upon your return here to your office.

On one subject he raised, Commission meetings, we are guided by Section 2902(e)(2)(A) of the BRAC statute which provides: "Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public." When read together with Commission procedural rules, the Commission is very constrained in its conduct of meetings (both the rules and the statutory provision have been in force since 1990). Again, this is a subject we can talk about more.

Thanks again and we look forward to seeing you soon.

David

To : Anthony.Principi@wso.whs.mil; Battaglia, Charles, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Dan.Cowhig@wso.whs.mil

Subject: Preparing for our next BRAC votes

Dear Chairman Principi, Mr. Battaglia, Gen. Hague and Mr. Cowhig:

After the Los Angeles Regional Hearing, David Berteau came up to express some concerns to me. Mr. Berteau had a lead role in OSD on the 1995 BRAC, and we worked together in the Pentagon. He is now with Clark and Weinstock.

I suggested that he follow up with an e-mail, which he has just done. Our July 19th hearing motivated him further, and I received his e-mail yesterday.

Please note his comment that, "Previous Commissions held closed meetings just to talk about matters. As a

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FACA body, these need to be set up in advance, with notice as to the reasons for not holding the meeting in public."

I strongly feel that we need such sessions, and if they are permissible under FACA as Mr. Berteau says, we should set them up soon.

In its entirety, here's Mr. Berteau's e-mail, pasted below:

Phil,

You kindly offered me the opportunity two weeks ago in Los Angeles to send you an email with some thoughts about the BRAC process and the Commission's work. This is my crack at that. It's pretty long, but it's a complex set of comments.

First, some comments on fundamental principles.

1. It is imperative to remember that the closure recommendations of the Commission have the force of law. As a result, you all need to be thoroughly cognizant of the impact of the decisions. This becomes critical, for example, in areas that are really programmatic in nature, such as the reassignment of Air National Guard units. This creates the potential for future problems that only Congress can fix, by changing the recommendation in legislation. It may be best to leave some decisions to the programmatic process, where they are more easily adjusted from year to year. There is a growing consensus among Commissioners that our involvement in programmatic changes must be limited to units and not individual tail numbers

The implementation sections of the Commission's recommendations, on that other hand, do NOT have the force of law, unless they are integral to the closure decision. Thus, reuse aspects (such as but not limited to, resale of property) generally are simply suggestions, although they may be important ones. The privatization of the NAWC in Indianapolis under the 1995 BRAC, generally thought a success, was really just an option for the Navy that the Commission opened up. It was the Navy, working with the mayor's team, that made it a reality. The Commission can help those ideas along by endorsing them. Members of Congress and staff have reminded us that implementation and reuse fall outside of the Commission's charter. Including such in recommendations will necessarily be limited.

2. Your greatest strength as a Commission comes from following the process. Frankly, you have much to do on that score to ensure long term success. Based on the July 19 session on adds, the Commission needs to get a lot more focused on the wording of its decisions, with clearly articulated motions, seconded, read in their entirety, checked AHEAD OF TIME by the general counsel, and debated and voted on with precision and clarity. The transcript of the July 19 session, which I attended in its entirety, is fraught with potential for litigation. I am no lawyer, and I myself believe that only the SecDef has standing with regard to legal action over the Commission's failing to comply adequately with the advance notice requirement of the amended statute, but I believe the Commission opened the door for possible legal action. As noted above, the staff is working on this in earnest. We are meeting with parliamentarians to ensure that we are able to handle the volume of recommendations with clarity, transparency and public understanding. I am not sanguine on Berteau's claim that the July 19th session is fraught with litigation in that the hearing was devoted to a consideration of closures and realignments and not votes for closure or recommendations.

Every previous Commission's decisions have stood well against litigation. To make sure this one does, learn from the July 19 session. Make the staff and the Commissioners walk through the final votes sessions ahead of time. Staff is working to this end with special care given to ensure that there is not even the appearance of a pre-vote

Previous Commissions held closed meetings just to talk about matters. As a FACA body, these need to be set up in advance, with notice as to the reasons for not holding the meeting in public. I may have missed it, but I haven't seen you do that. As David Hague points out, we are governed by the BRAC law which is quite explicit on meetings. We wrestle with this often on the staff and try to draw a distinction between Commissioner meetings that deliberative and those that are for procedural purposes only. Trying to draw the line between is not always clear and frustrates the Chairman.

n Homeland Defense and Homeland Security, and many of the arguments about specific recommendations blur that difference. In Rumsfeld's mind, to put it too simply, Homeland Defense is what DoD does (mainly to protect just itself), and Homeland Security is what everyone else does, to prevent and respond to attack or disaster. Obviously, that is not the right answer.

critical that the Commission not support closures or realignments that reduce our homeland security. However, that goal is nearly impossible to achieve, because there is NO credible set of requirements that you can use to gauge either the DoD recommendations. You can blame DoD for not consulting with DHS, but DHS has nothing to offer back. Hence, in my view, you have to err of the side of keeping bases open - like Otis and Point Mugu for Coast Guard air operations, like most of the Air Guard Stations, and like Grand Forks AFB for northern operations. NO ARGUMENT HERE.

f Military Personnel compensation as savings has really messed up the evaluation process. This was clear on the day DoD released its recommendations, but it was not widely understood until the GAO report was released July 1. These savings simply do not exist, not even in the crude Comptroller sense of the word (where savings exist because I take them out of your budget). DoD has no intention of taking the billets out of the force structure, and the Commission should disregard any such savings. (It is true, I believe, that some force structure reductions are programmed in the FYDP, but these were set up before BRAC and should be treated independently of any BRAC recommendations until and unless DoD demonstrates a clear link, which I believe they cannot do.) It's not going to be easy to deconstruct the recommendations to remove this fundamental and widespread flaw, but I think you have to do so.

3. Environmental costs and remediation schedules have always been treated as neutral for BRAC purposes. This is because, in theory, DoD has to take appropriate remedial action regardless of whether the base closes, is realigned, or remains open. Of course, it ignores the dirty little secret that DoD subjects its own people to greater environmental risk than the law permits us to do after we leave. This has been true for every administration, Democrat and Republican. I think the Commission could possibly do something about that, but not in the time and with the resources you have at this point. HOPEFULLY OUR HEARING ON AUG 11 WILL SHED MORE LIGHT ON THIS.

Third, I offer some process observations.

DoD has really messed this up. Nearly every recommendation has fundamental flaws. Many of the recommendations clearly do not belong in BRAC, as I have seen you point out in many questions you have asked at hearings across the country (though in fairness, you don't answer your own questions, you clearly target this issue repeatedly and justifiably). Many recommendations, once actual costs and savings are laid out, never pay for themselves. However, the fact is that the Commission has only one reason to exist and that is to close bases, as fairly and responsibly as possible, but still to do it. You can't, nor should you, reject every flawed DoD recommendation. What then should the Commission do? I offer five filters, in the form of rules.

The first rule is of course to take no action that causes grave harm to the future of America. I think all prior round decisions probably passed that test, though some would have been better left alone had we known the future threats we now face.

The second rule is to recognize that this BRAC takes place in fundamentally different circumstances than the previous rounds vastly more uncertain threats, no obvious force structure reductions, and a painfully inadequate set of requirements for future infrastructure.

The third rule is that there are still closures and realignments that make sense you just need to find them.

The fourth rule is that politics still will play but it's really about the politics among the 9 of you. It still comes down to votes. You need (as I have watched you do from afar many times) to seek that proper combination of politics and analysis that makes the best sense available.

The final rule is that saving money will matter. We won't have \$80 billion supplementals forever, and we won't be able to afford half a trillion dollars a year for defense forever.

So, ultimately, you collectively have to draw some lines.

Below one line are the closures and realignments that may be flawed but pass the filters above. They cause no grave harm, don't really affect capability in the face of uncertain threats, save real money, and will likely work. One example might be the DFAS consolidations, which I can promise you would have been in the 1993 round if Bush 41 had been reelected. There are probably a significant number of these, and you will save DoD real money and do little damage to anything important.

You can't fix everything, but some big ones are above the line. Better to preserve the status quo than to make a bad decision. Better to keep BRAC as an option for the future than to stain it by endorsing too many flawed DoD ideas. AGREE

Because in the end, the potential for future BRACs helps keep communities and states focused on being a better host and partner to Defense and the military. We need that, now and in the future. If places like Connecticut and California had been paying attention over the last 2 decades instead of just the last 2 years, they would have done more. Probably the best outcome of the Air National Guard fiasco is that governors of states like Oregon and Minnesota and Vermont and Wisconsin know they have important, though small, bases in their states, and maybe they will value those a bit more and act accordingly. You can reinforce that in your final report.

Phil, this is a long set of comments, though obviously one that barely scratches the surface. As you can see, none of it is tied to any specific recommendation, except by way of example. I would be happy to discuss these further if you wish, by phone or in person, over coffee or a meal or just an empty table, any time of day or night. This is critically important in my view, and anything I can do to advance sane decisions is worth it. Hope this helps.

David Berteau

dberteau@cwdc.com

personal cell: 301-928-3158

You all have probably heard criticisms, as I have, of our ragged July 19th hearing. For example, the press asked us immediately afterward to explain what had we decided with respect to Pope AFB, or the Naval Post-Graduate School, and we couldn't really answer their questions.

Our pre-meetings in groups of three were helpful, but some Commissioners did not participate fully in those meetings. And - to my surprise - having declared how they would vote in those pre-meetings, a number of Commissioners changed their votes a few hours later. It's a free country and there is certainly no reason for anyone to stick with a vote they would like to change. But I thought it showed a lack of focus and attention to the issues beforehand.

Closed executive sessions of the full Commission would improve matters all the way around. If such sessions cannot be arranged under FACA, then I think we need much more extended Commissioner discussions in sub-quorum groups than we had for our July 19th hearing. I believe you are arranging for some sub-quorum sessions now, but in my view they will not substitute for closed meetings of the full Commission in Executive Session, as is apparently provided for under FACA.

Best regards,

Phil

Philip E. Coyle, III

[REDACTED]

8/2/2005

6/20

Charlie,

This idea is in early development. Ethan Sapon, Interagency Team, who has bill experience, prepared this issue paper.

6/22

Sword

David

Thank you I think this is now OBE.

Charlie

Suggested Deliberative Process for Final Recommendations

Issues:

- 7/9 vote for all additions – this process allows for a recorded vote on any motion that requires a supermajority.
- Commissioner’s recusals – this process requires Commissioners to not vote on any individual motion that affects any issue from which they have recused themselves.
- Information on bill sections – the R&A staff will have ready a PowerPoint presentation on each of the 190 recommendations and each proposed amendment if needed by the Commissioners.
- Length of deliberation – this process allows non-controversial provisions to be considered by the Commission and passed through the final passage vote without individual deliberation.
- Final form of the recommendations – this process enables the Commission to deliver to the President the recommendation in a legislative format that cannot be misinterpreted.

Process:

- Step 1:** The Department of Defense provides the Commission with a legislative draft of its 190 recommendations in bill form: “2005 Base Realignment & Closure Recommendations”.
- Step 2:** Commissioners review the bill and draft amendments with the assistance of the R&A support staff. These amendments must be cleared in advance by legislative counsel who will determine whether they need a 7/9 vote and who must be recused from voting.
- Step 3:** The Commission meets to mark-up the 2005 Base Realignment & Closure Recommendations in an open forum. The bill is read in sections (ie: Army, Navy, Air Force, Joint). After a delegated Commissioner has introduced that section the floor is open to amendments previously vetted by legislative counsel. All amendments will be numbered to be put before the Commission. On amendments to add bases, the Chairman will inform the Commission that the following vote requires a majority of 7 votes and if any members have recused themselves from the vote. Each amendment offered will receive a recorded vote (unless withdrawn).
- Step 4:** At the end of deliberation on the recommendations a designated Commissioner will make a motion that the Commission should vote to recommend to the President the 2005 Base Realignment & Closure Recommendations as amended. This vote will require a simple majority (but would likely be unanimous).

Hague, David, CIV, WSO-BRAC

From: Hague, David, CIV, WSO-BRAC
Sent: Monday, June 13, 2005 12:31 PM
To: Battaglia, Charles, CIV, WSO-BRAC
Subject: FW: Recusal policy

Charlie,

Here is a short review of the recusal situation.

Commissioners Bilbray, Coyle, Gehman, and Hansen recused themselves from substantial participation in BRAC recommendations that involved their home states. I believe all understood this to cover both gains and losses. The general understanding of the commissioners concerned was that they would not deliberate or vote on recommendations that would move forces to their state, or remove forces from their state.

Two events have occurred since the initial recusals that create a need for closer interpretation of what the recusals meant. First, we cancelled a base visit by ADM Gehman to a naval activity in Texas because he (and we) belatedly realized that a substantial chunk of the operations DoD had recommended for realignment out of that location were slated for a destination in Virginia. Senator Hutchinson stated that she believed it would be appropriate for him to conduct the visit even though part of the activity was recommended for removal from her state to his state.

The second event was that Commissioner Coyle realized that one of the activities at an installation in California was recommended for realignment to another location in California - there would be no net gain or loss for the state. Commissioner Coyle pointed out, quite correctly, that the reason for his recusal, that he might be seen to favor his state over another, simply did not exist under those facts.

There are several reasons for sending a commissioner who cannot deliberate or vote on the installation he/she is visiting, apart from acceding to the wishes of a Senator (although being responsive to Congressional delegations is a worthy reason in itself). The public needs to see as many commissioners visiting as many sites as possible. Where a commissioner is recused from deliberating or voting on a certain proposal, there is still substantial utility in their participation in a base visit or regional hearing. They won't deliberate or vote while there. The other commissioner (or commissioners) and staff will also gather data, so there is no real possibility that the recused commissioner could be seen as filtering the Commission's view of an installation or activity. Even where a commissioner is recused, that realignment action may tangentially effect another facially unrelated action, so the Commissioner's intimate knowledge of that action might be indispensable to reasoned action on the other. We're short on time and commissioners - we need to maximize what the commissioners see (and how much they're seen) in a short period of time.

These adjustments to the understanding of the recusals' effect are a net positive.

David

August 17, 2005

MEMORANDUM FOR THE CHAIRMAN

VIA: EXECUTIVE DIRECTOR

SUBJ: FINAL DELIBERATIONS

The following overview is provided to assist in focus of effort on the most likely challenges to be confronted in the week ahead.

Legal issues of which the commissioners should be aware.

- Governor consent ICW Air NG recommendations.
- Retirement of aircraft ICW Air NG recommendations.
- Legality of Commission acting on leased space recommendations.
- Legality of Commission considering Cecil Field as an alternative to NAS Oceana.

As has been discussed at length, both the governor consent and retirement of aircraft issues could be bases for successful legal challenge of the BRAC process.

I do not believe the other two issues in any way inhibit the Commission in its deliberations and voting on leased space properties or NAS Oceana. Furthermore, I believe that the Commission can appropriately consider Cecil Field to be a receiving site if NAS Oceana is closed.

The first two issues can be mitigated and largely resolved by including language in the Air NG recommendations that require State approval and by deleting reference from those recommendations all mention of retiring aircraft. However, if neither approach is considered desirable, the Air NG recommendations can be evaluated without regard to them. They can all be approved, all voted down, or altered in one way or another. As with other recommendations, a sense of the Commission as to possible resolutions of the Air NG recommendations will develop in the days ahead.

The breakdown of recommendations is as follows:

- Adds – 8 installations to be considered.
- Army -- 10 recommendations involving major installations, 46 involving Reserve Component installations.
- Navy -- 16 recommendations involving major installations, 5 involving Reserve Centers and Recruiting.

- Air Force -- By rough count 30 recommendations involve movement of Air NG aircraft; 12 other recommendations involve other (some major) installations.
- Joint Cross Service Group – 71 recommendations
 - Education and Training -- 9 recommendations
 - Headquarters and Support Activities -- 21 recommendations, including leased spaces and numerous multiple recommendations
 - Industrial -- 17 recommendations
 - Intelligence -- 2 recommendations
 - Medical -- 6 recommendations
 - Supply and Storage -- 3 recommendations
 - Technical --13 recommendations

At least 50 recommendations (Army and Naval Reserve) will be resolved in two or three votes. A significant number of the other recommendations will be approved with minimal discussion. By category, the Air NG recommendations are currently presenting the most vexing issues to staff. Once there is more clarity about viable courses of action, motions and alternative motions can be developed for them, and they will likely be deliberating and voted on expeditiously. Then the remaining recommendations will fall into two categories: 1) those likely to require lengthy discussion; and 2) those that can be voted on more quickly, but will still require considerable discussion.

Scripts and amendments/motions are being prepared for all possibilities which will be identified through interaction with the commissioners in the days ahead.

David C. Hague

August 14, 2005

MEMORANDUM

TO: Executive Director

SUBJECT: Proposed Changes to the Procedural Rules of the 2005 Defense Base Closure and Realignment Commission

FROM: Office of the General Counsel

ISSUE: In light of the upcoming final deliberations of the 2005 Defense Base Closure and Realignment (BRAC) Commission, it is clear that certain procedural changes may need to be made in order to facilitate a smooth and efficient decision-making process and the actual voting done by Commissioners. These deliberations (and the subsequent voting) are critical to the BRAC Commission making its final recommendations to the President, thereby enabling it to meet its statutory obligations. This memorandum proposes new procedural rules to augment the existing rules, attached, as adopted by the BRAC Commission for the reasons discussed below. The rules are presented in bullet format for ease of understanding.

PROPOSED RULE 11.

- When the Commission meets to consider the recommendations to add military installations as adopted at the July 19, 2005 public hearing of the Commission (adds), a motion (duly seconded) shall be made by a member qualified to make such a motion.
- If the motion to accept the adds recommendation is adopted by a duly constituted quorum of not less than seven members then serving, the recommendation shall constitute the final recommendation of the Commission, except as may be further amended or rescinded in accordance with Rule 12 by not less than seven members then serving.
- If the motion is rejected, then a duly qualified member may move to amend the original adds recommendation by inserting, striking or substituting language, or by a combination thereof.
- If the motion (duly seconded) fails to be adopted by not less than seven members then serving, the adds recommendation shall fail.
- Whereupon, a motion may be brought by a duly qualified member to consider the original recommendation pertinent to the military installation in question, if any, as submitted to the Commission by the Secretary of Defense (the "Secretary").
- No amendments to the Secretary's recommendation shall be permitted.
- If the motion fails to be adopted by a quorum of not less than five members then serving, then the Secretary's recommendation shall be rejected.

DISCUSSION: Although the language may be a little difficult to follow, it actually lays out a step-by-step consideration of the “adds” recommendations. As a preliminary matter, please note that the term “duly qualified member” has been inserted to indicate that recused or otherwise disqualified Commissioners shall not be eligible to make these motions. (The expectation is that Commissioners who have recused themselves from certain matters also will not vote on those matters.)

If the adds recommendation as proposed by BRAC staff members is not adopted in its original or amended form by seven or more Commissioners, then the motion fails. At that point, the Commissioners are advised to revert to the original recommendation made by the Secretary as pertinent to the military installation in question. However, no further amendments shall be permitted at that point. The reason for this is that the opportunity to amend or otherwise change the Secretary’s recommendation has already taken place vis-à-vis the “adds” recommendation process. Moreover, at this point, the Commissioners are no longer considering an “adds,” but the original recommendation of the Secretary. Therefore, a supermajority of seven Commissioners is not required; a quorum of five members will suffice.

For example, if the motion (as may be amended) to adopt the “adds” recommendation to close NAS New Brunswick fails, then the Secretary’s original proposal of realigning New Brunswick should be considered. However, the Secretary’s recommendation is not an “adds” and therefore, will not require a supermajority vote in order to be sustained. If rejected, then both the ‘adds’ recommendation and the Secretary’s recommendation will fail.

PROPOSED RULE 12:

- If the Chairman determines that a pending motion (duly seconded) conflicts with a prior adopted motion, he may request that the pending motion be withdrawn or be resubmitted as motion to amend the prior adopted motion.
- If the subject of the prior adopted motion relates to an adds recommendation, then the proposed amendment thereto must be adopted by not less than seven members then serving, but if not, then the amendment may be adopted by not less than five members then serving.
- If, on the other hand, the Chairman determines that a motion has been duly adopted that conflicts with the terms of a prior adopted motion, then he may request that a motion to reconsider be offered by a duly qualified member.
- A motion to reconsider (duly seconded) may move to rescind, repeal, annul or cancel the prior adopted motion, leaving the latter adopted motion as the final recommendation of the Commission, or vice versa.
- A motion to reconsider must be adopted by not less than five members then serving.

- If the motion to reconsider fails, then the Chairman shall move to strike both motions from the record.
- The motion to strike must be adopted by not less than five members then serving and, upon adoption, both motions shall fail.

DISCUSSION: This rule anticipates that there may be some conflict or inconsistency between two motions. For example, a joint cross-service proposed recommendation may be inconsistent with a prior adopted motion offered by the Army team. To eliminate this potential confusion, a pending motion may be withdrawn or recast as an amendment to the original Army recommendation, as passed by the Commission. If, on the other hand, two inconsistent motions have already been passed, then two options are available.

A motion to reconsider may be brought that, in effect, chooses one of the motions that have already been adopted, and defeats the other. This, in effect, strikes one of the motions from the record. If this measure fails, then the Chairman shall bring a motion to strike both motions from the record in order to avoid inconsistencies in the final recommendations being made by the Commission. This means that both motions fail. Moreover, if one or more of the motions being considered are the original recommendations made by the Secretary, then that motion (or motions) shall be rejected.

If, on the hand, one of the motions is an adds recommendation and is stricken from the record through a motion to reconsider or a motion to strike, then the “adds” recommendation is defeated. However, a vote of five Commissioners is sufficient since the vote is not to add a military installation as such, but to eliminate the “adds” recommendation. Presumably, when the adds recommendation was originally passed, a supermajority of seven or more Commissioners was achieved. Therefore, a motion to reconsider, or a motion to strike, only require five votes for passage.

PROPOSED RULE 13:

- In preparation for the Commission’s final deliberations commencing on August 24, 2005, the Chairman and each Commissioner shall submit individual written motions no later than 5:00 p.m. on August 22, 2005, that propose amendments to the Secretary’s final recommendations as submitted to the Commission on May 13, 2005.
- Each motion shall specify that the Secretary’s final recommendation substantially deviates from the selection criteria, and shall specify which of the eight selection criteria have been deviated from.
- The proposed motions may amend the Secretary’s final recommendations by striking, inserting or deleting provisions of the Secretary’s final recommendations, or a combination thereof, or by striking the entire final recommendation and replacing it with a new recommendation.

- The motion must be passed by at least five members then serving in order for the amendment to be adopted, unless the amendment proposes a change to an “adds” recommendation, in which case, a vote of seven members then serving will be required.
- Notwithstanding this rule, the Chairman and the Commissioners shall not be barred or prejudiced from offering motions during the course of final deliberations commencing on August 24, 2005, as long as consideration for such a motion is seconded and passed by unanimous consent of the Commission. If unanimously consented to, the motion may then be deliberated upon and voted on.

DISCUSSION: This proposed procedural rule change simply requests all Commissioners (including the Chairman) to make their proposed motions in a timely manner thus enabling BRAC staff members to incorporate the amendments into the binder of motions for the final deliberations. The motions are designed to meet statutory criteria requiring the Commission to make a finding of a substantial deviation from the selection criteria as set for the in the BRAC statute, and specify the specific criterion, and therefore, to propose amendments to the Secretary’s final recommendation. This will keep the process honest so that the statutory criteria are fully met, and will also permit amendments to the “adds” recommendations using the supermajority requirement. The last bullet permits motions to amend to be made during the course of deliberations, but only upon the unanimous consent of the Commissioners. This tracks with a rule of the House of Representatives allowing amendments to be made on the floor based on the unanimous consent of the Chamber or Committee. This gives an added measure of flexibility allowing Commissioners to make motions while in final deliberations. This may also facilitate making technical amendments for purposes of ensuring clarity and consistency in the record.

PROPOSED RULE 14:

- If, on voting on the Secretary’s final recommendation, without amendment (but not a vote that may take place under Rule 11), and the final vote of the Commission is four (4) votes for and five (5) against, the Chairman shall cancel the vote.
- The Chairman shall then move to reconsider the recommendation, without amendment. If passed by a vote of not less than five members then serving, the Secretary’s recommendation shall be adopted.
- If not, then the Chairman shall ask a member to move (as duly seconded) for an amendment to the Secretary’s final recommendation.
- If an amendment is not duly made, seconded, and passed by not less than five members then serving, the Secretary’s final recommendation shall be deemed by the Chairman as adopted by the Commission since there was no finding by the Commission that such a recommendation substantially deviated from the force structure plan and the selection criteria.

DISCUSSION: This rule addresses the potentially uncomfortable situation where the Commissioners voting on an original recommendation made by the Secretary do not pass it, nor

do they amend it successfully. While the logical course of action would be to proclaim that the recommendation has failed, there has been no affirmative finding by the Commission that the recommendation fails to meet the selection criteria. While a finding of a substantial deviation from the criteria provides statutory grounds to propose changes by the Commission, the rejection of a final recommendation by the Secretary without such a finding leaves the entire BRAC process in the somewhat untenable position of rejecting recommendations without establishing clear grounds for doing so. It has the *de facto* effect of making the Commission's role into a more passive one rather than an active constructive one whereby it changes flawed or deficient recommendations submitted by the Secretary. While rejecting the Secretary's final recommendations without a finding of substantial deviation from the selection criteria may be a legally supportable course of action, it is also a less constructive approach. Ultimately, adopting this proposed rule is more of a matter of policy rather than a legally-mandated requirement.

This rule may also be distinguished from proposed Rule 11 since, in that case, amendments to the Secretary's final recommendations had already been considered and voted on.]

RECOMMENDATION: That Rules 11, 12 and 13, [and 14] above, be adopted by the Commission at a meeting where a quorum is present.

Attachment: a/s

Additional Procedural Rules of the 2005 Defense Base Closure and Realignment Commission

Rule 11. Amendments to the recommendations of the Secretary of Defense in Final Deliberations. When the Commission meets to deliberate and vote on any action that would amend the recommendations of the Secretary of Defense, the Commission shall proceed by motion, seconded, and vote. All such motions shall be offered in writing. In the event of a conflict between the written text of the motion and the oral description of that motion, the text of the written motion shall control. A Commissioner may withdraw a motion that he or she offered at any point prior to the Commission's vote on the motion. A motion that is defeated may be reconsidered by the Commission by a vote of the majority of the Commissioners then serving.

Rule 12. The Chairman shall define a general format for substantive motions that would amend the recommendations of the Secretary of Defense. The format for such motions shall include the proposed amendment and the associated findings required by the Defense Base Closure and Realignment Act. Each Commissioner shall provide any amendments that he or she intends to offer to the Commission Office of General Counsel as far in advance as possible to the final deliberations, but in no case later than 6 p.m. Eastern Standard Time on Monday, August 22, 2005. The Office of General Counsel shall ensure that each motion to amend conforms to the format defined by the Chairman. The Office of General Counsel shall take appropriate measures to ensure the confidentiality of the motions as predecisional matters until such time as the motion is offered before the Commission. By a vote of the majority of the Commissioners then serving, a Commissioner may offer a motion that was not previously filed with the Office of General Counsel in accordance with the timeframe established by this rule.

Rule 13. In addition to the powers enumerated in Rule 8, the Chairman shall have the authority to table any substantive motion at any time prior to the vote of the Commission. Any motion tabled by the Chairman, if not sooner withdrawn by the Commissioner who offered the motion, must be put to a vote before the closure of final deliberations.

Rule 14. All adopted motions, both as to findings and recommendations, are subject to further revision by later motions approved by the consent of a majority of Commissioners prior to the completion of final deliberations on or about August 27, 2005. The Commission Staff are authorized to make non-substantive technical, grammatical and administrative corrections to the proceedings of the Commission, subject to the approval of the Chairman.

Rule 15. All Commissioners present for deliberations shall vote on all procedural motions. A Commissioner who is present may abstain from voting on an action that would amend the recommendations of the Secretary of Defense only on the basis of a recusal.

**Office of General Counsel
Defense Base Closure and Realignment Commission**

Discussion of Additional Procedural Rules

August 19, 2005

Additional Procedural Rules of the 2005 Defense Base Closure and Realignment Commission, Rules 11 through 14, are designed to provide a general procedural framework for the final deliberations. The salient points are:

- amendments to the Secretary's recommendations, and to the further realignments or closures placed under consideration by the Commission on July 19 will be made by motion, seconded, and vote
- amendments shall be in writing, and the written text controls
- amendments, if offered, may be withdrawn by the proponent
- defeated amendments may be reconsidered with the consent of the majority
- adopted motions may be reconsidered and revised by a new amendment with the consent of the majority
- amendments shall be filed with OGC not later than 6 p.m. EST August 22
- after the filing deadline for amendments, new amendments may be introduced only with the consent of the majority
- the Chairman may table a motion to amend at any time prior to vote
- tabled amendments must be considered before the close of final deliberations on or about August 27, unless withdrawn

July 26, 2005

MEMORANDUM FOR THE CHAIRMAN AND COMMISSIONERS
DEFENSE BASE CLOSURE AND REALIGNMENT ACT

From: GENERAL COUNSEL

Subj: REVIEW OF 1995 BRAC RECOMMENDATIONS; ENCLAVES, ANG CLOSURES;
CONDITIONAL AND "BELOW THE THRESHOLD" ACTIONS; ETC

1. The rapid approach of final deliberations provides a timely opportunity to review the 1995 BRAC Commission Report and glean from it information that will be useful to future review, analysis, deliberations, and voting. The 140 base closure and realignment decisions made by the 1995 Commission have been carefully scrutinized. Highlights of the process are reflected below.

2. Overview of 1995 BRAC Report (chapter 1)

Army: 47 recommendations (by DoD and additions by Commission)
17 substantial deviations (36%)
2 additions

Navy: 52 recommendations (by DoD and additions by Commission)
15 substantial deviations (29%)
2 additions

Air Force: 29 recommendations (by DoD and additions by Commission)
14 substantial deviations (48%)
3 additions

Defense 11 recommendations (by DoD and additions by Commission)
Logistics 2 substantial deviations (18%)
Agency (DLA) 2 additions

Defense 1 recommendation (by DoD)
Investigative 0 substantial deviations
Service (DIS) 0 additions

3. DoD recommended actions: 65 close, 19 realign, 34 redirect, 15 disestablish, 1 relocate.

Army: 31 closures, 12 realignments, 1 redirect, 1 disestablish
Navy: 21 closures, 1 realignment, 19 redirects, 8 disestablish, 1 relocate to leased space
Air Force: 10 closures, 3 realignments, 11 redirects, 2 disestablish
DLA 2 closures, 3 redirects, 4 disestablish
DIS 1 relocate

4. Definitions and examples

a. Enclave -- A section of a military installation that remains intact from that part which is closed or realigned and which will continue with its current role and functions subject to specific modifications. Thirteen enclaves were either recommended by DoD and approved by the Commission or established by the Commission in 1995. Twelve of the enclaves were on Army installations; one was on a DLA installation (Pages 1-122/3/4 of the 1995 BRAC Report). The enclaves were for the Reserve Component, National Guard, and ammo or other storage.

b. Closure -- defined by DoD as "All missions of the installation have ceased or have been relocated; personnel positions (military, civilian and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves." In a closure, all missions carried out at a base either cease or relocate.

c. Realignment -- defined in the BRAC statute as "includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances." In realignment, a base remains open but loses and sometimes gains mission.

d. Relocate -- this term used to describe the movement of missions, units, or activities from a closing or realigning installation to another installation. Units do not realign from a closing or a realigning installation to another installation, they relocate.

e. Redirection refers to cases in which the BRAC Commission changes the recommendation of a previous commission. (Redirections are unlikely in 2005, since the last commission was 10 years ago and most actions directed at that time have been completed.) Two examples of 1995 redirections containing language that may be useful to effect desired results in 2005 follow:

In the case of MCAS, El Toro, the Commission recommendation was: "*Change the receiving sites from [those designated by DoD] to other air stations consistent with operational requirements.*" Pages 1-40/1 of 1995 BRAC Report.

In the case of Naval Activities, Guam, DoD recommended: "Relocate all ammunition vessels and associated personnel and support to Naval Magazine, Lualualei, Hawaii. Relocate all other combat logistics force ships . . ." The Commission, having found substantial deviation from criterion 1, recommended: "*Locate all Military Sealift Command assets and related personnel and support at available DoD activities or in rented facilities as required to support operational commitments.*" Pages 1-54/5 of 1995 BRAC Report.

f. Inactivate, disestablish -- terms used to describe actions which directly affect missions, units, or activities. E.g., fighter wings are inactivated (disestablished); bases are closed. Both, however, cease operations.

g. Thresholds actions -- The 300/1000-50% rule. Title 10 U.S.Code, Section 2687 BASE CLOSURES AND REALIGNMENTS, states that “no action may be taken to effect or implement the closure of (1) any military installation at which at least 300 civilian personnel are authorized to be employed, or (2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more that 1000, or by more than 50%, in the number of civilian personnel authorized to be employed as such military installation . . .”

Numerous recommendations by DoD in 1995 that were approved by the Commission fell below the 300/1000-50% threshold. The value and importance of closures and realignments under BRAC, including those that fall below the 300/1000-50% threshold, is that they are significantly expedited and otherwise facilitated.

Numerous DoD recommendations that included the movement of aircraft were also approved by the Commission in 1995. However, all aircraft movement involved “*squadrons and related activities*” or “[*specified squadron*] with its associated aircraft.”

h. 1995 Commission changes DoD recommendation from a closure to a realignment. A good example of such an action is Red River Army Depot, Texas. DoD recommended: “Close Red River Army Depot, Texas. Transfer the ammunition storage mission, intern training center, and civilian training education to Lone Star Army Ammunition Plant. Transfer the light combat vehicle maintenance mission to Anniston Army Depot. Transfer the Rubber Production Facility to Lone Star.” After finding substantial deviation from criterion 1, the 1995 Commission recommended: “*Realign Red River Army Depot, Texas by moving all maintenance missions, except for that related to the Bradley Fighting Vehicle Series, to other depot maintenance activities, including the private sector. Retain conventional ammunition storage, intern training center, Rubber Production Facility, and civilian training education at Red River.*” Pages 1-33/4 of 1995 BRAC Report.

4. Examples of typical 1995 Commission findings

The Commission finds the Secretary of Defense did not deviate substantially from the force-structure plan and final criteria. Therefore, the Commission recommends the following: [restatement of DoD’s recommendation]. There were 91 such findings, 65% of the 140 recommendations.

The Commission finds the Secretary of Defense deviated substantially from final criteria [criteria listed -- e.g., 1, 2, and 4]. Therefore, the Commission recommends the following: [recommended action]. There were 49 such findings, 35% of the 140 recommendations.

1995 BRAC Final Selection Criteria (military value given overall priority consideration) (Significant 2005 changes to criteria are indicated with bold text.)

1. The current and future mission ~~requirements~~ **capabilities** and the impact on operational readiness of DoD’s total force, **including the impact of joint warfighting, training, and readiness.** DoD substantially deviated from this criterion 37 times.

2. The availability and condition of land, facilities, and associated airspace (**including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for use of the Armed Forces in homeland defense missions**) at both the existing and potential receiving locations. DoD substantially deviated from this criterion 15 times.

3. The ability to accommodate contingency, mobilization, **surge**, and future total force requirements at both the existing and potential receiving locations **to support operations and training**. DoD substantially deviated from this criterion 6 times.

4. The cost of **operations** and the manpower implications. DoD substantially deviated from this criterion 22 times.

Return on Investment

5. The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed cost. DoD substantially deviated from this criterion 19 times.

Impacts

6. The economic impact on **existing communities in the vicinity of military installations**. DoD substantially deviated from this criterion 1 time.

7. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions, and personnel. DoD did not substantially deviate from this criterion.

8. The environmental impact, **including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities**. DoD substantially deviated from this criterion 1 time.

5. Other examples of Commission findings

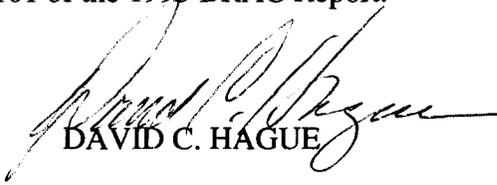
With regard to the Bayonne Military Ocean Terminal in New Jersey, the 1995 Commission found substantial deviation from criteria 1 and 3, but agreed with the DoD recommendation to close the installation. However, instead of relocating units to specific locations as recommended by DoD, the 1995 Commission recommended the units be relocated *"to a location to be determined."* Pages 1-22/3 of the 1995 BRAC Report.

DoD recommended redirection of Griffiss Air Force Base, NY, 485th Engineering Installation Group from very specific locations identified by the 1993 Commission to *"Transfer its engineering and installation functions as operational requirements dictate in accordance with Department of the Air Force policy."* Pages 1-97/8 of the 1995 BRAC Report.

6. Actions taken in 1995 impacting Air Guard installations

DoD recommended closure of Moffett Federal Airfield Air Guard Station, CA; North Highlands Air Guard Station, CA; and Springfield-Berkley Municipal Airport Air Guard Station, Ohio. The 1995 Commission found substantial deviation in all three instances and kept the installations open. Pages 1-85/6, 1-86/7, and 1-103/4 respectively of the 1995 BRAC Report.

The 1995 Commission agreed with the DoD recommendation to close Ontario International Airport Air Guard Station, CA. Pages 1-88/9 of the 1995 BRAC Report. After finding that DoD had deviated substantially from criteria 4 and 5, the 1995 Commission agreed to conditionally close Roslyn Air Guard Station, NY, "*if the Roslyn Air Guard Station can be sold for its fair market value.*" Page 1-101 of the 1995 BRAC Report.



DAVID C. HAGUE

An Evaluation of the Proposed Change to the Commission's Dispositive Voting Rule

Proposed Change to the Voting Rule

- A proposal has been made for the Commission to adopt a recusal-based rule, where “Commissioners who have recused themselves from a particular matter would be deemed to be *not serving with respect to that matter.*”

Existing Bright-Line Voting Rule

- For dispositive action, “a majority of the members ... serving” must vote
- Contained in procedural rules adopted by the Commission
- The “majority of the members ... serving” rule
 - Has remained unchanged since 1991
 - Has been consistently interpreted since 1991
 - Has effectively required 5 votes since 1991

Dispositive Action (Less “Adds”)

- Action on
 - “(a) the recommendations of the Secretary submitted to the Commission in accordance with the Act,
 - “(b) the Commission's report to the President in accordance with the Act, or
 - “(c) a revised list of recommendations in accordance with the Act”

Statutory Revisions for 2005

- The Defense Base Closure and Realignment Act of 1990 was amended for the 2005 Commission to require:
 - 9 rather than 8 commissioners
 - 7 of 9 votes to “add” a closure or realignment
- The Act was not amended to alter the bright-line “majority of the members ... serving” rule requiring 5 votes for dispositive action in effect since 1991

Effect of Statutory Revisions I

- Introduction of the “7 of 9” “add” rule
 - Without 7 votes, there is no “add”
 - Admits no exceptions regardless of absences, recusals, or attrition of Commissioners
 - Consistent with the bright-line “majority of the members ... serving” rule that had been present in the Commission rules since 1991, which admitted no exception other than attrition

DCN: 12120

Effect of Statutory Revisions II

- Expansion from 8 to 9 Commissioners:
 - Diminished the “parliamentary advantage” enjoyed by the Department of Defense recommendations in a body of 8
 - 5 of 9 votes is easier to obtain than 5 of 8
 - Reduced the likelihood of a tie vote
 - Tie votes (4 to 4) resulted in failure of motion
- Under expanded 9-member Commission, 5 votes are still required to carry a motion

Comparison of Bright-Line Rule to Recusal-Based Rule

Voting Members	9	8	7	6	5
“Adds” under Statute	7	7	7	7	7
Proposed Change	7	7	7	7	7
Bright-Line Rule	5	5	5	5	5
Proposed Change	5	5	4	4	3
Difference in Votes			1	1	2

Attorney Work Product -
Predecisional Advice

Incidence of Recusals Correlated with Voting Rule Comparison

Voting Members	9	8	7	6	5
Incidence	100	67	18	5	0
“Adds” under Statute	7	7	7	7	7
Proposed Change	7	7	7	7	7
Bright-Line Rule	5	5	5	5	5
Proposed Change	5	5	4	4	3

Attorney Work Product -
Predecisional Advice

Change

- **Must be justified in context**
 - Current bright-line rule is consistent with expectation established by past practice
 - Current rule is consistent with bright-line “7 of 9” statute rule
 - Proposed recusal-based change would please some stakeholders by improving their perceived position, but displease others by degrading their perceived position

Advantages of Bright-Line Rule

- “Majority” is determined by an unchanging, objectively established count, not by shifting, subjectively established recusals
 - Later legal challenges will find no traction attacking the bright-line rule, but may make headway against the subjective judgment of individual recusals
- “Substantial participation” need not be defined

Drawbacks of Recusal-Based Rule

- Recusals will become determinative of the entire Commission's threshold of action
- As the number of recusals increase, the size of the majority will decrease
 - With 3 recusals, "4 of 9" would constitute a majority
 - With 4 recusals, "3 of 9" would constitute a majority

Drawbacks of Recusal-Based Rule

- Political pressure on individual Commissioners to exercise or withdraw recusals in particular cases will escalate dramatically
 - Exposure to potential criminal liability
 - Perceptions of political manipulation of what was designed to be an objective process

Drawbacks of Recusal-Based Rule

- Intemperate statements by individual Commissioners will have greater impact on the legitimacy of the Commission's work as whole
 - Receive greater scrutiny
 - Provide basis for recusal and legal challenge
 - Rejoinders and rebuttals will increase perception of political manipulation

Drawbacks of Recusal-Based Rule

- “Substantial participation” will become a matter of interminable public debate

Recommendation

- Make no change to the existing bright-line rule
- Provide Senators Warner and Stevens with this brief via counsel
- Respond to Senators Warner and Stevens via public letter reassuring them and the public that the Commission will not be hobbled by multiple recusals

DCN: 12120

facsimile TRANSMITTAL**Committee on Appropriations**

Subcommittee on Defense
United States Senate
Washington D.C., 20510-6025

To: *Christine Hill*
Of: *(703) 699-2735*
Date: *17 Jun 05*
Pages: *2* (Including Cover)

Re:

Christine -

*Would you please make
this letter available to
Mr. Principi as soon as possible.*

*Thanks.**Sid Ashworth*

From the desk of...
Sid Ashworth
Direct Tel: (202) 224-3378
Fax: (202) 224-4296
email: Sid_Ashworth@appro.senate.gov

DCN: 12120

United States Senate

WASHINGTON, DC 20510

June 17, 2005

Honorable Anthony J. Principi
Chairman, Base Closure and Realignment Commission
2521 South Clark Street, Suite 600
Arlington, Virginia 22202-3920

Dear Mr. Chairman:

The Defense Base Closure and Realignment Act of 1990, as amended, provides for establishment of the 2005 Base Closure and Realignment (BRAC) Commission and its carrying out of certain statutory duties with respect to the closure and realignment of military installations. The Act is generally silent on the internal procedures to be followed by the Commission, leaving it up to the Commission to adopt its own internal rules of procedure.

We are writing to express our concern with a possible interpretation of the Commission's procedural rules that may restrict the ability of the Commission to carry out its duties under applicable law. The procedural rule in question provides generally that actions taken by the Commission (other than certain actions which require seven affirmative votes by statute) must be approved by a majority of the Commissioners "serving at the time." We understand that this rule could be interpreted to require a minimum of five affirmative votes, regardless of the number of recusals by individual Commissioners, for any action of the Commission on a particular closure or realignment recommendation proposed by the Secretary of Defense.

We recognize the necessity for a recusal procedure for individual Commissioners in order to protect the Commission and individual Commissioners from conflicts of interest or the appearance of such conflicts. However, such an interpretation of the rule cited above may result in a situation in which a particular Commission action that is supported by a majority of the Commissioners who are actually voting on the matter would fail for want of five affirmative votes. This interpretation would undercut the ability of the Commission to act in accordance with the views of a majority of Commissioners voting on a particular matter.

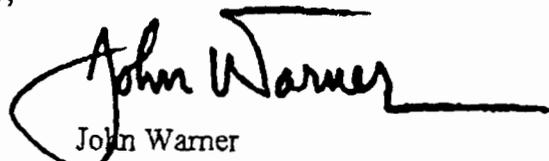
We request that the Commission, which has the ability to modify its rules, do so in a way that clearly states that individual Commissioners who have recused themselves from a particular matter would be deemed to be not serving *with respect to that matter*. This will preserve the principle of majority decisionmaking by the Commission, while also enabling the Commission to carry out its statutory responsibilities in light of multiple recusals.

Sincerely,



Ted Stevens

Chairman, Subcommittee on Defense
Committee on Appropriations



John Warner
Chairman
Committee on Armed Services

Page #	Title	Bilbray	Covle	Gelman	Hansen	Total
Army - 8	Fort McPherson, GA			X		1
Army - 11	Fort Monmouth, NJ			X		1
Army - 19	Fort Monroe, VA			X		1
Army - 33	RC Transformation in California		X			1
Army - 112	USAR Command and Control – Northwest				X	1
Army - 117	USAR Command and Control - Southwest		X			1
DoN - 6	Marine Corps Logistics Base, Barstow, CA		X			1
DoN - 9	Naval Weapons Station Seal Beach Detachment, Concord, CA		X			1
DoN - 10	Submarine Base New London, CT			X		1
DoN - 15	Naval Support Activity New Orleans, LA		X			1
DoN - 23	Naval Shipyard Portsmouth, Kittery, ME			X		1
DoN - 25	Naval Station Newport, RI			X		1
DoN - 26	Naval Station Ingleside, TX and Naval Air Station Corpus Christi, TX		X	X		2
DoN - 28	Engineering Field Division/Activity			X		1
DoN - 29	Navy and Marine Corps Reserve Centers		X			1
DoN - 44	Navy Reserve Readiness Commands			X		1
Air Force - 6	Eielson Air Force Base, AK, Moody Air Force Base, GA, and Shaw Air Force Base, SC	X				1
Air Force - 7	Kulis Air Guard Station, AK, and Elmendorf Air Force Base, AK			X		1
Air Force - 8	Fort Smith Air Guard Station, AR, and Luke Air Force Base, AZ		X			1
Air Force - 10	Beale Air Force Base, CA, and Selfridge Air National Guard Base, MI		X			1
Air Force - 11	March Air Reserve Base, CA		X			1
Air Force - 12	Onizuka Air Force Station, CA		X			1
Air Force - 18	Mountain Home Air Force Base, ID, Nellis Air Force Base, NV, and Elmendorf Air Force Base, AK	X				1
Air Force - 22	New Orleans Air Reserve Station, LA	X				1
Air Force - 24	Martin State Air Guard Station, MD		X			1
Air Force - 25	Otis Air National Guard Base, MA, Lambert St. Louis International Airport Air Guard Station, MO, and Atlantic City Air Guard Station, NJ	X				1
Air Force - 31	Reno-Tahoe International Airport Air Guard Station, NV	X	X			2
Air Force - 32	Cannon Air Force Base, NM	X			X	2
Air Force - 33	Niagara Falls Air Reserve Station, NY			X		1
Air Force - 35	Pope Air Force Base, NC, Pittsburgh International Airport Air Reserve Station, PA, and Yeager Air Guard Station, WV		X			1
Air Force - 41	Portland International Airport Air Guard Station, OR		X			1
Air Force - 47	Hill Air Force Base, UT, Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV	X	X		X	3
Air Force - 49	Langley Air Force Base, VA			X		1
Air Force - 50	Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA			X		1
Air Force - 53	Air Force Logistics Support Centers			X		1
Air Force - 55	F100 Engine Centralized Intermediate Repair Facilities			X		1
E&T - 5	Aviation Logistics School			X		1
E&T - 6	Combat Service Support Center			X		1
E&T - 7	Joint Center for Consolidated Transportation Management Training			X		1
E&T - 8	Joint Center of Excellence for Culinary Training			X		1
E&T - 10	Joint Strike Fighter Initial Joint Training Site		X	X		2
E&T - 13	Prime Power to Fort Leonard Wood, MO			X		1
H&SA - 3	Co-locate Miscellaneous Air Force Leased Locations and National Guard Headquarters Leased Locations			X		1
H&SA - 5	Co-locate Defense/Military Department Adjudication Activities		X	X		2
H&SA - 8	Co-locate Military Department Investigation Agencies with DoD Counterintelligence and Security Agency		X	X		2
H&SA - 10	Co-locate Miscellaneous Army Leased Locations			X		1
H&SA - 12	Co-locate Miscellaneous OSD, Defense Agency, and Field Activity Leased Locations			X		1
H&SA - 15	Co-locate Missile and Space Defense Agencies			X		1
H&SA - 18	Consolidate Army Test and Evaluation Command (ATEC) Headquarters			X		1
H&SA - 19	Consolidate Civilian Personnel Offices (CPOs) within each Military Department and the Defense Agencies		X	X	X	3
H&SA - 22	Consolidate Correctional Facilities into Joint Regional Correctional Facilities		X	X		2
H&SA - 26	Consolidate Defense Commissary Agency Eastern, Midwestern Regional, and Hopewell, VA Offices			X		1
H&SA - 27	Consolidate Defense Information Systems Agency and Establish Joint C4ISR D&A Capability			X		1
H&SA - 30	Consolidate Media Organizations into a New Agency for Media and Publications			X		1
H&SA - 31	Consolidate Transportation Command Components			X		1

Page #	Title	Bilbray	Covle	Gelman	Hansen	Total
H&SA - 33	Consolidate/Co-locate Active and Reserve Personnel & Recruiting Centers for Army and Air Force			X		1
H&SA - 35	Create Joint Mobilization Sites			X		1
H&SA - 37	Defense Finance and Accounting Service		X	X		2
H&SA - 41	Joint Basing			X		1
H&SA - 44	Relocate Air Force Real Property Agency (AFRPA)			X		1
H&SA - 46	Relocate Army Headquarters and Field Operating Agencies			X		1
H&SA - 49	Relocate Miscellaneous Department of Navy Leased Locations			X		1
Ind - 4	Naval Weapons Station Seal Beach, CA		X			1
Ind - 5	Riverbank Army Ammunition Plant, CA		X			1
Ind - 6	Sierra Army Depot, CA	X	X			2
Ind - 12	Hawthorne Army Depot, NV	X			X	2
Ind - 17	Deseret Chemical Depot, UT				X	1
Ind - 18	Ship Intermediate Maintenance Activity Norfolk, VA			X		1
Ind - 19	Fleet Readiness Centers		X	X		2
Ind - 26	Naval Shipyard Detachments			X		1
Int - 3	Defense Intelligence Agency			X		1
Int - 4	National Geospatial-Intelligence Agency Activities			X		1
Med - 4	Walter Reed National Military Medical Center, Bethesda, MD			X		1
Med - 10	San Antonio Regional Medical Center, TX			X		1
Med - 12	Convert Inpatient Services to Clinics			X		1
Med - 15	Joint Centers of Excellence for Chemical, Biological, and Medical Research and Development and Acquisition			X		1
S&S - 5	Commodity Management Privatization		X	X	X	3
S&S - 7	Depot Level Repairable Procurement Management Consolidation			X	X	2
S&S - 13	Supply, Storage, and Distribution Management Reconfiguration		X	X	X	3
Tech - 5	Co-locate Extramural Research Program Managers			X		1
Tech - 6	Consolidate Air and Space C4ISR Research, Development & Acquisition, Test & Evaluation		X			1
Tech - 7	Consolidate Ground Vehicle Development & Acquisition in a Joint Center			X		1
Tech - 9	Consolidate Maritime C4ISR Research, Development & Acquisition, Test & Evaluation		X	X		2
Tech - 15	Create a Naval Integrated Weapons & Armaments Research, Development & Acquisition, Test & Evaluation Center		X	X		2
Tech - 18	Create an Air Integrated Weapons & Armaments Research, Development & Acquisition, Test & Evaluation Center			X	X	2
Tech - 19	Create an Integrated Weapons & Armaments Specialty Site for Guns and Ammunition		X	X		2
Tech - 22	Defense Research Service Led Laboratories			X		1
Tech - 24	Establish Centers for Fixed Wing Air Platform Research, Development & Acquisition, Test & Evaluation				X	1
Tech - 28	Navy Sensors, Electronic Warfare, and Electronics Research, Development & Acquisition, Test & Evaluation		X			1
89		9	33	60	11	113

Consolidation of Recusals, DoN Recommendation, from the "190" List

<u>Coye</u>	<u>Hansen</u>	<u>Bilbray</u>	<u>Gehman</u>
Air Force - 8	Air Force - 32	Air Force - 6	Air Force - 7
Air Force - 10		Air Force - 18	Air Force - 33
Air Force - 11	Army - 112	Air Force - 22	Air Force - 49
Air Force - 12	H&SA - 19	Air Force - 25	Air Force - 50
Air Force - 24	Ind - 12	Air Force - 31	Air Force - 53
Air Force - 31	Ind - 17	Air Force - 32	Air Force - 55
Air Force - 35			Army - 8
Air Force - 41		Ind - 6	Army - 11
	S&S - 7	Ind - 12	Army - 19
Army - 33	Tech - 18		DoN - 10
Army - 117	Tech - 24		DoN - 23
DoN - 6			DoN - 25
DoN - 9			DoN - 26
DoN - 15			DoN - 28
DoN - 26			DoN - 44
DoN - 29			E&T - 5
E&T - 10			E&T - 6
H&SA - 5			E&T - 7
H&SA - 8			E&T - 8
H&SA - 19			E&T - 10
H&SA - 22			E&T - 13
H&SA - 37			H&SA - 3
Ind - 4			H&SA - 5
Ind - 5			H&SA - 8
Ind - 6			H&SA - 10
Ind - 19			H&SA - 12
			H&SA - 15
			H&SA - 18
			H&SA - 19
			H&SA - 22
			H&SA - 26
			H&SA - 27
			H&SA - 30
Tech - 28			
Tech - 6			
Tech - 9			
Tech - 15			
Tech - 19			

16
 Two Commissioners recused: AF 31, AF 32, DoN 26, E&T 10
 H&SA 5, H&SA 8, H&SA 22, H&SA 37, Ind 6, Ind 12
 Ind 19, Tech 9, Tech 15, Tech 19

Three Commissioners recused: AF 47, S&S 5, S&S 13

Gehman (Continued)

H&SA - 31	Med - 4
H&SA - 33	Med - 12
H&SA - 35	Med - 15
H&SA - 37	
H&SA - 41	S&S - 7
H&SA - 42	
H&SA - 46	Tech - 5
H&SA - 49	Tech - 7
Ind - 18	Tech - 9
Ind - 19	Tech - 15
Ind - 26	Tech - 18
Int - 3	Tech - 19
Int - 4	Tech - 22
Med - 10	

Consolidation of Recusals, by Recommendation, from the "190" List

The identified - e.g., Air Force 8 refers to the Recommendations Page in the middle of each page of the "190 list."

<u>Coyle</u>	<u>Hansen</u>	<u>Bilbray</u>	<u>Gehman</u>
Air Force - 8	Air Force - 32	Air Force - 6	Air Force - 7
Air Force - 10	Air Force - 47	Air Force - 18	Air Force - 33
Air Force - 11	Army - 112	Air Force - 22	Air Force - 49
Air Force - 12	H&SA - 19	Air Force - 25	Air Force - 50
Air Force - 24	Ind - 12	Air Force - 31	Air Force - 53
Air Force - 31	Ind - 17	Air Force - 32	Air Force - 55
Air Force - 35	S&S - 13	Air Force - 47	Army - 8
Air Force - 41	S&S - 5	Ind - 6	Army - 11
Air Force - 47	S&S - 7	Ind - 12	Army - 19
Army - 33	Tech - 18		DoN - 10
Army - 117	Tech - 24	9	DoN - 23
DoN - 6	11		DoN - 25
DoN - 9			DoN - 26
DoN - 15			DoN - 28
DoN - 26			DoN - 44
DoN - 29			E&T - 5
E&T - 10			E&T - 6
H&SA - 5			E&T - 7
H&SA - 8			E&T - 8
H&SA - 19			E&T - 10
H&SA - 22			E&T - 13
H&SA - 37			H&SA - 3
Ind - 4			H&SA - 5
Ind - 5			H&SA - 8
Ind - 6			H&SA - 10
Ind - 19			H&SA - 12
S&S - 5			H&SA - 15
S&S - 13			H&SA - 18
Tech - 28			H&SA - 19
Tech - 6			H&SA - 22
Tech - 9			H&SA - 26
Tech - 15			H&SA - 27
Tech - 19			H&SA - 30

Two Commissioners recused: AF 31, AF 32, DoN 26, E&T 10
 H&SA 5, H&SA 8, H&SA 22, H&SA 37, Ind 6, Ind 12
 Ind 19, Tech 9, Tech 15, Tech 19

Three Commissioners recused: AF 47, S&S 5, S&S 13

Gehman (Continued)

H&SA - 31	Med - 4
H&SA - 33	Med - 12
H&SA - 35	Med - 15
H&SA - 37	S&S - 5
H&SA - 41	S&S - 7
H&SA - 42	S&S - 13
H&SA - 46	Tech - 5
H&SA - 49	Tech - 7
Ind - 18	Tech - 9
Ind - 19	Tech - 15
Ind - 26	Tech - 18
Int - 3	Tech - 19
Int - 4	Tech - 22
Med - 10	

Air Force - 24	Air Force
Army - 6	Army
DoN - 11	Navy
E&T - 7	E&T's
H&SA - 26	HQ + Supt.
Ind - 13	Industrial
S&S - 8	Supply + Stores
Tech - 14	Technical
Med - 4	Medical
Int - 2	Intel
<u>3</u>	
85	
113	

33

113 total

60

DCN: 12120
Regional Hearing Recusals

Date	Regional Hearing	COYLE	Principi	Hansen	Bilbray
6/15/05	Fairbanks, AK	H&SA - 19		H&SA - 19	Air Force - 6 Air Force - 18

Date	Regional Hearing	HANSEN	Principi	Coyle	Bilbray
6/17/05	Portland, OR	Army - 112 Air Force - 47 H&SA - 19 S&S - 5 S&S - 13		Air Force - 18 Air Force - 41 Air Force - 47 H&SA - 19 H&SA - 22 Ind - 19 S&S - 5 S&S - 13	Air Force - 18 Air Force - 47 Ind - 19

Date	Regional Hearing	GEHMAN	Turner	Hansen
6/20/05	St. Louis, MO	Army - 11 Army - 19 DoN - 28 DoN - 44 Air Force - 50 Air Force - 53 E&T - 13 H&SA - 19 H&SA - 22 H&SA - 31 H&SA - 33 H&SA - 37 H&SA - 46 Ind - 19 Med - 10 Med - 12 Med - 15 S&S - 5 S&S - 7 Tech - 7 Tech - 15 Tech - 19		Army - 112 H&SA - 19 S&S - 5 S&S - 7

Date	Regional Hearing	SKINNER	Coyle	Bilbray
6/21/05	Rapid City, SD			Air Force - 32

Date	Regional Hearing	BILBRAY	Skinner	Coyle
6/23/05	Grand Forks, ND			

Date	Regional Hearing	HANSEN	Hill	Turner	Newton	Bilbray	Coyle
6/24/05	Clovis, NM	Air Force - 32 Air Force - 47 H&SA - 19 Ind - 12 S&S - 7				Air Force - 6 Air Force - 18 Air Force - 22 Air Force - 25 Air Force - 31 Air Force - 32 Air Force - 47 Ind - 12 Ind - 19	Air Force - 18 Air Force - 47 E&T - 10 H&SA - 5 H&SA - 19 H&SA - 22 Ind - 19

Date	Regional Hearing	NEWTON	Principi	Bilbray	Turner
6/27/05	Buffalo, NY				

DCN: 12120
Regional Hearing Recusals

Date	Regional Hearing	COYLE	Hill	Skinner	Gelman
6/28/05	Charlotte, NC	DoN - 29 Air Force - 18 Air Force - 35 Air Force - 47 H&SA - 22 H&SA - 37 Ind - 19 S&S - 13 Tech - 9			Army - 8 DoN - 28 Air Force - 55 H&SA - 22 H&SA - 35 H&SA - 37 H&SA - 41 Ind - 19 Med - 12 S&S - 13 Tech - 5 Tech - 9

Date	Regional Hearing	HILL	Skinner	Bilbray	Gelman	Coyle
6/30/05	Atlanta, GA				Army - 8 DoN - 10 H&SA - 8 H&SA - 19 H&SA - 33 S&S - 7 S&S - 13	Air Force - 35 DoN - 6 DoN - 29 H&SA - 8 H&SA - 19 Ind - 4 S&S - 13

Date	Regional Hearing	HILL	Skinner	Bilbray	Gelman	Principi	Coyle
6/30/05	Atlanta, GA TAGS, DHS						

Date	Regional Hearing	NEWTON	Principi	Turner	Bilbray
7/6/05	Boston, MA				Air Force - 25

Date	Regional Hearing	PRINCIPI	Newton	Bilbray	Turner
7/7/05	DC Area			Air Force - 6 Air Force - 47 Ind - 19	

Date	Regional Hearing	PRINCIPI	Newton	Coyle	Turner
7/8/05	Baltimore, MD			DoN - 6 DoN - 29 Air Force - 24 Air Force - 35 Air Force - 41 H&SA - 5 H&SA - 8 H&SA - 19 Ind - 4 Ind - 19 S&S - 5 S&S - 13 Tech - 9 Tech - 15 Tech - 19	

Date	Regional Hearing	TURNER	Hill	Newton
7/11/05	San Antonio, TX			

Date	Regional Hearing	TURNER	Newton	Hansen
7/12/05	New Orleans, LA			Air Force - 47 H&SA - 19 S&S - 13 Tech - 18

DGN: 12120
Regional Hearing Recusals

Date	Regional Hearing	BILBRAY	Turner	Gelman
7/14/05	Los Angeles, CA	Air Force - 18 Air Force - 31 Air Force - 47 Ind - 19		DoN - 26 E&T - 10 H&SA - 5 H&SA - 8 H&SA - 19 H&SA - 22 H&SA - 33 H&SA - 37 Ind - 19 Med - 10 Med - 12 S&S - 5 S&S - 13 Tech - 9 Tech - 15 Tech - 19

February 11, 1995

MEMO TO SENATOR DIXON

From: Madelyn and David

RE: Commission Rules of Procedure

This folder contains the Rules of Procedure that were adopted by the 1993 Commission at a brief business meeting at the end of their first day of hearings.

We recommend a similar business meeting at the end of our first day of hearings on March 1.

We think these Rules can be used by the 1995 Commission without change. The Rules are brief and straightforward, but we want to make sure that you are familiar and comfortable with them.

This memo discusses several key points about the Rules.

1. Quorums

For public hearings, a quorum shall consist of one or more members designated by the Chairman.

When the Commission meets to consider:

1. the recommendations of the Secretary of Defense;
2. the Commission's report to the President; or
3. a revised list of recommendations for closures and realignments

a quorum shall consist of a majority of members serving at that time.

Discussion

One or more Commissioners can hold a hearing, but at least 5 of 8 Commissioners would have to be present for the Commission to consider and act on any closure or realignment recommendation, including any decision to add a base to the Secretary's list for consideration.

2. Voting

The Rules require that when the Commission meets to consider:

1. the recommendations of the Secretary of Defense;
2. the Commission's report to the President; or
3. a revised list of recommendations for closures and realignments

once a quorum has been established, "a vote shall be required of the Commission to dispense with any of the above responsibilities or to ratify any actions of the Commission."

The Rules go on to state that any action taken by the Commission concerning these three areas of the Commission's responsibilities "will be by a majority vote of the Commission members serving at that time."

The Rules allow for Commissioners to vote in person or by proxy. (See discussion on proxies below.)

The Rules allow for any other issues that may arise during Commission meetings or hearings to be resolved "by a simple majority of Commissioners present."

Discussion

Under the Defense Base Closure and Realignment Act of 1990, as amended, the Commission is charged with reviewing the closures and realignments recommended by the Secretary of Defense. The Commission is authorized to make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary "deviated substantially" from the force structure plan or selection criteria.

The Secretary's recommendations become the baseline for the Commission's actions. In other words, the burden of proof rests with those wishing to change the Secretary's recommendations. This gives the Secretary's list a certain parliamentary advantage, because the votes of a majority of the Commissioners would be required to make any changes to the Secretary's list. A tie vote on a motion to change the Secretary's recommendations means that the motion would fail, and the Secretary's recommendations would prevail.

For example, at least 5 of the 8 Commissioners would have to vote in favor of a motion:

- to remove a base from the Secretary's list;
- to change one of the recommendations on the Secretary's list; or
- to add a base for consideration to the Secretary's list.

In each of these cases, a tie vote would mean that the motion fails, and the Secretary's recommendation stands.

3. Proxies

The Rules allow proxy voting.

Under Rule 9, a Commissioner may designate another member to vote and otherwise act for the first member when he or she will be absent. However, the absent Commissioner must "issue a written proxy stating the specific or limited purpose for which the proxy can be exercised."

Discussion

The Rule on proxy voting was put in to allow a Commission who might be ill or running late from the airport to cast a vote. Our understanding is that proxy votes were never used.

There is no requirement in the Rule that a Commissioner's proxy be voted by the Chairman. The Rule simply says that "A member of the Commission may designate another member..." -- presumably any other member -- to vote the proxy.

Note that the Rule requires "a written proxy stating the specific or limited purpose for which the proxy can be exercised." There is no definition of "specific or limited", but it is clear that the intent of the Rule is not to allow a blanket proxy. An absent Commissioner cannot give to another Commissioner the ability to vote a proxy on an issue in any way that the Commissioner determines appropriate at the time.

Given the public scrutiny of all of the votes which the Commission will take, we think it is unlikely that proxies will be needed or used, but we have no objection to leaving the Rule as it is.

However, we recommend that it be made clear that proxies must be given in writing for a specific and limited purpose in much the same way that absentee ballots are cast. This could be done orally as an explanation of "specific or limited" when the Rules are adopted by the Commission.

Matt

Here is a copy of the Rules, as amended 4/26/91, for your information.

Bob Moore

PROCEDURAL RULES OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Rule 1. The Defense Base Closure and Realignment Commission ("Commission") was established in Title XXIX of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510. The Commission's operations shall comply with that Act and with these Procedural Rules.

Rule 2. The Commission's meetings, other than meetings in which classified information is to be discussed, shall be open to the public. In other respects, the Commission shall comply with the Federal Advisory Committee Act, as amended, 5 U.S.C. app2.

Rule 3. The Commission shall meet only during calendar years 1991, 1993, and 1995.

Rule 4. The Commission shall meet at the call of the Chairman or at the request of a majority of members of the Commission serving at that time.

Rule 5. When the Commission meets to consider (a) the recommendations of the Secretary of Defense ("Secretary") submitted under section 2903 (c) of Pub. L. No. 101-510, (b) the Commission's report to the President under section 2903 (d) including the Commission's recommendations for closures and realignments of military installations, or (c) a revised list of recommendations for the closure or realignment of military installations under section 2903 (e), a quorum shall consist of a majority of the Commission members serving at that time. When the Commission conducts public hearings on the Secretary's recommendations under section 2903 (d) (1), a quorum shall consist of one or more members designated by the Chairman.

Rule 6. When the Commission meets to consider (a) the recommendations of the Secretary of Defense (Secretary) submitted under section 2903 (c) of Public Law No. 101-510, (b) the Commission's report to the President under section 2903(d), or (c) a revised list of recommendations for the closure or realignment of military

installations under Section 2903 (e) and a QUORUM has been established, a vote shall be required of the Commission to dispense with any of the above responsibilities or to ratify any actions of the Commission. The adoption of any action taken by the Commission with regard to responsibilities (a,) (b) or (c) stated above will be by a majority vote of the Commission Members serving at that time. Commissioners may vote in person . The resolution of all other issues arising in the normal course of Commission meetings or hearings, etc. will be by a simple majority of Commissioners present.

Rule 7. The Chairman shall preside at meetings and public hearings of the Commission when he or she is present. In the Chairman's absence, he or she shall designate another member of the Commission to preside.

Rule 8. The Chairman (or another member of the Commission presiding in the Chairman's absence) shall have the authority to ensure the orderly conduct of the Commission's business. This power includes, without limitation, recognizing members of the Commission and members of the public to speak, imposing reasonable limitations on the length of time a speaker may hold the floor, determining the order in which members of the Commission may question witnesses, conducting votes of members of the Commission, and designating Commission members for the conduct of public hearings under section 2903 (d) (1).

Rule 9. A member of the Commission may designate another member to vote and otherwise act for the first member when he or she will be absent. The first member shall issue a written proxy stating the specific or limited purpose for which the proxy can be exercised.

Rule 10. These Rules may be amended by the majority vote of the members of the Commission serving at that time.



DCN: 12120

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301-1600

14 JAN 1991

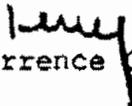
The Honorable Jim Courter
Courter, Robert
Attorneys at Law
1001 Route 517
Hacketstown, NJ 07840

Dear Mr. Courter:

At your request, we have prepared the enclosed draft procedural rules of the Defense Base Closure and Realignment Commission for your consideration. In preparing these rules, we have tried to include basic guidance that will speed the Commission's work, while avoiding cumbersome technical procedural requirements.

My staff and I, as well as Doc Cooke and his organization, remain available to continue to assist you and your associates in the important work of the Commission. Please let Paul Koffsky, of my staff, know if you desire further refinements in the draft rules or if my office can be of other help. Paul can be reached on 703-695-3657.

Sincerely,


Terrence P. O'Donnell

Enclosure

cc (with enclosure): Mr. D.O. Cooke
Director, Administration & Management, OSD

D
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I

Procedural Rules of the Defense Base Closure
and Realignment Commission

Rule 1. The Defense Base Closure and Realignment Commission ("Commission") was established in Title XXIX of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510. The Commission's operations shall comply with that Act and with these Procedural Rules.

Rule 2. The Commission's meetings, other than meetings in which classified information is to be discussed, shall be open to the public. In other respects, the Commission shall comply with the Federal Advisory Committee Act, as amended, 5 U.S.C. app. 2.

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*and a quorum shall be
by a majority of
Comm. Members serving
at that time.*

and for all other purpose

Rule on Vote:

Rule 6. The Chairman shall preside at meetings and public hearings of the Commission when he or she is present. In the Chairman's absence, he or she shall designate another member of the Commission to preside.

Rule 7. The Chairman (or another member of the Commission presiding in the Chairman's absence) shall have the authority to ensure the orderly conduct of the Commission's business. This power includes without limitation recognizing members of the Commission and members of the public to speak, imposing reasonable limitations on the length of time a speaker may hold

the floor, determining the order in which members of the Commission may question witnesses, conducting votes of members of the Commission, and designating commission members for the conduct of public hearings under section 2903(d)(1).

Rule 8. A member of the Commission may designate, by written proxy, another member to vote and otherwise act for the first member when he or she will be absent.

Rule 9. These Rules may be amended by the majority vote of the members of the Commission serving at that time.

BRAC/GC/dch
May 10, 2005

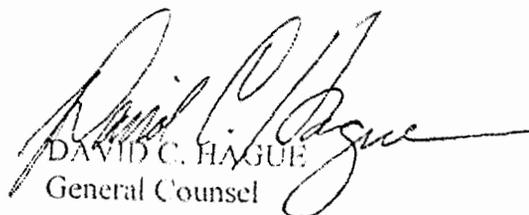
MEMORANDUM FOR THE CHAIRMAN OF THE DEFENSE BASE
CLOSURE AND REALIGNMENT COMMISSION

Via: DIRECTOR OF STAFF

Subj: PROCEDURES FOR ADDING INSTALLATIONS TO THE SECRETARY'S
LIST FOR CONSIDERATION AND REVIEW

Encl: (1) Subject procedures

1. Enclosure (1) reflects the statutory requirements for review and recommendation by the BRAC Commission of the list of military installations recommended for closure or realignment by the Secretary of Defense, including the newly added limitations on authority to consider additions to the list.


DAVID C. HAGUE
General Counsel

3/8/05

This ethics agreement reflects my understanding of, and agreement to follow, the following rules regarding my membership on the Base Realignment and Closure Commission (BRAC), if confirmed for such membership.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Also, under 5 C.F.R. § 2635.502, I will not participate in any particular matter involving specific parties if a person or entity with whom I have a covered relationship is, or represents, a party, unless I am authorized to participate. Under the ethics rules, a Federal employee has a covered relationship with:

- Persons or entities with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;
- Members of the employee's household and relatives with whom the employee has a close personal relationship;
- Persons or entities for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- Persons or entities for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or,
- Organizations, other than a political party, in which the employee is an active participant.

Additionally, in order to avoid an appearance of loss of impartiality that could arise from my participation in or representation of a state, local, or private-sector BRAC-related entity, I will not participate in any particular matter affecting that state, local or private-sector BRAC-related entity, or its geographic region, unless I am authorized to participate by BRAC's designated agency ethics official. This recusal will bar my participation in any particular matter regarding facilities whose forces, missions, or installations may be transferred to, as well as from, the geographic region of that state, local, or private sector BRAC-related entity.

*not
substantial*

3/8/05

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- Members of the employee's household and relatives with whom the employee has a close personal relationship;
- Persons or entities for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- Persons or entities for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or,
- Organizations, other than a political party, in which the employee is an active participant.

Additionally, in order to avoid an appearance of loss of impartiality that could arise from my participation in or representation of a state, local, or private-sector BRAC-related entity, I will not participate in any particular matter affecting that state, local or private-sector BRAC-related entity, or its geographic region, unless I am authorized to participate by BRAC's designated agency ethics official. This recusal will bar my participation in any particular matter regarding facilities whose forces, missions, or installations may be transferred to, as well as from, the geographic region of that state, local, or private sector BRAC-related entity.

BRAC/GC/dch
13 May 2005

MEMORANDUM FOR THE CHAIRMAN

Via: DIRECTOR OF STAFF *[Handwritten Signature]*

Subj: BRAC RECUSAL PROCESS

1. The General Counsel is responsible for ensuring that all members of the Commission are free of financial and other conflicts of interest. The members' financial disclosure statements (SF 278) must be carefully reviewed and compared with the list of contracts at the bases under consideration for closure and realignment. Members must be asked about matters not revealed on the SF 278, including homes and other non-rental property. Since all members signed an ethics agreement prior to their confirmation, its provisions as they relate to the Secretary's list must be reviewed. The concluding paragraph of that agreement provides:

"Additionally, in order to avoid an appearance of loss of impartiality that could arise from my participation in or representation of a state, local, or private-sector BRAC-related entity, I will not participate in any particular matter affecting that state, local or private-sector BRAC-related entity, or its geographic region, unless I am authorized to participate by BRAC's designated agency ethics official. This recusal will bar my participation in any particular matter regarding facilities whose forces, missions, or installations may be transferred to, as well as from, the geographic region of that state, local, or private-sector BRAC-related entity."

2. In prior BRAC rounds several members recused themselves from the consideration of certain installations. Other members were granted waivers of the statutory constraints because of the nature and breadth of their holdings. Still others were required to divest certain holdings, and at least one member resigned because he was unwilling to divest himself of certain interests.

3. In a letter dated February 22, 1993, the BRAC Commission Chairman provided the following information regarding operation of the recusal process:

"When it is determined by the Commission's General Counsel that a Commissioner has a potential conflict of interest and the recommended remedial measure is recusal in regards to a base, to avoid a conflict of interest or perception of a conflict, the Commission will adopt the following policy: the Commissioners shall be prohibited from participation in any and all discussions, debate and actions regarding the base in question. Additionally, Commissioners will not participate in any discussions, debate or actions involving bases that are being considered as substitutes to the first base in question. The prohibition regarding substitute bases will take effect the moment the additional base(s) is/are being considered as substitute(s) to the original base"

4. I recommend BRAC 2005 operate under similar constraints with regard to members who are deemed unqualified or recuse themselves from consideration of particular bases.

[Handwritten Signature]
DAVID C. HAGUE
General Counsel

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5/11/05
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ADDING INSTALLATIONS TO THE SECRETARY'S LIST FOR CONSIDERATION AND REVIEW

The steps below apply to changes by the Commission 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 changes in the recommendations of the Secretary of Defense that would add military installations 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 installations 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 public hearings 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 selection criteria, and

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

Furthermore, the following applies:

- Commissioners vote in final deliberations on each installation, including additions.
- Seven commissioners must agree on additions.
- Only a simple majority is required for approval and disapproval of closures and realignments recommended by the Secretary.
- In the event of a tie vote (if only six or eight commissioners are voting because of recusals or other incapacity) a vote to drop an installation from the list fails.
- A quorum (that is the number of commissioners required to be present for the Commission to vote and transact other business) is five commissioners.

8/5
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3 recusal to look at = IND-19,
5+5 5 (numerous personnel
moves), 5+5 13 (likely take
Comm. People off - intra-state)

DFAS aboard bases, not closing,
they are relocating

loss/gain of military personnel
not a threshold issue

If we threshold #s for substructure,
dimensional AF 47 may fall out.

DCN: 12120
BRAC Recommendation Recusals

Page #	Title	Bilbray	Covle	Gehman	Hansen	Total	Lead Team	Lead Analyst
Army - 8	Fort McPherson, GA			X		1	Army	Manuel
Army - 11	Fort Monmouth, NJ			X		1	Army	Hood
Army - 19	Fort Monroe, VA			X		1	Army	Manuel
Army - 33	RC Transformation in California		X			1	JC-S	Abrell
Army - 112	USAR Command and Control - Northwest				X	1	JC-S	Abrell
Army - 117	USAR Command and Control - Southwest		X			1	JC-S	Abrell
DoN - 6	Marine Corps Logistics Base, Barstow, CA		X			1	Navy	Barrett
DoN - 7	Naval Support Activity Corona, CA		X			1	Navy	Epstein
DoN - 9	Naval Weapons Station Seal Beach Detachment, Concord, CA		X			1	JC-S	Epstein Farrington
DoN - 10	Submarine Base New London, CT			X		1	Navy	Tickle
DoN - 15	Naval Support Activity New Orleans, LA		X	X		2	Navy	Barrett
DoN - 23	Naval Shipyard Portsmouth, Kittery, ME			X		1	Navy	Furlow
DoN - 25	Naval Station Newport, RI			X		1	Navy	Tickle
DoN - 26	Naval Station Ingleside, TX and Naval Air Station Corpus Christi, TX		X	X		2	Navy	Fetzer
DoN - 28	Engineering Field Division/Activity			X		1	Navy	Furlow
DoN - 29	Navy and Marine Corps Reserve Centers		X			1	JC-S	Delaney
DoN - 44	Navy Reserve Readiness Commands			X		1	JC-S	Turner
Air Force - 6	Eielson Air Force Base, AK, Moody Air Force Base, GA, and Shaw Air Force Base, SC	X				1	Air Force	Hall
Air Force - 7	Kulis Air Guard Station, AK, and Elmendorf Air Force Base, AK			X		1	Air Force	Hall
Air Force - 8	Fort Smith Air Guard Station, AR, and Luke Air Force Base, AZ		X			1	Air Force	Combs
Air Force - 10	Beale Air Force Base, CA, and Selfridge Air National Guard Base, MI		X			1	Air Force	MacGregor
Air Force - 11	March Air Reserve Base, CA		X			1	Air Force	Justin
Air Force - 12	Onizuka Air Force Station, CA		X			1	Air Force	Hall
Air Force - 18	Mountain Home Air Force Base, ID, Nellis Air Force Base, NV, and Elmendorf Air Force Base, AK	X	X			2	Air Force	Cruz Combs Hall
Air Force - 22	New Orleans Air Reserve Station, LA	X				1	Air Force	Cruz
Air Force - 24	Martin State Air Guard Station, MD		X			1	JC-S	McRee
Air Force - 25	Otis Air National Guard Base, MA, Lambert St. Louis International Airport Air Guard Station, MO, and Atlantic City Air Guard Station, NJ	X				1	JC-S	McRee
Air Force - 31	Reno-Tahoe International Airport Air Guard Station, NV	X	X			2	Air Force	MacGregor
Air Force - 32	Cannon Air Force Base, NM	X			X	2	Air Force	Combs
Air Force - 33	Niagara Falls Air Reserve Station, NY			X		1	Air Force	Flinn
Air Force - 35	Pope Air Force Base, NC, Pittsburgh International Airport Air Reserve Station, PA, and Yeager Air Guard Station, WV		X			1	Air Force	Flinn
Air Force - 41	Portland International Airport Air Guard Station, OR		X			1	JC-S	McRee
Air Force - 47	Hill Air Force Base, UT, Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV	X	X		X		Air Force	Beauchamp
Air Force - 49	Langley Air Force Base, VA			X		1	Air Force	Beauchamp
Air Force - 50	Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA			X		1	JC-S	McRee
Air Force - 53	Air Force Logistics Support Centers			X		1	Air Force	Beauchamp
Air Force - 55	F100 Engine Centralized Intermediate Repair Facilities			X		1	Air Force	Beauchamp
E&T - 5	Aviation Logistics School			X		1	Army	Rhody
E&T - 6	Combat Service Support Center			X		1	Army	Rhody
E&T - 7	Joint Center for Consolidated Transportation Management Training			X		1	JC-S	Carroll
E&T - 8	Joint Center of Excellence for Culinary Training			X		1	JC-S	Carroll

Page #	Title	Bilbray	Covle	Gehman	Hansen	Total	Lead Team	Lead Analyst
E&T - 10	Joint Strike Fighter Initial Joint Training Site		X	X		2	JC-S	Carroll
E&T - 13	Prime Power to Fort Leonard Wood, MO			X		1	Army	Rhody
H&SA - 3	Co-locate Miscellaneous Air Force Leased Locations and National Guard Headquarters Leased Locations			X		1	JC-S	Schmidt
H&SA - 5	Co-locate Defense/Military Department Adjudication Activities		X	X		2	JC-S	Schmidt
H&SA - 8	Co-locate Military Department Investigation Agencies with DoD Counterintelligence and Security Agency		X	X		2	JC-S	Schmidt
H&SA - 10	Co-locate Miscellaneous Army Leased Locations			X		1	JC-S	Schmidt
H&SA - 12	Co-locate Miscellaneous OSD, Defense Agency, and Field Activity Leased Locations			X		1	JC-S	Schmidt
H&SA - 15	Co-locate Missile and Space Defense Agencies			X		1	JC-S	Schmidt
H&SA - 18	Consolidate Army Test and Evaluation Command (ATEC) Headquarters			X		1	JC-S	Schmidt
H&SA - 19	Consolidate Civilian Personnel Offices (CPOs) within each Military Department and the Defense		X	X	X		JC-S	Schmidt
H&SA - 22	Consolidate Correctional Facilities into Joint Regional Correctional Facilities		X	X		2	JC-S	Schmidt
H&SA - 26	Consolidate Defense Commissary Agency Eastern, Midwestern Regional, and Hopewell, VA Offices			X		1	JC-S	Durso
H&SA - 27	Consolidate Defense Information Systems Agency and Establish Joint C4ISR D&A Capability			X		1	IA	Wasleski
H&SA - 30	Consolidate Media Organizations into a New Agency for Media and Publications			X		1	JC-S	Schmidt
H&SA - 31	Consolidate Transportation Command Components			X		1	JC-S	Durso
H&SA - 33	Consolidate/Co-locate Active and Reserve Personnel & Recruiting Centers for Army and Air Force			X		1	JC-S	Turner
H&SA - 35	Create Joint Mobilization Sites			X		1	JC-S	Turner
H&SA - 37	Defense Finance and Accounting Service		X	X		2	IA	Wasleski
H&SA - 41	Joint Basing			X		1	JC-S	Schmidt
H&SA - 44	Relocate Air Force Real Property Agency (AFRPA)			X		1	JC-S	Schmidt
H&SA - 46	Relocate Army Headquarters and Field Operating Agencies			X		1	Army	Hood
H&SA - 49	Relocate Miscellaneous Department of Navy Leased Locations			X		1	JC-S	Schmidt
Ind - 4	Naval Weapons Station Seal Beach, CA		X			1	Navy	Furlow
Ind - 5	Riverbank Army Ammunition Plant, CA		X			1	JC-S	Delgado
Ind - 6	Sierra Army Depot, CA		X			2	JC-S	Delgado
Ind - 12	Hawthorne Army Depot, NV	X				2	JC-S	Delgado
Ind - 17	Deseret Chemical Depot, UT				X	1	JC-S	Delgado
Ind - 18	Ship Intermediate Maintenance Activity Norfolk, VA			X		1	Navy	Furlow
Ind - 19	Fleet Readiness Centers	X	X	X			JC-S	Pantelides
Ind - 26	Naval Shipyard Detachments			X		1	Navy	Furlow
Int - 3	Defense Intelligence Agency			X		1	JC-S	Delaney
Int - 4	National Geospatial-Intelligence Agency Activities			X		1	JC-S	Delaney
Med - 4	Walter Reed National Military Medical Center, Bethesda, MD			X		1	JC-S	Mandzia
Med - 10	San Antonio Regional Medical Center, TX		X	X		2	JC-S	Mandzia
Med - 12	Convert Inpatient Services to Clinics			X		1	JC-S	Mandzia
Med - 15	Joint Centers of Excellence for Chemical, Biological, and Medical Research and Development and Acquisition			X		1	JC-S	Mandzia
S&S - 5	Commodity Management Privatization		X	X	X		JC-S	Durso
S&S - 7	Depot Level Reparable Procurement Management Consolidation			X	X	2	JC-S	Durso
S&S - 13	Supply, Storage, and Distribution Management Reconfiguration		X	X	X		JC-S	Durso
Tech - 5	Co-locate Extramural Research Program Managers			X		1	JC-S	Mandzia
Tech - 6	Consolidate Air and Space C4ISR Research, Development & Acquisition, Test & Evaluation		X			1	JC-S	Farrington
Tech - 7	Consolidate Ground Vehicle Development & Acquisition in a Joint Center			X		1	JC-S	Farrington
Tech - 9	Consolidate Maritime C4ISR Research, Development & Acquisition, Test & Evaluation		X	X		2	JC-S	Farrington

DCN: 12120
BRAC Recommendation Recusals

Page #	Title	Bilbray	Covle	Gehman	Hansen	Total	Lead Team	Lead Analyst
Tech - 15	Create a Naval Integrated Weapons & Armaments Research, Development & Acquisition, Test & Evaluation Center		X	X		2	JC-S	Farrington
Tech - 18	Create an Air Integrated Weapons & Armaments Research, Development & Acquisition, Test & Evaluation Center			X	X	2	JC-S	Farrington
Tech - 19	Create an Integrated Weapons & Armaments Specialty Site for Guns and Ammunition		X	X		2	JC-S	Farrington
Tech - 22	Defense Research Service Led Laboratories			X		1	JC-S	Farrington
Tech - 24	Establish Centers for Fixed Wing Air Platform Research, Development & Acquisition, Test &				X	1	JC-S	Farrington
Tech - 28	Navy Sensors, Electronic Warfare, and Electronics Research, Development & Acquisition, Test &		X			1	JC-S	Farrington
90		9	36	61	12	118		

NOTES:

Air Force - 6: Appendix D shows 2 military moving to Langley AFB; the recommendation does not mention this

Air Force - 24: Recommendation distribute the four C-130J aircraft to Channel Islands AGS, CA; Appendix D shows no personnel relocating to Channel Islands AGS, CA

Air Force - 47: Appendix D shows 1 military moving to Langley AFB; the recommendation does not mention this

H&SA - 44: Recommendation realigns Rosslyn Center and the Nash Street Building, leased installations in Arlington, VA; Appendix D shows personnel relocating from Bolling AFB, not lea

Ind - 6: Recommendation shows gaining installation, Tooele Army Depot, NV; however, Tooele Army Depot is in UT

Ind - 12: Recommendation relocates Storage and Demilitarization functions to Tooele Army Depot, UT; Appendix D shows no personnel relocating to Tooele Army Depot

Int - 3: Appendix D shows no personnel relocations

Int - 4: Appendix D shows no personnel relocations

S&S - 5: Recommendation realigns Hill AFB, Naval Station San Diego, and Defense Distribution Depot Barstow; Appendix D shows no personnel relocating from these bases