SUMMARY SHEET

CES AGENT: Rod Brinkman DCN-857 DATE: 9/7/93

BUILDING/SHOPPING CENTER	NEW LEASE CANCELLATION	ECONOMICS
Three Crystal Park	RENEWAL EXTENSION	Square Feet 7,291
	SUBLEASE ASSIGNMENT	Rate $27.50
Property # 384	STORAGE AMENDMENT	(XX)WFM ( )Net ( )Other
Suite/Store # 400	ESCALATIONS/ADJUSTMENTS	RENT
( )Retail (XX)Office	R.E. Taxes Existing	Annual: $200,502.48
( )Storage	Base 12/31/93	Monthly: $ 16,708.54
TENANT	Oper. Exp. Existing	
ELS, INC.	Base 12/31/93	
	Begin 11/1/94	
	Fixed	Gross Lease $1,002,512.40
( )New (XX)Existing	CPI Existing	CONCESSIONS
Term: 5 Yrs 0 Mos	Beg/Base 11/1/94 - 11/30/93	RENT WAIVER:
11/01/93 to 10/31/98	( )Lump Sum (XX)Monthly	Months: 1.41
USE	Utilities	Total Value: $23,549.40
Office	Promo Fund	Sq. Ft. Impact: $0.65
	Other	TENANT IMPROVEMENTS:
OPTIONS		Allow./Sq. Ft.: $4.27
(XX)Cancel ( )Extend		Total Value: $31,133.00
( )Additional Space	SECURITY DEP. None	Sq. Ft. Impact: $0.85
PARKING	DEMISING CHANGE	Other
( )Included in Rent	( )Yes (XX)No	Allow./Sq. Ft.: $
( )Prevailing Rate		Total Value: $
		Sq. Ft. Impact: $
		Other
		Allow./Sq. Ft.: $
		Total Value: $
		Sq. Ft. Impact: $
		VALUE OF CONCESSIONS:
		$54,682.40
		TOTAL SQ. FT. IMPACT:
		$1.50
		NET EFFECTIVE RATE
		$26.00
		Coop. Broker Commission:
		Total Com. SF Impact
		$ $

COMMENTS

Lease extended for five (5) years at a base rate of $27.50 per square foot.

Tenant's rent waiver is spread over the entire lease term.

In the event NAVSEA relocates beyond a 5 mile radius of Crystal City, then Tenant, with six (6) months prior written notice, may cancel this lease at the end of any month with damages equal to the unamortized amount of Landlord's contribution towards remodeling.

- Waiting for Landlords Signature

PCM_____ DATE_____ KLM_____ DATE_____ MBM_____ DATE_____

EAG_____ DATE_____ RPK_____ DATE_____ RHS_____ DATE_____

OWNER'S APPROVAL Stephen B. Altman

7. Cancellation Option: In the event NAVSEA relocates beyond a Five (5) mile radius of Crystal City, and further provided Tenant is not then in default of any of the terms or conditions of this Lease, Tenant shall have the right, upon Six (6) months prior written notice to Landlord, time being of the essence, to cancel this Lease at the end of any month, in which event Tenant shall pay to Landlord liquidated damages equal to the unamortized amount of Landlord's contribution specified in Paragraph 4 hereof, which shall be paid in full with Tenant's written cancellation notice to Landlord. Such unamortized liquidated damages shall be in addition to any other charges which may be due and payable under this Lease, and the cancellation is further subject to the provisions of Section 2.5.

8. All of the terms and conditions of the Lease, as modified by this Lease Extension Agreement, except for Sections 26, 27, 28 and 29, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year hereinbefore first written.

WITNESS:

_____

LANDLORD: THIRD CRYSTAL PARK ASSOCIATES LIMITED PARTNERSHIP

BY_____ (SEAL)
Agent

ATTEST:

M R Begg
~~Secretary~~ Director
(Corporate Seal)

TENANT: ELS, INC.

BY_____ (SEAL)
Name: STANLEY G. GISRIEL
Title: VP

LEASE EXTENSION AGREEMENT

THIS LEASE EXTENSION AGREEMENT made this _____ day of _____, 1993, by and between THIRD CRYSTAL PARK ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership (hereinafter "Landlord"), and ELS, INC., a Maryland corporation (hereinafter "Tenant").

WITNESSETH:

WHEREAS, the parties hereto entered into a lease agreement dated February 10, 1988 (the "Lease"), which provides for the leasing of Suite 400, consisting of approximately 7,291 square feet of office space in the building known as Three Crystal Park located at 2231 Crystal Drive, Arlington, Virginia, for a term expiring October 31, 1993; and

WHEREAS, the parties hereto desire to extend the term of the aforesaid Lease.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term: The Lease is hereby extended for a further period of Five (5) years, commencing November 1, 1993 and expiring October 31, 1998.

2. Base Rent: The base monthly rent for the extended term shall be Sixteen Thousand Seven Hundred Eight and 54/100 Dollars ($16,708.54).

3. Rent Waiver: Provided Tenant is not then in default under any of the terms and conditions of the Lease, then notwithstanding anything to the contrary in Section 2.1, Landlord agrees to waive Three Hundred Ninety-Two and 49/100 Dollars ($392.49) of Base Annual Rent due in each and every month of the extended term.

4. Landlord's Remodeling: Provided Tenant is not then in default of any of the terms or conditions of the Lease, on Tenant's behalf, Landlord agrees to remodel the demised premises in accordance with plans to be approved by both Tenant and Landlord. Provided Tenant is not then in default of any of the terms or conditions of the Lease, Landlord shall contribute to the cost of such Tenant remodeling the sum of Thirty-One Thousand One Hundred Thirty-Three Dollars ($31,133.00), with the understanding that any costs in excess thereof will be paid by Tenant. Such excess costs shall be paid in full by Tenant simultaneously with the approval by Landlord and Tenant of Tenant's working drawings and Landlord's estimate of extra costs. Provided Tenant is not then in default of any of the terms or conditions of the Lease, any remainder of said contribution shall be credited against Tenant's rent obligations hereunder, apportioned equally and applied once each month over the extended term hereof.

5. Acceptance of Space: Tenant accepts the demised premises in its existing "as is" condition and shall be obligated for the payment of rent on the commencement date hereof, regardless of any time required to construct, alter or redecorate the demised premises to Tenant's requirements.

6. Additional Rent: For purposes of calculating Additional Rent based on Tenant's pro rata share of increases in Operating Expenses and Real Estate Taxes, the base year shall be Landlord's fiscal year ending September 30, 1993; the base period for increases in the CPI shall be November, 1993. Tenant's obligation to pay such Additional Rent shall commence on November 1, 1994.

Lease not -

SUMMARY SHEET

CES AGENT: Michael Altman DATE: 9/7/93

BUILDING/SHOPPING CENTER
Crystal Park Three

Property # 384
Suite/Store # 404
( )Retail (XX)Office
( )Storage

TENANT
ELS, INC.

( )New (XX)Existing
Term: 4 Yrs 5 Mos
06/01/94 to 10/31/98
USE
Office

OPTIONS
(XX)Cancel ( )Extend
( )Additional Space

PARKING
( )Included in Rent
(6) Prevailing Rate

NEW LEASE CANCELLATION
RENEWAL EXTENSION
SUBLEASE ASSIGNMENT
STORAGE AMENDMENT

ESCALATIONS/ADJUSTMENTS
R.E. Taxes 0.76%
Base 9/30/94
Oper. Exp. 0.76%
Base 9/30/94
Begin 6/1/95
Fixed
CPI 30%
Beg/Base 6/1/95 - 11/30/94
( )Lump Sum (XX) Monthly
Utilities
Promo Fund
Other

SECURITY DEP. None

DEMISING CHANGE
(XX)Yes ( )No

ECONOMICS
Square Feet 3,215
Rate $27.50
(XX)WFM ( )Net ( )Other

RENT
Annual: $88,412.52
Monthly: $ 7,367.71

Gross Lease $390,488.63

CONCESSIONS
RENT WAIVER:
Months: 3.37
Total Value: $24,849.05
Sq. Ft. Impact: $1.75

TENANT IMPROVEMENTS:
Allow./Sq. Ft.: $3.31
Total Value: $10,649.69
Sq. Ft. Impact: $0.75

Other
Allow./Sq. Ft.: $
Total Value: $
Sq. Ft. Impact: $

Other
Allow./Sq. Ft.: $
Total Value: $
Sq. Ft. Impact: $

VALUE OF CONCESSIONS:
$35,498.74

TOTAL SQ. FT. IMPACT:
$2.50

NET EFFECTIVE RATE
$25.00

Coop. Broker Commission:
Total Com. SF Impact
$ $

COMMENTS

Tenant's rent waiver is spread over the entire lease term.

In the event NAVSEA relocates beyond a 5 mile radius of Crystal City, then Tenant, with six (6) months prior written notice, may cancel this lease at the end of any month with damages equal to the unamortized portion of Tenant's remodeling costs.

- Waiting for Landlords signature.

PCM DATE KLM DATE MBM DATE

EAG DATE RPK DATE RHS DATE

OWNER'S APPROVAL Stephen B. Altman

This Lease, made this day of , 199__, between THIRD CRYSTAL PARK ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership, (hereinafter referred to as "Landlord"), and ELS, INC., a Maryland corporation, (hereinafter referred to as "Tenant").

Landlord, for and in consideration of the covenants and agreements set forth hereinafter, leases to Tenant, and Tenant leases from Landlord, the premises described, for the use set forth and for the term and at the rent reserved herein.

1. SPECIFIC PROVISIONS

1.1 Demised Premises

(a) **Space Description:** Suite 404.

(b) **Floor Area:** Approximately 3,215 square feet (Washington D.C. Association of Realtors Standard Floor Area Measure in effect at the time of execution of this Lease).

(c) **Building:** THREE CRYSTAL PARK

(d) **Address:** 2231 Crystal Drive
Arlington, Virginia 22202

1.2 **Term of Lease:** Four (4) years and Five (5) months, commencing on June 1, 1994 ("Lease Commencement Date"), and expiring on October 31, 1998, both dates inclusive.

1.3 **Base Annual Rent:** Eighty-Eight Thousand Four Hundred Twelve and 52/100 Dollars ($88,412.52), payable in equal monthly installments of Seven Thousand Three Hundred Sixty-Seven and 71/100 Dollars ($7,367.71), hereinafter referred to as "base monthly rent".

1.4 **Base Year:** "Base Year" shall mean fiscal year of Landlord ending September 30, 1994.

1.5 **Additional Rent:** Payable in equal monthly installments, commencing on June 1, 1995, consisting of the following:

(a) Tenant's pro rata share equal to Seventy-Six Hundredths of One Percent (.76%) of any increase in Real Estate Taxes over the Base Year Real Estate Taxes; and

(b) Tenant's pro rata share equal to Seventy-Six Hundredths of One Percent (.76%) of any increase in Operating Expenses over the Base Year Operating Expenses; and

(c) A percentage of Base Annual Rent equal to Thirty Percent (30%) of the percentage increase in the CPI over the CPI for "the base period" in the year 1994.

1.6 **Security Deposit:** None.

1.7 (a) **Date Tenant approved Preliminary Plans to be furnished:** Not Applicable.

(b) **Working days to prepare Working Drawings and cost estimate:** Not Applicable.

(c) **Working days to substantially complete construction of demised premises:** Not Applicable.

1.8 **Standard Building Operating Days and Hours:**

8:00 AM to 6:00 PM Monday - Friday
8:00 AM to 1:00 PM Saturday

1.9 **Use of Premises:**

General office use in keeping with the quality and nature of this first class office building.

1.10 (a) **Address for Notices to Tenant:**

ELS, Inc.
2231 Crystal Drive
Suite 404
Arlington, Virginia 22202

AND

ELS, Inc.
14120 Parke Long Court
Suite 201
Chantilly, Virginia 22021

(b) **Address for Notices to Landlord:**

Third Crystal Park Associates Limited Partnership
c/o Charles E. Smith Management, Inc.
2345 Crystal Drive
Arlington, Virginia 22202

1.11 **Special Provisions:**

Rent	Section 26
Waiver of Rent	Section 27
Acceptance of Space	Section 28
Landlord's Remodeling	Section 29
Parking	Section 30
Cancellation Option	Section 31
Recovery of Damages	Section 32
Subordination	Section 33
Security Deposit	Section 34
Execution of Document	Section 35

1.12 Exhibits to Lease:

Exhibit "A" - Not Applicable
Exhibit "B" - Not Applicable
Exhibit "C" - Building Rules and Regulations

IN WITNESS WHEREOF, Landlord has caused this Lease, comprised of Specific Provisions, General Provisions, Special Provisions and Exhibits to be signed and sealed by one or more of its General Partners, Trustees, or Agents, and Tenant has caused this Lease, as described above, to be signed in its corporate name by its duly authorized officer and its corporate seal to be hereto affixed and duly attested by its Secretary.

WITNESS: _____

LANDLORD: **THIRD CRYSTAL PARK ASSOCIATES LIMITED PARTNERSHIP**

BY _____ (SEAL)
Agent

ATTEST:

CORPORATE SEAL _____
~~Secretary~~ DIRECTOR

TENANT: **ELS, INC.**

BY _____ (SEAL)
Name: STANLEY B. GISRIEL
Title: VP

31. CANCELLATION OPTION

31.1 In the event Naval Sea Systems Command relocates beyond a five (5) mile radius of Crystal City and the units thereof with which Tenant has contracts have physically moved beyond such Five (5) mile radius, and further provided Tenant is not then in default of any of the terms or conditions of this Lease, Tenant shall have the right upon Six (6) months prior written notice to Landlord, time being of the essence, to cancel this Lease at the end of any month, in which event Tenant shall pay to Landlord liquidated damages equal to the unamortized portion of any remodeling cost incurred by Landlord, which damages shall be paid in full with Tenant's written cancellation notice to Landlord. Such liquidated damages shall be in addition to any other charges which may be due and payable under this Lease, and the cancellation is further subject to the provisions of Section 2.5.

32. RECOVERY OF DAMAGES

32.1 In Section 12.4, in the second line, delete 'at the time of the reletting, or'; and in the third line, delete 'by successive relettings,'.

33. SUBORDINATION

33.1 Sections 13.1, 13.2, and 13.3 of this Lease are hereby deleted in their entirety and the following are substituted in lieu thereof:

"13.1 **Subordination.** This Lease is subject and subordinate to all ground or underlying leases and to all mortgages and/or deeds of trust and/or other security interests which may now or hereafter affect the real property of which the demised premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required to effect this subordination. Notwithstanding the foregoing, in confirmation of such subordination, Tenant shall at Landlord's request execute and deliver to Landlord within ten (10) business days after Landlord's request, any requisite or appropriate certificate, subordination agreement or other document that may be reasonably requested by Landlord or any other party requiring such certificate, subordination agreement or document. If Tenant fails to execute such certificate, subordination agreement or other document within said ten (10) day period, Tenant by such failure irrevocably constitutes and appoints Landlord as its special attorney-in-fact to execute such certificate, subordination agreement or other document on Tenant's behalf. Notwithstanding the foregoing subordination, Tenant agrees that any landlord under any ground or underlying lease, and any mortgagee or trustee under any security agreement to which this Lease is now, or may hereafter, become subject or subordinate, may elect to continue this Lease and Tenant agrees that in such event neither the cancellation nor termination of any ground or underlying lease, nor the foreclosure under any mortgage or deed of trust, nor the sale at foreclosure, nor the transfer by a deed in lieu of foreclosure, shall, by operation of law or otherwise, result in cancellation or termination of this Lease or the obligations of Tenant hereunder and this Lease shall continue as a direct lease between Tenant and such landlord, mortgagee, purchaser or trustee.

SUMMARY SHEET

CES AGENT: Todd Brinkman DATE: 9/7/93

BUILDING/SHOPPING CENTER
Three Crystal Park

Property # 384
Suite/Store # 400
( )Retail (XX)Office
( )Storage

TENANT
ELS, INC.

( )New (XX)Existing
Term: 5 Yrs 0 Mos
11/01/93 to 10/31/98

USE
Office

OPTIONS
(XX)Cancel ( )Extend
( )Additional Space

PARKING
( )Included in Rent
( )Prevailing Rate

NEW LEASE CANCELLATION
RENEWAL EXTENSION
SUBLEASE ASSIGNMENT
STORAGE AMENDMENT

ESCALATIONS/ADJUSTMENTS
R.E. Taxes Existing
Base 12/31/93
Oper. Exp. Existing
Base 12/31/93
Begin 11/1/94
Fixed
CPI Existing
Beg/Base 11/1/94 - 11/30/93
( )Lump Sum (XX)Monthly
Utilities
Promo Fund
Other

SECURITY DEP. None

DEMISING CHANGE
( )Yes (XX)No

ECONOMICS
Square Feet 7,291
Rate $27.50
(XX)WFM ( )Net ( )Other

RENT
Annual: $200,502.48
Monthly: $ 16,708.54

Gross Lease $1,002,512.40

CONCESSIONS
RENT WAIVER:
Months: 1.41
Total Value: $23,549.40
Sq. Ft. Impact: $0.65

TENANT IMPROVEMENTS:
Allow./Sq. Ft.: $4.27
Total Value: $31,133.00
Sq. Ft. Impact: $0.85

Other
Allow./Sq. Ft.: $
Total Value: $
Sq. Ft. Impact: $

Other
Allow./Sq. Ft.: $
Total Value: $
Sq. Ft. Impact: $

VALUE OF CONCESSIONS:
$54,682.40

TOTAL SQ. FT. IMPACT:
$1.50

NET EFFECTIVE RATE
$26.00

Coop. Broker Commission:
Total Com. SF Impact
$ $

COMMENTS

Lease extended for five (5) years at a base rate of $27.50 per square foot.

Tenant's rent waiver is spread over the entire lease term.

In the event NAVSEA relocates beyond a 5 mile radius of Crystal City, then Tenant, with six (6) months prior written notice, may cancel this lease at the end of any month with damages equal to the unamortized amount of Landlord's contribution towards remodeling.

- Waiting for Landlords Signature

PCM DATE KLM DATE MBM DATE

EAG DATE RPK DATE RHS DATE

OWNER'S APPROVAL Stephen B. Altman

LEASE EXTENSION AGREEMENT
ELS, INC.

7. Cancellation Option: In the event NAVSEA relocates beyond a Five (5) mile radius of Crystal City, and further provided Tenant is not then in default of any of the terms or conditions of this Lease, Tenant shall have the right, upon Six (6) months prior written notice to Landlord, time being of the essence, to cancel this Lease at the end of any month, in which event Tenant shall pay to Landlord liquidated damages equal to the unamortized amount of Landlord's contribution specified in Paragraph 4 hereof, which shall be paid in full with Tenant's written cancellation notice to Landlord. Such unamortized liquidated damages shall be in addition to any other charges which may be due and payable under this Lease, and the cancellation is further subject to the provisions of Section 2.5.

8. All of the terms and conditions of the Lease, as modified by this Lease Extension Agreement, except for Sections 26, 27, 28 and 29, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year hereinbefore first written.

WITNESS:

_____

LANDLORD: THIRD CRYSTAL PARK ASSOCIATES LIMITED PARTNERSHIP

BY_____ (SEAL)
Agent

ATTEST:

M R Beyer
~~Secretary~~ Director
(Corporate Seal)

TENANT: ELS, INC.

BY_____ (SEAL)
Name: STANLEY G. GISRIEL
Title: VP

LEASE EXTENSION AGREEMENT

THIS LEASE EXTENSION AGREEMENT made this _____ day of _____, 1993, by and between THIRD CRYSTAL PARK ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership (hereinafter "Landlord"), and ELS, INC., a Maryland corporation (hereinafter "Tenant").

WITNESSETH:

WHEREAS, the parties hereto entered into a lease agreement dated February 10, 1988 (the "Lease"), which provides for the leasing of Suite 400, consisting of approximately 7,291 square feet of office space in the building known as Three Crystal Park located at 2231 Crystal Drive, Arlington, Virginia, for a term expiring October 31, 1993; and

WHEREAS, the parties hereto desire to extend the term of the aforesaid Lease.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term: The Lease is hereby extended for a further period of Five (5) years, commencing November 1, 1993 and expiring October 31, 1998.

2. Base Rent: The base monthly rent for the extended term shall be Sixteen Thousand Seven Hundred Eight and 54/100 Dollars ($16,708.54).

3. Rent Waiver: Provided Tenant is not then in default under any of the terms and conditions of the Lease, then notwithstanding anything to the contrary in Section 2.1, Landlord agrees to waive Three Hundred Ninety-Two and 49/100 Dollars ($392.49) of Base Annual Rent due in each and every month of the extended term.

4. Landlord's Remodeling: Provided Tenant is not then in default of any of the terms or conditions of the Lease, on Tenant's behalf, Landlord agrees to remodel the demised premises in accordance with plans to be approved by both Tenant and Landlord. Provided Tenant is not then in default of any of the terms or conditions of the Lease, Landlord shall contribute to the cost of such Tenant remodeling the sum of Thirty-One Thousand One Hundred Thirty-Three Dollars ($31,133.00), with the understanding that any costs in excess thereof will be paid by Tenant. Such excess costs shall be paid in full by Tenant simultaneously with the approval by Landlord and Tenant of Tenant's working drawings and Landlord's estimate of extra costs. Provided Tenant is not then in default of any of the terms or conditions of the Lease, any remainder of said contribution shall be credited against Tenant's rent obligations hereunder, apportioned equally and applied once each month over the extended term hereof.

5. Acceptance of Space: Tenant accepts the demised premises in its existing "as is" condition and shall be obligated for the payment of rent on the commencement date hereof, regardless of any time required to construct, alter or redecorate the demised premises to Tenant's requirements.

6. Additional Rent: For purposes of calculating Additional Rent based on Tenant's pro rata share of increases in Operating Expenses and Real Estate Taxes, the base year shall be Landlord's fiscal year ending September 30, 1993; the base period for increases in the CPI shall be November, 1993. Tenant's obligation to pay such Additional Rent shall commence on November 1, 1994.

Lease no 71 - 1

SUMMARY SHEET

CES AGENT: Michael Altman DATE: 9/7/93

BUILDING/SHOPPING CENTER
Crystal Park Three

Property # 384
Suite/Store # 404
( )Retail (XX)Office
( )Storage

TENANT
ELS, INC.

( )New (XX)Existing
Term: 4 Yrs 5 Mos
06/01/94 to 10/31/98
USE
Office

OPTIONS
(XX)Cancel ( )Extend
( )Additional Space

PARKING
( )Included in Rent
(6) Prevailing Rate

NEW LEASE **CANCELLATION**
RENEWAL **EXTENSION**
SUBLEASE **ASSIGNMENT**
STORAGE **AMENDMENT**

ESCALATIONS/ADJUSTMENTS
R.E. Taxes 0.76%
Base 9/30/94
Oper. Exp. 0.76%
Base 9/30/94
Begin 6/1/95
Fixed
CPI 30%
Beg/Base 6/1/95 - 11/30/94
( )Lump Sum (XX) Monthly
Utilities
Promo Fund
Other

SECURITY DEP. None

DEMISING CHANGE
(XX)Yes ( )No

ECONOMICS
Square Feet 3,215
Rate $27.50
(XX)WFM ( )Net ( )Other

RENT
Annual: $88,412.52
Monthly: $ 7,367.71

Gross Lease $390,488.63

CONCESSIONS
RENT WAIVER:
Months: 3.37
Total Value: $24,849.05
Sq. Ft. Impact: $1.75

TENANT IMPROVEMENTS:
Allow./Sq. Ft.: $3.31
Total Value: $10,649.69
Sq. Ft. Impact: $0.75

Other
Allow./Sq. Ft.: $
Total Value: $
Sq. Ft. Impact: $

Other
Allow./Sq. Ft.: $
Total Value: $
Sq. Ft. Impact: $

VALUE OF CONCESSIONS:
$35,498.74

TOTAL SQ. FT. IMPACT:
$2.50

NET EFFECTIVE RATE
$25.00

Coop. Broker Commission:
Total Com. SF Impact
$ $

COMMENTS

Tenant's rent waiver is spread over the entire lease term.

In the event NAVSEA relocates beyond a 5 mile radius of Crystal City, then Tenant, with six (6) months prior written notice, may cancel this lease at the end of any month with damages equal to the unamortized portion of Tenant's remodeling costs.

- Waiting for Landlords signature.

PCM DATE KLM DATE MBM DATE

EAG DATE RPK DATE RHS DATE

OWNER'S APPROVAL Stephen B. Altman

This Lease, made this day of , 199__, between THIRD CRYSTAL PARK ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership, (hereinafter referred to as "Landlord"), and ELS, INC., a Maryland corporation, (hereinafter referred to as "Tenant").

Landlord, for and in consideration of the covenants and agreements set forth hereinafter, leases to Tenant, and Tenant leases from Landlord, the premises described, for the use set forth and for the term and at the rent reserved herein.

1. SPECIFIC PROVISIONS

1.1 Demised Premises

(a) **Space Description:** Suite 404.

(b) **Floor Area:** Approximately 3,215 square feet (Washington D.C. Association of Realtors Standard Floor Area Measure in effect at the time of execution of this Lease).

(c) **Building:** THREE CRYSTAL PARK

(d) **Address:** 2231 Crystal Drive
Arlington, Virginia 22202

1.2 **Term of Lease:** Four (4) years and Five (5) months, commencing on June 1, 1994 ("Lease Commencement Date"), and expiring on October 31, 1998, both dates inclusive.

1.3 **Base Annual Rent:** Eighty-Eight Thousand Four Hundred Twelve and 52/100 Dollars ($88,412.52), payable in equal monthly installments of Seven Thousand Three Hundred Sixty-Seven and 71/100 Dollars ($7,367.71), hereinafter referred to as "base monthly rent".

1.4 **Base Year:** "Base Year" shall mean fiscal year of Landlord ending September 30, 1994.

1.5 **Additional Rent:** Payable in equal monthly installments, commencing on June 1, 1995, consisting of the following:

(a) Tenant's pro rata share equal to Seventy-Six Hundredths of One Percent (.76%) of any increase in Real Estate Taxes over the Base Year Real Estate Taxes; and

(b) Tenant's pro rata share equal to Seventy-Six Hundredths of One Percent (.76%) of any increase in Operating Expenses over the Base Year Operating Expenses; and

(c) A percentage of Base Annual Rent equal to Thirty Percent (30%) of the percentage increase in the CPI over the CPI for "the base period" in the year 1994.

1.6 **Security Deposit:** None.

1.7 (a) **Date Tenant approved Preliminary Plans to be furnished:** Not Applicable.

(b) **Working days to prepare Working Drawings and cost estimate:** Not Applicable.

(c) **Working days to substantially complete construction of demised premises:** Not Applicable.

1.8 **Standard Building Operating Days and Hours:**

8:00 AM to 6:00 PM Monday - Friday
8:00 AM to 1:00 PM Saturday

1.9 **Use of Premises:**

General office use in keeping with the quality and nature of this first class office building.

1.10 (a) **Address for Notices to Tenant:**

ELS, Inc.
2231 Crystal Drive
Suite 404
Arlington, Virginia 22202

AND

ELS, Inc.
14120 Parke Long Court
Suite 201
Chantilly, Virginia 22021

(b) **Address for Notices to Landlord:**

Third Crystal Park Associates Limited Partnership
c/o Charles E. Smith Management, Inc.
2345 Crystal Drive
Arlington, Virginia 22202

1.11 **Special Provisions:**

Rent	Section 26
Waiver of Rent	Section 27
Acceptance of Space	Section 28
Landlord's Remodeling	Section 29
Parking	Section 30
Cancellation Option	Section 31
Recovery of Damages	Section 32
Subordination	Section 33
Security Deposit	Section 34
Execution of Document	Section 35

1.12 Exhibits to Lease:

Exhibit "A" - Not Applicable
Exhibit "B" - Not Applicable
Exhibit "C" - Building Rules and Regulations

IN WITNESS WHEREOF, Landlord has caused this Lease, comprised of Specific Provisions, General Provisions, Special Provisions and Exhibits to be signed and sealed by one or more of its General Partners, Trustees, or Agents, and Tenant has caused this Lease, as described above, to be signed in its corporate name by its duly authorized officer and its corporate seal to be hereto affixed and duly attested by its Secretary.

WITNESS:

_____

LANDLORD: **THIRD CRYSTAL PARK ASSOCIATES LIMITED PARTNERSHIP**

BY _____ (SEAL)
Agent

ATTEST:

CORPORATE SEAL _____
~~Secretary~~ DIRECTOR

TENANT: **ELS, INC.**

BY _____ (SEAL)
Name: STANLEY B. GESRIEL
Title: VP

31. CANCELLATION OPTION

31.1 In the event Naval Sea Systems Command relocates beyond a five (5) mile radius of Crystal City and the units thereof with which Tenant has contracts have physically moved beyond such Five (5) mile radius, and further provided Tenant is not then in default of any of the terms or conditions of this Lease, Tenant shall have the right upon Six (6) months prior written notice to Landlord, time being of the essence, to cancel this Lease at the end of any month, in which event Tenant shall pay to Landlord liquidated damages equal to the unamortized portion of any remodeling cost incurred by Landlord, which damages shall be paid in full with Tenant's written cancellation notice to Landlord. Such liquidated damages shall be in addition to any other charges which may be due and payable under this Lease, and the cancellation is further subject to the provisions of Section 2.5.

32. RECOVERY OF DAMAGES

32.1 In Section 12.4, in the second line, delete 'at the time of the reletting, or'; and in the third line, delete 'by successive relettings,'.

33. SUBORDINATION

33.1 Sections 13.1, 13.2, and 13.3 of this Lease are hereby deleted in their entirety and the following are substituted in lieu thereof:

"13.1 **Subordination.** This Lease is subject and subordinate to all ground or underlying leases and to all mortgages and/or deeds of trust and/or other security interests which may now or hereafter affect the real property of which the demised premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required to effect this subordination. Notwithstanding the foregoing, in confirmation of such subordination, Tenant shall at Landlord's request execute and deliver to Landlord within ten (10) business days after Landlord's request, any requisite or appropriate certificate, subordination agreement or other document that may be reasonably requested by Landlord or any other party requiring such certificate, subordination agreement or document. If Tenant fails to execute such certificate, subordination agreement or other document within said ten (10) day period, Tenant by such failure irrevocably constitutes and appoints Landlord as its special attorney-in-fact to execute such certificate, subordination agreement or other document on Tenant's behalf. Notwithstanding the foregoing subordination, Tenant agrees that any landlord under any ground or underlying lease, and any mortgagee or trustee under any security agreement to which this Lease is now, or may hereafter, become subject or subordinate, may elect to continue this Lease and Tenant agrees that in such event neither the cancellation nor termination of any ground or underlying lease, nor the foreclosure under any mortgage or deed of trust, nor the sale at foreclosure, nor the transfer by a deed in lieu of foreclosure, shall, by operation of law or otherwise, result in cancellation or termination of this Lease or the obligations of Tenant hereunder and this Lease shall continue as a direct lease between Tenant and such landlord, mortgagee, purchaser or trustee.

United States District Court

EASTERN DISTRICT OF VIRGINIA

CHARLES E. SMITH MANAGEMENT, INC.
2345 Crystal Drive
Arlington, Virginia 22202

Plaintiff,

V.

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION
1700 North Moore Street, Suite 142
and
MEMBERS OF THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION: JAMES A. COURTER;
PETER B. BOWMAN; BEVERLY B. BYRON;
REBECCA G. COX; HANSFORD T. JOHNSON;
HARRY MCPHERSON; AND ROBERT D. STUART
1700 North Moore Street, Suite 142
Arlington, Virginia 22209

Defendants.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 93-844-A

To: (Name and Address of Defendant)

Sheila Cheston, Esq.
General Counsel
Defense Base Closure and Realignment Commission

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Benjamin C. Chew
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

DORIS R. CASEY, Clerk

CLERK

7/2/93

DATE

Sandra J. Sacchetti

BY DEPUTY CLERK

AO 440 (Rev. 5/85) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
NAME OF SERVER	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

_____
Signature of Server

_____
Address of Server

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION 1700 North Moore Street, Suite 142 Arlington, Virginia 22209 and MEMBERS OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION: JAMES A. COURTER; PETER B. BOWMAN; BEVERLY B. BYRON; REBECCA G. COX; HANSFORD T. JOHNSON; HARRY MCPHERSON; AND ROBERT D. STUART 1700 North Moore Street, Suite 142 Arlington, Virgnia 22209 Defendants.	Civil Action No. 93-844-A

COMPLAINT FOR A DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF

Plaintiff Charles E. Smith Management, Inc., by and through counsel, for its cause of action states as follows:

Jurisdiction and Venue

1. This Court has personal jurisdiction over Defendants herein since they have their principal place of business in the Commonwealth of Virginia.

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. Venue is proper under 28 U.S.C. § 1391(e). There is now between the parties an actual and justiciable controversy in respect of which Plaintiffs require injunctive and declaratory relief.

The Parties

3. Plaintiff Charles E. Smith Management, Inc. is a corporation, organized under the laws of the District of Columbia, whose principal place of business is 2345 Crystal Drive, Arlington, Virginia, 22202. It is the managing agent for various real estate limited partnerships which own buildings which are the subject of the Base Closure Commission's report.

4. Defendant Defense Base Closure and Realignment Commission is an independent commission established under section 2902 of the Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, §§ 2901 - 2910, 104 Stat. 1808 (1990), as amended, (Exhibit 1). Its principal place of business is 1700 North Moore Street, Suite 142, Arlington, Virginia 22209. The Commission is responsible under the Base Closure Act for reviewing the Secretary of Defense's recommended closures and realignments of military installations, making findings and conclusions based on that review and formulating, and reporting its own recommendations of closures and realignments to the President.

5. Defendants James A. Courter, Peter B. Bowman, Beverly B. Byron, Rebecca G. Cox, Hansford T. Johnson, Harry McPherson, and Robert D. Stuart, Jr., are the duly-appointed members of the

Commission, pursuant to section 2902 of the Base Closure Act, § 2902, 104 Stat. at 1808, and the officials charged with carrying out the duties of the Commission as prescribed under the Base Closure Act.

Statement of the Facts

History of Leases

6. Plaintiff has leased Crystal City office space to the General Services Administration for occupancy by the Naval Systems Commands for more than twenty years.

Navy's Past Efforts to Realign the Naval Systems Commands

7. From 1990 through 1992, the Navy attempted to consolidate its Systems Commands, which occupy office buildings leased by the U.S. General Services Administration ("GSA") in Arlington County and the City of Alexandria, Virginia, into a government-owned building that GSA would construct in Arlington, Virginia. On information and belief, the Navy and the GSA made this effort under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §§ 471 et seq., in conjunction with the Public Buildings Act of 1959 ("PBA"), 40 U.S.C. §§ 601 et seq.

8. On information and belief, on March 29, 1990, the Office of Management and Budget forwarded a prospectus prepared by GSA to the Congress, as required under section 7 of the PBA, 40 U.S.C. § 606 (Exhibit 2), requesting approval to construct a three million square foot building in northern Virginia to house the Naval Systems Commands, and $821 million for the building's design, site acquisition, and construction.

9. On information and belief, in September of 1990, the Navy and GSA revised the scope of the proposed project to a one million square foot building to be constructed in northern Virginia.

10. In November 1990, the Navy issued a Draft Environmental Impact Statement under the National Environmental Policy Act, 42 U.S.C. §§ 4321 - 4370b, discussing the environmental effects of the proposed consolidation of the Naval Systems Commands (Exhibit 3).

11. On information and belief, in April 1991, GSA solicited offers for land in northern Virginia on which a buildings would be constructed to house the Naval Systems Commands.

12. In February 1992, the Navy issued a Supplemental Environmental Impact Statement addressing the environmental effects of the proposed consolidation (Exhibit 4).

13. On information and belief, in July 1992, the Secretary of the Navy announced that the Navy would not go forward with the planned consolidation.

The Base Closure and Realignment Act of 1990

14. As part of the National Defense Authorization Act for Fiscal Year 1990, Congress enacted the Base Closure Act. Pub. L. No. 101-510, §§ 2901 - 2910, 104 Stat. 1808 (1990). The Base Closure Act sets forth the exclusive process for recommending and implementing base closure and realignment actions to which 10 U.S.C. § 2687 would otherwise apply.

15. The Base Closure Act provides for three biennial opportunities, beginning in 1991, for closing and realigning military installations. Id. at § 2903(c), 104 Stat. at 1811. The Act authorizes the Secretary of Defense to recommend to the Commission closures and realignments based on final selection criteria and a force-structure plan, id., both of which are prescribed under the Act. Id. at § 2903 (a) & (b), 194 Stat. at 1810-11.

16. The Act requires the Commission to conduct public hearings on the Secretary of Defense's recommendations, review and analyze the Secretary's recommendations, make findings and conclusions on the basis if its review, and then issue its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. In making its recommendations, the Commission may change any of the Secretary of Defense's recommendations if it finds that the Secretary deviated substantially from the final selection criteria and the force-structure plan. Id. at § 2903(d)(2)(B), 104 Stat. at 1811-12.

17. The President has until July 15, 1993, to approve or disapprove the recommendations as a whole. Id. at § 2903(e), 104 Stat, at 1812. If he disapproves, the Commission must submit revised recommendations to him by August 15, 1993. Id. If the President approves of the recommendations, he forwards the list to the Congress in a report containing his certification of approval. Id. He may not approve some and disapprove others. Congress then has forty-five legislative days from the date of

receipt of the President's report to enact a joint resolution disapproving of all the recommendations or the recommendations become binding on the Department of Defense. Id. at § 2904(b), 104 Stat. at 1813.

18. The Base Closure Act applies only to the closure or realignment of a "military installation." Id. at § 2901, 104 Stat. at 1808; § 2904, 104 Stat at 1812-13. The Act defines a "military installation" as:

> a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control. or other projects not under the primary jurisdiction or control of the Department of Defense.

Id. at § 2910(4), 104 Stat at 1819, as amended by National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, § 2821(h), 105 Stat. 1546 (1991).

19. The Act does not define the term "closure" or "close." The Act defines "realignment" as including:

> 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.

Id. at § 2910(5), 104 Stat. at 1819.

General Purpose Space

20. Under Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), (Exhibit 5) which President Truman prepared in 1950 in

accordance with the Reorganization Act of 1950, 5 U.S.C. §§ 901 et seq., and under the Federal Property and Administrative Services Act (the "FPASA"), 40 U.S.C. § 490, (Exhibit 6) GSA has the exclusive authority within the federal government to lease "general purpose space" in designated urban areas, see 41 C.F.R. § 101-18.101, (Exhibit 7) and to assign and reassign "general purpose space" to federal agencies, see id. at § 101-17.002 (Exhibit 8).

21. Under the FPASA, 40 U.S.C. § 486, (Exhibit 9) and Executive Order 12512, 50 Fed. Reg. 18,453 (1985), (Exhibit 10) GSA is the agency responsible for preparing annual reports on "general purpose space" that it leases from a third party and assigns to another agency. 41 C.F.R. § 101-3.2 (Exhibit 11).

22. "General purpose space" is space in buildings that may be suitable for use of federal agencies generally. 41 C.F.R. at § 101-17.003-2 (Exhibit 12).

23. A federal agency that occupies general purpose space in buildings leased by GSA is an "occupant agency" under GSA's regulations. Id. at § 101-20.003(u) (Exhibit 13). An "occupant agency" is defined as an organization assigned space in a facility under GSA's custody and control. Id.

24. Department of Defense regulations recognize that GSA is responsible exclusively for the custody and control of general purpose space. For example, the Department of the Navy defines a military installation as the "aggregate of real property facilities assigned to a shore command." Shore Facilities

Planning Manual, Naval Facilities Command Instruction 11010.44D, at A-4 (Exhibit 14). The Navy places all of its military installations on the Navy Facilities Assets Data Base. Id. at II-7 - II-8 (Exhibit 15). Space leased by GSA is specifically excluded from this data base. Id. at A-4. See Real Estate Procedural Manual, Naval Facilities Engineering Command Instruction P-73, at 13-14 (Exhibit 16); Army Regulation 405-45, ¶ 1-6(k) (1982) (Exhibit 17).

The Commission's Action

25. On December 15, 1992, the Secretary of Defense published in the Federal Register the proposed selection criteria prescribed under section 2903(b) of the Base Closure Act. 57 Fed. Reg. 59,334 (1992) (Exhibit 18). The Secretary established the following eight selection criteria, in descending order of importance:

Military Value

> (1) Current and future mission requirements and the impact of operational readiness of the Department of Defense's total force.
>
> (2) The availability and condition of land, facilities, and associated airspace at both the existing and potential receiving locations.
>
> (3) The ability to accommodation contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

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 closure or realignment, for the savings to exceed costs.

Local Economic and Environmental Impact

(6) The economic impact on local communities.

(7) The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

(8) The environmental impact.

26. On March 12, 1993, Secretary of Defense Aspin, recommended to the Commission the realignment of the Navy's "National Capital Region Activities" (the "NCR Activities") located in buildings leased by GSA. See 55 Fed. Reg. 14,094 (1993) (Exhibit 19). The realignment recommendation required the NCR Activities to move out of GSA-leased buildings in which the Navy is currently an "occupant agency," within the meaning of 41 C.F.R. § 101-20.0003(u), and relocate to government-owned space in either the National Capital Region or in other locations throughout the United States.

27. Of the Crystal City office buildings that the Secretary of Defense recommended for realignment, GSA leased for the Naval Systems Commands approximately 1.2 million square feet from Plaintiff.

28. During the Commission's deliberations, Plaintiff, presented to the Commission a memorandum contending that the Base Closure Act does not grant jurisdiction to recommend or implement a decision to realign with respect to the Crystal City offices. The Commission rejected Plaintiff's position. Thus, Plaintiff has exhausted its administrative remedies.

29. On information and belief, on June 27, 1993, the Commission announced that it would accept the Secretary of Defense's recommendation to realign the NCR Activities from GSA-leased buildings,

30. As required under section 2903(d) of the Base Closure Act, § 2903(d), 104 Stat. at 1811-12, the Commission shall, by no later than July 1, 1993, transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, along with the Commission's own recommendations for closures and realignments of military installations inside the United States.

COUNT I

31. Plaintiff realleges as if fully set forth herein, Paragraphs 1 through 30, inclusive, of this Complaint.

32. Plaintiff has exhausted all administrative remedies before the Commission by submitting evidence to the Commission during the Commission's deliberations indicating that the Secretary of Defense had deviated substantially from the selection criteria and force-structure plan in recommending the realignment of the NCR Activities.

33. On June 27, 1993, the Commission announced that it would recommend to the President the realignment of various Naval Commands now located in buildings leased by GSA in Crystal City.

34. As set out in Paragraphs 20 through 24, the Crystal City office buildings fall under the jurisdiction of GSA.

Reorganization Plan No. 18 and the FPASA specify that the leased buildings, which constitute general purpose space, are under the exclusive custody and control of the GSA. Any relocations relative to the buildings can only be accomplished consistent with the FPASA and its implementing regulations.

35. The Base Closure Act limits the Commission's authority is recommending the closure or the realignment of "military installations."

36. The buildings that the Navy activities occupy in the National Capital Region, and which the Commission recommended for realignment, however, are not "military installations" for purposes of the Base Closure Act because they fall under the jurisdiction of GSA, not the Department of Defense.

37. Therefore, these buildings are not subject to the Base Closure Act. The action of the Commission in submitting a report recommending the movement of the Naval Systems Commands from these GSA-leased buildings is unlawful in that it exceeds the jurisdiction and authority provided by the Base Closure Act.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff Charles E. Smith Management, Inc., respectfully requests that judgment be entered in its favor and against the Commission and its members as follows:

A. That the Court declare that the Crystal City office buildings which are the subject of the Secretary of Defense's recommendations and the Commission's report are not "military

installations" and therefore, not subject to the jurisdiction of the Base Closure Acts;

B. That the Court issue a permanent injunction barring Defendants from recommending said buildings for realignment;

C. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Benjamin C. Chew
Virginia Bar No. 29113
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Of Counsel:

John L. Oberdorfer
Roger S. Ballentine
James A. King
Edward J. Newberry
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037

Dated: 6/30/93

Document Separator

United States District Court

EASTERN DISTRICT OF VIRGINIA

CHARLES E. SMITH MANAGEMENT, INC.
2345 Crystal Drive
Arlington, Virginia 22202

Plaintiff,

v.

LES ASPIN
In His Official Capacity As
SECRETARY OF DEFENSE
The Pentaton
Washington, D.C. 20301

and

THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

Defendants.

Amended Comp.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 93-944-A

Please refer to this number when responding 936727-1

TO: (Name and Address of Defendant)

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Benjamin C. Chew, Esq.
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

BY DEPUTY CLERK

DATE 7/20/93

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Charles E. Smith Management, Inc., by and through counsel, submits its Amended Complaint and for its cause of action states as follows:

Introductory Statement

1. This case challenges the authority under the Base Closure and Realignment Act of 1990 (the "Base Closure Act" or "Act") for action by the Executive Branch to realign office buildings that the U.S. Department of the Navy's Systems Commands

("Naval Systems Commands" or "Systems Commands") have occupied for two decades in the Crystal City area of Arlington, Virginia. Those office buildings are owned privately and leased by the U.S. General Services Administration ("GSA"). During the last five years, the Department of the Navy has explored moving the Naval Systems Commands to government-owned space. Until mid-1992, the Navy took the position that its authority to relocate from the buildings at Crystal City was governed by the Public Buildings Act of 1959, and the Federal Property and Administrative Services Act of 1949. In reliance on this legal position, the Navy and the GSA requested and secured congressional authorization and appropriations to construct a new, government-owned building in Northern Virginia for the Naval Systems Commands, and solicited and accepted offers for the actual construction of the building.

Just a year ago, however, the Navy's legal position and actions abruptly changed. First, the Navy decided not to pursue the construction of new offices in Northern Virginia. Second, the Navy requested and the Secretary of Defense recommended that the Naval Systems Commands' facilities be placed on the list of military installations to be closed and realigned under the 1993 process of the Base Closure Act, and that the Commands be moved to government-owned facilities in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

Plaintiff seeks a ruling that the relocation of the Naval Systems Commands from offices leased by GSA to government-owned

offices is an invalid purpose under the Base Closure Act, and that the decision to do so by the Defense Base Closure and Realignment Commission, as approved by the President, exceeds the authority granted by that Act. For this reason, the Court should enjoin implementation of the decision by the Secretary of Defense.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. Venue is proper under 28 U.S.C. § 1391(e).

The Parties

3. Plaintiff Charles E. Smith Management, Inc. is a corporation, organized under the laws of the District of Columbia, whose principal place of business is 2345 Crystal Drive, Arlington, Virginia, 22202. It is the managing agent for various real estate limited partnerships that own certain office buildings which are the subject of the Defense Base Closure and Realignment Commission's (the "Commission") July 1, 1993, report to the President, and the President's July 2, 1993, report to the Congress, under the Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, §§ 2901-2910, 104 Stat. 1808 (1990), as amended. As a result of the actions complained of herein, the office buildings managed by Plaintiff in Arlington, Virginia, will no longer serve as the locations of the Naval Systems Commands.

4. Defendant Les Aspin is named as a defendant in his official capacity as Secretary of Defense. As the head of the U.S. Department of Defense, the Secretary is charged under the Base Closure Act with recommending military installations to be closed or realigned, id. at § 2903(c), 104 Stat. at 1811, and with implementing closures and realignments that the Commission has recommended and the President has approved, id. at § 2905, 104 Stat. at 1813-15.

5. Defendant Defense Base Closure and Realignment Commission is an independent commission established under section 2902 of the Base Closure Act. Id. at § 2902, 104 Stat. at 1808. Its principal place of business is 1700 North Moore Street, Suite 1425, Arlington, Virginia 22209. Pursuant to the Base Closure Act, the Commission reviewed the Secretary of Defense's recommended closures and realignments of military installations, made findings and conclusions based on that review, and, on July 1, 1993, formulated and reported its own recommendations of closures and realignments to the President. On July 2, 1993, the President approved the Commission's report, and its recommendations, and transmitted the report to the Commission and to Congress.

Statement of the Facts

The Navy's Occupancy of GSA-Leased Buildings in Crystal City

6. For more than twenty years, Plaintiff has leased directly to GSA office buildings in the area known as "Crystal City" in Arlington, Virginia. During all this time, the following Naval Systems Commands have occupied these office buildings: Naval Sea Systems Command; Naval Air Systems Command; Naval Supply Systems Command; Space and Naval Warfare Systems Command; Naval Facilities Engineering Command; Naval Recruiting Command; Navy Field Support Activity; International Programs Office; Naval Criminal Investigative Service; Navy Regional Contracting Center; Strategic Systems Program Office; and the Bureau of Personnel.

7. The Crystal City office buildings that GSA leases from Plaintiff and that the Naval Systems Commands occupy constitute "general purpose space" under the Federal Property and Administrative Services Act ("FPASA"), 40 U.S.C. § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101.

8. The FPASA, 40 U.S.C § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101 govern the acquisition, management, assignment, and utilization of "general purpose space."

9. GSA has exclusive jurisdiction over "general purpose space." FPASA, 40 U.S.C. § 490; Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950); 41 C.F.R. part 101. See National Defense

Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 2804, 104 Stat. 1784-86 (1990) (codified at 10 U.S.C. § 2674).

The Base Closure and Realignment Act of 1990.

10. Since 1977, 10 U.S.C. § 2687 has governed generally all major base closure and realignment actions. Section 2687 sets forth a procedure to which the Secretary of Defense must adhere in closing or realigning any military installation at which 300 civilian personnel are authorized to be employed.

11. On November 5, 1990, the Base Closure and Realignment Act of 1990 was enacted as one part of the National Defense Authorization Act for Fiscal Year 1991. Pub. L. No. 101-510, §§ 2901 - 2910, 104 Stat. 1808 (1990). The Base Closure Act specifies that it will apply to any action that section 2687 would otherwise cover. Id. at § 2909, 104 Stat. at 1818-19.

12. The Base Closure Act establishes an exclusive process for recommending and implementing base closures and realignments. Id. In this regard, it prescribes that from the date of enactment (November 5, 1990) until December 31, 1995, the Act:

> shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

Id. at § 2909(a), 104 Stat. at 1818. Except for closures and realignments authorized under the Base Closure Act, and certain other exceptions not applicable to the actions complained of in this Amended Complaint, the Base Closure Act prohibits the use of any funds available to the Department of Defense from November 5, 1990, to December 31, 1995:

(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure of realignment; or

(2) to carry out any closure or realignment of a military installation inside the United States.

13. The Base Closure Act applies solely to the closure or realignment of a "military installation." Id. at § 2901, 104 Stat. at 1808; § 2904, 104 Stat. at 1812-13. The Base Closure Act defines a "military installation" as:

> a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

Id. at § 2910(4), 104 Stat. at 1819, as amended by National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, § 2821(h), 105 Stat. 1546 (1991).

14. The Base Closure Act adopted the definition of "military installation" that had been in 10 U.S.C. § 2687, and then added a clarifying amendment with the insertion of the term "including any leased facility."

15. The Act does not define the term "closure" or "close." The Act defines "realignment," however, as including:

> 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.

Id. at § 2910(5), 104 Stat. at 1819.

16. The Base Closure Act authorizes three biennial processes, beginning in 1991, for formulating recommendations of military installations to be closed or realigned. Id. at § 2903(c), 104 Stat. at 1811. The process is initiated by the Secretary of Defense, who may recommend to the Commission closures and realignments based on final selection criteria and the force-structure plan, both of which are prescribed under the Act. Id. at § 2903(a) & (b), 104 Stat. at 1810-11. The Commission then holds public hearings on the recommendations, reviews and analyzes them, makes findings and conclusions on the basis of its review and analysis, and then issues its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. If the President approves the recommendations, he submits a report to the Congress, and the Commission, certifying his approval. Id. at § 2903(e), 104 Stat. at 1812. Congress then has forty-five (45) legislative days to pass a joint resolution disapproving the recommendations as a whole. The Act ensures that Congress may not reject certain recommendations and approve others. Unless Congress passes a timely joint resolution, the recommendations are binding on the Department of Defense. Id. at § 2904(b), 104 Stat. at 1813.

17. The Secretary of Defense is charged with implementing the recommendations within six (6) years from the date the President submits his report to Congress certifying his approval. Id. at § 2904, 104 Stat. at 1812-13. The Act prescribes what actions the Secretary may take in closing or realigning a military installation. Id. at § 2905, 104 Stat. at 1813-15.

18. The Base Closure Act provides a limited statutory exception to the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 - 4370b. That exception applies only to the implementation of lawful closure and realignment recommendations made under the Act. The Base Closure Act states that during the process of implementing such recommendations, the Secretary of Defense and the Secretary of a military department do not have to consider:

> (i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;
>
> (ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or
>
> (iii) military installations alternative to those recommended or selected.

Id. at § 2905(b), 104 Stat. at 1815.

Section 2803 of the National Defense Authorization Act for Fiscal Year 1991.

19. The Base Closure Act is a part of the National Defense Authorization Act for Fiscal Year 1991. Another provision of that act (section 2803) separately addressed the Department of

Defense's moving out of GSA-leased space. Section 2803 schedules the Department of Defense's reduction of its occupancy of leased general purpose space, including space GSA leases for use by the Department of Defense. The years covered by section 2803 are years during which the Base Closure Act and its exclusive biennial process for closing and realigning military installations were in effect.

The Navy's Efforts Outside of the Base Closure Act to Relocate Into Government-Owned Offices

20. Just before and well after enactment of the Base Closure Act in 1990, the Navy attempted to move its Systems Commands from the Crystal City office buildings into a government-owned building that GSA would construct in Arlington, Virginia. The Navy and the GSA made this effort under the Public Buildings Act of 1959 ("PBA"), 40 U.S.C. §§ 601 et seq., in conjunction with the FPASA, 40 U.S.C. § 490. The steps that the Navy and GSA took to implement this action included:

a. On March 29, 1990, the Office of Management and Budget forwarded a prospectus prepared by GSA to the Congress, as required under section 7 of the PBA, 40 U.S.C. § 606, seeking authorization to construct a building in Northern Virginia to house the Naval Systems Commands, and asking for the appropriation of funds necessary for the building's design, site acquisition, and construction.

b. Pursuant to 40 U.S.C. § 606, in June 1990 and October 1990 the House Committee on Public Works and the Senate Committee on Public Works, respectively, adopted resolutions

authorizing the construction of a new building in Northern Virginia for the Naval Systems Commands.

c. On November 5, 1990, the same date that the Base Closure Act became law, the fiscal year 1991 Treasury, Postal Service and General Government Appropriations Act was enacted, providing $273 million for the construction of a building in Northern Virginia for the Naval Systems Commands. Pub. L. No. 101-509, 104 Stat. 1407 (1990).

d. In November 1990, the Navy issued a draft environmental impact statement under NEPA discussing the environmental impacts of and all reasonable alternatives to the proposed consolidation of the Naval Systems Commands.

e. In April 1991, GSA solicited offers to sell land in Northern Virginia on which a building to house the Naval Systems Commands would be constructed.

f. In February 1992, the Navy issued a supplemental environmental impact statement under NEPA concerning the proposed consolidation.

21. However, in July 1992, the Secretary of the Navy announced that the Navy would not proceed with the planned consolidation.

22. The Navy took all the actions described in Paragraph 20 of this Amended Complaint to move out of GSA-leased space in Crystal City pursuant to the PBA and the FPASA, notwithstanding that the Base Closure Act, which contains the phrase "including any leased facility" in its definition of "military installation," became effective on November 5, 1990.

23. Neither the Secretary of Defense nor the Commission placed the Crystal City office buildings on their respective lists of recommended closures and realignments in 1991.

The 1993 Base Closure Process.

24. On December 15, 1992, the Secretary of Defense published in the Federal Register the final selection criteria required under section 2903(b) of the Act. 57 Fed. Reg. 59,334 (1992) The Secretary established the following eight selection criteria, in descending order of importance:

Military Value

(1) Current and future mission requirements and the impact of operational readiness of the Department of Defense's total force.

(2) The availability and condition of land, facilities, and associated airspace at both the existing and potential receiving locations.

(3) The ability to accommodation contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

(4) The cost and manpower implications.

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 closure or realignment, for the savings to exceed costs.

Local Economic and Environmental Impact

(6) The economic impact on local communities.

(7) The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

(8) The environmental impact.

25. As authorized under section 2903(c) of the Act, id. at § 2903(c), 104 Stat. at 1811, on March 12, 1993, the Secretary of Defense transmitted to the Commission his recommendations of military installations to be closed and realigned. 58 Fed. Reg. 14,001 (1993).

26. One of the Secretary's recommendations to the Commission was to move the Naval Systems Commands from buildings leased by GSA in Crystal City. Id. at 14,094. This movement would displace approximately 11,000 Navy civilian and military personnel from Crystal City and close these offices as the home for those commands.

27. Plaintiff leases to GSA approximately 1.2 million square feet of space in office buildings in Crystal City for use by the Navy Systems Commands that were the subject of the Secretary's recommendations.

28. Private entities that perform work for the Naval Systems Commands lease in excess of an additional one million square feet of Crystal City office space from Plaintiff.

29. On June 7, 1993, Plaintiff presented to the Commission a memorandum addressing the lack of authority under the Base Closure Act to recommend or implement a closure of GSA-leased space, including the Crystal City office buildings. Plaintiff again questioned the Commission's jurisdiction over the Crystal City buildings in a letter dated June 15, 1993. At a hearing on June 18, 1993, the Commission rejected Plaintiff's position.

30. The Act requires the Commission to conduct public hearings on the Secretary of Defense's recommendations, review and analyze the Secretary's recommendations, make findings and conclusions on the basis if its review and analysis, and then issue its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. In making its recommendations, the Commission is authorized to change any of the Secretary of Defense's recommendations if it finds that the Secretary deviated substantially from the final selection criteria and the force-structure plan. Id. at § 2903(d)(2)(B), 104 Stat. at 1811-12.

31. On June 27, 1993, the Commission announced at a public hearing that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City.

32. On July 1, 1993, the Commission transmitted to the President its report in which it recommended the closure of thirty-one (31) bases inside the United States. With respect to the Naval Systems Commands located in Crystal City, the Commission (i) concluded that the Secretary did not deviate substantially from the force-structure plan and final selection criteria in recommending the movement of the Naval Systems Commands from the Crystal City office buildings, and (ii) recommended that the Systems Commands be moved from Crystal City to sites in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

33. On July 2, 1993, the President approved the Commission's recommendations and transmitted to Congress a report with his certification of approval. Id. at § 2903(e), 104 Stat. at 1812. That decision is final and effective, even though Congress has forty-five (45) days from the date of the President's approval to pass a joint resolution disapproving the President's entire report.

COUNT I

34. Plaintiff realleges, as if fully set forth herein, Paragraphs 1 through 33, inclusive, of this Amended Complaint.

35. The Base Closure Act limits the Commission's authority to recommending the closure or the realignment of a "military installation."

36. The Crystal City office buildings that Plaintiff leases to GSA for use by the Naval Systems Commands are not "military installations" under the Base Closure Act. The Act applies only to installations under the jurisdiction of the Department of Defense. These buildings are under the jurisdiction of GSA. (See Paragraphs 7 through 9, supra.)

37. Plaintiff has exhausted its administrative remedies. (See Paragraph 29, supra.)

38. On July 1, 1993, the Commission adopted the Secretary of Defense's recommendation and recommended to the President the movement of certain Naval Systems Commands and other functions now located in buildings leased by GSA in Crystal City. On July 2, 1993, the President transmitted the Commission's report, along with his approval, to Congress and the Commission.

39. The Commission's decision, as approved by the President, to move the Naval Systems Commands from GSA-leased buildings in Crystal City exceeds the jurisdiction and authority provided by the Base Closure Act, and is, therefore, contrary to law.

PRAYER FOR RELIEF

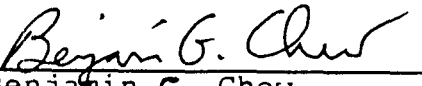
WHEREFORE, for the reasons stated above, Plaintiff Charles E. Smith Management, Inc., respectfully requests that judgment be entered in its favor and against the Secretary of Defense, and the Commission as follows:

A. That the Court declare that the Crystal City office buildings are not "military installation" subject to the jurisdiction of the Base Closure Act, and, therefore, are not a valid and lawful subject of the Secretary of Defense's recommendations, the Commission's recommendations and report, and President's approval of the Commission's recommendations and report;

B. That the Court enjoin Defendants from taking any action under the Base Closure Act to implement the Commission's recommendations with respect to the Crystal City office buildings;

C. That the Court grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Amended Complaint for Declaratory and Injunctive Relief in Civil Action No. 93-844-A, was served by hand delivery, this 20th, day of July 1993 to:

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

United States Attorney
Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, Virginia 22314

Benjamin G. Chew

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

PLAINTIFF'S FIRST SET OF INTERROGATORIES

PLEASE TAKE NOTICE that, in accordance with Federal Rules of Civil Procedure 26 and 33, Plaintiff Charles E. Smith Management, Inc., hereby requests that the Defendant Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000, respond to the following interrogatories within 45 days after service, or such earlier date as may be agreed upon by the parties or ordered by the Court, in accordance with the definitions and instructions set forth below, as well as those

contained in Plaintiff's First Request for Production of Documents, served concurrently with this set of interrogatories.

DEFINITIONS AND INSTRUCTIONS

1. Plaintiff incorporates by reference the definitions and rules set forth in the Federal Rules of Civil Procedure. Without limiting the foregoing, the terms used below shall have the following meanings:

2. The term "Plaintiff" means Charles E. Smith Management, Inc.

3. The term "Defendant" means Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000.

4. The term "Department of Defense" or "DOD" means the U.S. Department of Defense; the Office of the Secretary of Defense; the Joint Chiefs of Staff; the Joint Staff; the Defense Agencies; the Department of Defense Field Activities; the Department of the Army; the Department of the Navy; the Department of the Air Force; the unified and specified combatant commands; and all offices, agencies, instrumentalities, and commands under the control or supervision of any of the foregoing.

5. The term "General Services Administration" or "GSA" means the U.S. General Services Administration; the Administrator of General Services; and all offices, agencies, or instrumentalities under the control or supervision of any of the foregoing.

6. The term "you" or "your" means the Defendant, the Department of Defense, its representatives, and any other person acting (or person who acted or purported to act) on its behalf.

7. The term "person" or "persons" shall include without limitation: individuals, agencies, headquarters, forces, instrumentalities, functions, divisions, offices, groups, branches, sections, contractors, consultants, associations, companies, divisions, corporations, and any other governmental or business entity.

8. The term "document" or "documents" includes, without limitation: correspondence, memoranda, policy statements, guidelines, notes, drafts, minutes, plans, estimates, reports, studies, analyses, evaluations, assessments, leases, contracts, contract papers, logs, diaries, trip reports, computer software, telephone records, computer data, computer disks, computerized files, manuals, photographs, video recordings, motion pictures, sound recordings, and intra-agency or inter-agency communications of any type that have been memorialized in writing or in some other documentary fashion. Such term includes copies or reproductions of the foregoing upon which notations in writing have been made that do not appear on the original. If any document requested was, but is no longer, in the Defendant's possession or subject to the Defendant's control, state what disposition was made and the current location and custodian, if any, of each document.

9. The term "lease" means a contract between an agency of the United States and the owner of a building or buildings that permits the United States and any of its agencies to use the building or buildings, which may include the land incidental thereto, for a specified period of time.

10. The term "general purpose space" has the meaning provided under 41 C.F.R. § 101-17.003-2, and includes "administrative space" as defined under Department of Defense Instructions 5305.3, 5305.4, and 5305.5.

11. The term "special purpose space" has the meaning provided under 41 C.F.R. § 101-17.003-3.

12. The term "government-owned space" has the meaning provided under 41 C.F.R. § 101-17.003-4.

13. The term "leased space" has the meaning provided under 41 C.F.R. § 101-17.003-5.

14. The term "assignment" or "space assignment" has the meaning provided under 41 C.F.R. § 101-17.003-1.

15. The term "DOD Civilian employees" means direct-hire, permanent civilian employees of the Department of Defense.

16. The term "relocate" or "relocation" includes any movement to or from one building to another.

17. Where these interrogatories request you to identify a document, please state the following:

(a) The name of the person who prepared the document;

(b) The name of the person who signed the document or over whose name it was issued;

(c) The name of each person to whom the document was addressed or distributed;

(d) The document's nature and substance with sufficient particularity to enable it to be identified;

(e) The document's date and the date that it was prepared;

(f) Each of the document's identifying numbers, titles, and designations;

(g) The document's physical location and identity of its custodian or custodians; and

(h) If the document was, but is no longer, in your possession or subject to your control, state what disposition was made of it and the date of such disposition. With respect to document identification, documents prepared after the time or period specified in the Interrogatory but which relate to such time or period are to be included.

18. Where these interrogatories request you to identify a person, please state the following:

(a) The person's full name;

(b) The person's current employment, including title or position, military or civilian grade (if employed by the Government), and employer (if the Government, please state the specific agency);

(c) The person's current or last known address specifying which is being provided;

(d) the person's current or last known telephone number specifying which is being provided.

19. To the extent necessary to bring within the scope of the interrogatories or documents requested contained herein, with respect to any information that might otherwise be construed to be outside the scope, (a) the terms "and" and "or" shall be construed either disjunctively or conjunctively; and (b) the singular form of a word shall be interpreted as plural and the plural form of a word shall be interpreted as singular

20. The inability to answer completely a given Interrogatory shall not serve as a bar to answering that portion of the Interrogatory that is answerable. In such a case, that portion to which no response is given shall be identified in the response, along with the reason for no response.

21. To the extent that you consider any of the following Interrogatories objectionable, answer so much of each Interrogatory and each part that is not objectionable in your view, and separately state that part of each Interrogatory to which you object and each ground for your objection.

22. To the extent that you consider any document responsive to any of the following Interrogatories privileged (such as, but not limited to, either attorney-client communication or attorney work product), or classified, please:

(a) State the nature of the privilege claimed or the level of classification;

(b) Describe the general subject matter of the document;

(c) State the nature of the document or;

(d) Identify its author, recipient, and all persons who received it at any time;

(e) Identify each person with a copy of the document, indicating for each person his name, business affiliation, business address, and title at the time he saw the document;

(f) Set forth the date of the document, or, if undated, the best estimated date of its creation; and

(g) State the present location known copies of the document;

23. These interrogatories are continuing in nature. If, after responding to these interrogatories, Defendant obtains or becomes aware of any additional information regarding any of these interrogatories, Defendant is required to furnish a supplemental response to Plaintiff when the information becomes available.

INTERROGATORIES

Interrogatory No. 1: Please identify all leases in effect during all or part of calendar year 1990 (i.e., January 1, 1990, through December 31, 1990) under or pursuant to which the Defense Logistics Agency's Defense Contract Administration regional offices in Cleveland, Ohio; Dallas, Texas; New York, New York; and St. Louis, Missouri, respectively, occupied general purpose space.

Response:

Interrogatory No. 2: Please identify any delegations of leasing authority in accordance with 41 C.F.R. § 101-18:104 from GSA to DOD concerning any leases identified in response to Interrogatory No. 1.

Response:

Interrogatory No. 3: Please identify all Standard Forms 81, Request for Space, for, or created in conjunction with, referencing, or pertaining directly to, any leases identified in response to Interrogatory No. 1.

Response:

Interrogatory No. 4: Please identify all leases in effect during all or part of calendar year 1990 (i.e., January 1, 1990, through December 31, 1990) under or pursuant to which the Defense Logistics Agency's Defense Contract Administration regional offices in Cleveland, Ohio; Dallas, Texas; New York, New York; and St. Louis, Missouri, respectively, occupied special purpose space.

Response:

Interrogatory No. 5: Please identify any delegations of leasing authority in accordance with 41 C.F.R. § 101-18.104 from GSA to DOD concerning any leases identified in response to Interrogatory No. 4.

Response:

Interrogatory No. 6: Please identify all Standard Forms 81, Request for space, for, or created in conjunction with, referencing, or pertaining directly to, any leases identified in response to Interrogatory No. 4.

Response:

Interrogatory No. 7: Please identify all leases entered into by DOD after November 5, 1990, for general purpose space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 8: Please identify all leases entered into by GSA after November 5, 1990, for special purpose space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 9: Please identify all space assignments by GSA to DOD after November 5, 1990, of leased space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 10: Please identify which assignments identified in response to the preceding interrogatory are of general purpose space.

Response:

Interrogatory No. 11: Please identify all space assignments by GSA to DOD after November 5, 1990, of government-owned space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 12: Please identify which space assignments identified in response to Interrogatory No. 11 are of general purpose space.

Response:

Interrogatory No. 13: Please identify all relocations of DOD civilian employees or functions after November 5, 1990, to or from general purpose space at which at least three hundred DOD civilian personnel are, or are authorized to be, employed.

Response:

Interrogatory No. 14: For each relocation identified in response to Interrogatory No. 13, please:

a. Identify whether the general purpose space involved is leased or government-owned;

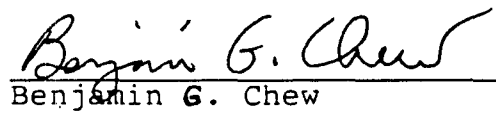
b. Identify which agency -- DOD or GSA -- leased the space;

c. State the number of DOD civilian employees relocated; and

d. State the number of DOD civilian employees whose employment was terminated as a consequence of the relocation.

Response:

Respectfully submitted,



Benjamin G. Chew
Virginia Bar No. 29113

John L. Oberdorfer
James A. King
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2550 M Street, N.W.
Washington, DC 20037
(202) 457-6420

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's First Set of Interrogatories in Civil Action No. 93-844-A, was served by hand delivery, this 20th day of July 1993 to:

Jamie S. Gorelick, Esq.
General Counsel
Department of Defense
The Pentagon
Washington, D.C. 20301-1600

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

United States Attorney
Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, Virginia 22314

Benjamin G. Chew

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that, in accordance with Federal Rules of Civil Procedure 26 and 33, Plaintiff Charles E. Smith Management, Inc., hereby requests that Defendant Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000, respond to the following requests for production of documents and things within 45 days after service, or such earlier date as may be agreed upon by the parties or ordered by the Court, in accordance with the definitions and instructions set forth below, as well as those contained in Plaintiff's First Set of

Interrogatories, served concurrently with this set of document requests.

DEFINITIONS AND INSTRUCTIONS

1. Plaintiff incorporates by reference the definitions and rules set forth in the Federal Rules of Civil Procedure. Without limiting the foregoing, the following instructions apply:

2. To the extent necessary to bring within the scope of the documents requested, any information that might otherwise be construed to be outside the scope: (a) the terms "and" and "or," shall be construed either disjunctively or conjunctively; and (b) the singular form of a word shall be interpreted as plural and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these document requests any information or documents which may otherwise be considered to be beyond their scope.

3. All documents produced shall be segregated and identified by the paragraphs to which they are primarily responsive. Any documents that are stored or maintained in files in the normal course of business shall be produced in such files or in a manner so as to preserve and identify the file from which the documents were taken.

4. If any document requested herein was formerly in the possession, custody, or control of the Defendant and has been lost or destroyed, the Defendant is requested to submit in lieu of each such document a written statement that:

(a) Describes in detail the nature of the document and its contents;

(b) Identifies the person who prepared the document and, if applicable, the person to whom the document was sent;

(c) Specifies the date on which the document was prepared or transmitted; and

(d) Specifies, if possible, the date on which the document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction, and the person requesting and performing the destruction.

5. To the extent that the Defendant, objects to producing any document in whole or in part on the basis of a claim of privilege or that the document sought is classified, Defendant is requested to: (a) state the nature of the privilege claimed or the level of classification of the document; (b) state the nature of the document withheld; (c) identify its author, recipient, and all persons who received it at any time; (d) identify each person with a copy of same, indicating for each his name, business affiliation, business address, and title at the time he saw the document; (e) set forth the date of the document, or if undated, the best estimated date of its creation; (f) state the present location of all known copies of the document; and (g) state the general subject matter of the document.

6. These requests for production of documents and things are continuing in nature. If, after responding to these requests, Defendant obtains or becomes aware of any additional information regarding any of these requests, Defendant is

required to furnish supplemental responsive documents to Plaintiff when such information becomes available.

DOCUMENT REQUESTS

Document Request No. 1: Provide a copy of all documents that you identified in response, or upon which you relied or otherwise used to respond, to Plaintiff's First Set of Interrogatories.

Document Request No. 2: To the extent not provide in response to Document Request No. 2, please provide documents created in conjunction with, referencing, or pertaining directly to 1) any relocation, in whole or in part, of the Navy's SPAWARS Command since November 1990; and 2) any relocation, in whole or in part, of any Research and Development Group of DOD since November 1990. For purposes of this request, the term "relocation" includes any movement to or from one building to another.

Respectfully submitted,

Benjamin G. Chew
Virginia Bar No. 29113

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James A. King
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's First Set of Requests for Production of Documents in Civil Action No. 93-844-A, was served by hand delivery, this 20th day of July 1993 to:

Jamie S. Gorelick, Esq.
General Counsel
Department of Defense
The Pentagon
Washington, D.C. 20301-1600

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

United States Attorney
Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, Virginia 22314

Benjamin G. Chew

Document Separator

July 20

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

PLAINTIFF'S FIRST SET OF INTERROGATORIES

PLEASE TAKE NOTICE that, in accordance with Federal Rules of Civil Procedure 26 and 33, Plaintiff Charles E. Smith Management, Inc., hereby requests that the Defendant Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000, respond to the following interrogatories within 45 days after service, or such earlier date as may be agreed upon by the parties or ordered by the Court, in accordance with the definitions and instructions set forth below, as well as those

contained in Plaintiff's First Request for Production of Documents, served concurrently with this set of interrogatories.

DEFINITIONS AND INSTRUCTIONS

1. Plaintiff incorporates by reference the definitions and rules set forth in the Federal Rules of Civil Procedure. Without limiting the foregoing, the terms used below shall have the following meanings:

2. The term "Plaintiff" means Charles E. Smith Management, Inc.

3. The term "Defendant" means Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000.

4. The term "Department of Defense" or "DOD" means the U.S. Department of Defense; the Office of the Secretary of Defense; the Joint Chiefs of Staff; the Joint Staff; the Defense Agencies; the Department of Defense Field Activities; the Department of the Army; the Department of the Navy; the Department of the Air Force; the unified and specified combatant commands; and all offices, agencies, instrumentalities, and commands under the control or supervision of any of the foregoing.

5. The term "General Services Administration" or "GSA" means the U.S. General Services Administration; the Administrator of General Services; and all offices, agencies, or instrumentalities under the control or supervision of any of the foregoing.

6. The term "you" or "your" means the Defendant, the Department of Defense, its representatives, and any other person acting (or person who acted or purported to act) on its behalf.

7. The term "person" or "persons" shall include without limitation: individuals, agencies, headquarters, forces, instrumentalities, functions, divisions, offices, groups, branches, sections, contractors, consultants, associations, companies, divisions, corporations, and any other governmental or business entity.

8. The term "document" or "documents" includes, without limitation: correspondence, memoranda, policy statements, guidelines, notes, drafts, minutes, plans, estimates, reports, studies, analyses, evaluations, assessments, leases, contracts, contract papers, logs, diaries, trip reports, computer software, telephone records, computer data, computer disks, computerized files, manuals, photographs, video recordings, motion pictures, sound recordings, and intra-agency or inter-agency communications of any type that have been memorialized in writing or in some other documentary fashion. Such term includes copies or reproductions of the foregoing upon which notations in writing have been made that do not appear on the original. If any document requested was, but is no longer, in the Defendant's possession or subject to the Defendant's control, state what disposition was made and the current location and custodian, if any, of each document.

9. The term "lease" means a contract between an agency of the United States and the owner of a building or buildings that permits the United States and any of its agencies to use the building or buildings, which may include the land incidental thereto, for a specified period of time.

10. The term "general purpose space" has the meaning provided under 41 C.F.R. § 101-17.003-2, and includes "administrative space" as defined under Department of Defense Instructions 5305.3, 5305.4, and 5305.5.

11. The term "special purpose space" has the meaning provided under 41 C.F.R. § 101-17.003-3.

12. The term "government-owned space" has the meaning provided under 41 C.F.R. § 101-17.003-4.

13. The term "leased space" has the meaning provided under 41 C.F.R. § 101-17.003-5.

14. The term "assignment" or "space assignment" has the meaning provided under 41 C.F.R. § 101-17.003-1.

15. The term "DOD Civilian employees" means direct-hire, permanent civilian employees of the Department of Defense.

16. The term "relocate" or "relocation" includes any movement to or from one building to another.

17. Where these interrogatories request you to identify a document, please state the following:

(a) The name of the person who prepared the document;

(b) The name of the person who signed the document or over whose name it was issued;

(c) The name of each person to whom the document was addressed or distributed;

(d) The document's nature and substance with sufficient particularity to enable it to be identified;

(e) The document's date and the date that it was prepared;

(f) Each of the document's identifying numbers, titles, and designations;

(g) The document's physical location and identity of its custodian or custodians; and

(h) If the document was, but is no longer, in your possession or subject to your control, state what disposition was made of it and the date of such disposition. With respect to document identification, documents prepared after the time or period specified in the Interrogatory but which relate to such time or period are to be included.

18. Where these interrogatories request you to identify a person, please state the following:

(a) The person's full name;

(b) The person's current employment, including title or position, military or civilian grade (if employed by the Government), and employer (if the Government, please state the specific agency);

(c) The person's current or last known address specifying which is being provided;

(d) the person's current or last known telephone number specifying which is being provided.

19. To the extent necessary to bring within the scope of the interrogatories or documents requested contained herein, with respect to any information that might otherwise be construed to be outside the scope, (a) the terms "and" and "or" shall be construed either disjunctively or conjunctively; and (b) the singular form of a word shall be interpreted as plural and the plural form of a word shall be interpreted as singular

20. The inability to answer completely a given Interrogatory shall not serve as a bar to answering that portion of the Interrogatory that is answerable. In such a case, that portion to which no response is given shall be identified in the response, along with the reason for no response.

21. To the extent that you consider any of the following Interrogatories objectionable, answer so much of each Interrogatory and each part that is not objectionable in your view, and separately state that part of each Interrogatory to which you object and each ground for your objection.

22. To the extent that you consider any document responsive to any of the following Interrogatories privileged (such as, but not limited to, either attorney-client communication or attorney work product), or classified, please:

(a) State the nature of the privilege claimed or the level of classification;

(b) Describe the general subject matter of the document;

(c) State the nature of the document or;

(d) Identify its author, recipient, and all persons who received it at any time;

(e) Identify each person with a copy of the document, indicating for each person his name, business affiliation, business address, and title at the time he saw the document;

(f) Set forth the date of the document, or, if undated, the best estimated date of its creation; and

(g) State the present location known copies of the document;

23. These interrogatories are continuing in nature. If, after responding to these interrogatories, Defendant obtains or becomes aware of any additional information regarding any of these interrogatories, Defendant is required to furnish a supplemental response to Plaintiff when the information becomes available.

INTERROGATORIES

Interrogatory No. 1: Please identify all leases in effect during all or part of calendar year 1990 (i.e., January 1, 1990, through December 31, 1990) under or pursuant to which the Defense Logistics Agency's Defense Contract Administration regional offices in Cleveland, Ohio; Dallas, Texas; New York, New York; and St. Louis, Missouri, respectively, occupied general purpose space.

Response:

Interrogatory No. 2: Please identify any delegations of leasing authority in accordance with 41 C.F.R. § 101-18:104 from GSA to DOD concerning any leases identified in response to Interrogatory No. 1.

Response:

Interrogatory No. 3: Please identify all Standard Forms 81, Request for Space, for, or created in conjunction with, referencing, or pertaining directly to, any leases identified in response to Interrogatory No. 1.

Response:

Interrogatory No. 4: Please identify all leases in effect during all or part of calendar year 1990 (i.e., January 1, 1990, through December 31, 1990) under or pursuant to which the Defense Logistics Agency's Defense Contract Administration regional offices in Cleveland, Ohio; Dallas, Texas; New York, New York; and St. Louis, Missouri, respectively, occupied special purpose space.

Response:

Interrogatory No. 5: Please identify any delegations of leasing authority in accordance with 41 C.F.R. § 101-18.104 from GSA to DOD concerning any leases identified in response to Interrogatory No. 4.

Response:

Interrogatory No. 6: Please identify all Standard Forms 81, Request for space, for, or created in conjunction with, referencing, or pertaining directly to, any leases identified in response to Interrogatory No. 4.

Response:

Interrogatory No. 7: Please identify all leases entered into by DOD after November 5, 1990, for general purpose space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 8: Please identify all leases entered into by GSA after November 5, 1990, for special purpose space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 9: Please identify all space assignments by GSA to DOD after November 5, 1990, of leased space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 10: Please identify which assignments identified in response to the preceding interrogatory are of general purpose space.

Response:

Interrogatory No. 11: Please identify all space assignments by GSA to DOD after November 5, 1990, of government-owned space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 12: Please identify which space assignments identified in response to Interrogatory No. 11 are of general purpose space.

Response:

Interrogatory No. 13: Please identify all relocations of DOD civilian employees or functions after November 5, 1990, to or from general purpose space at which at least three hundred DOD civilian personnel are, or are authorized to be, employed.

Response:

Interrogatory No. 14: For each relocation identified in response to Interrogatory No. 13, please:

a. Identify whether the general purpose space involved is leased or government-owned;

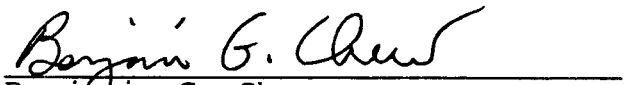
b. Identify which agency -- DOD or GSA -- leased the space;

c. State the number of DOD civilian employees relocated; and

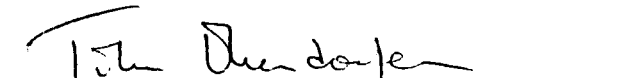
d. State the number of DOD civilian employees whose employment was terminated as a consequence of the relocation.

Response:

Respectfully submitted,



Benjamin G. Chew
Virginia Bar No. 29113



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2550 M Street, N.W.
Washington, DC 20037
(202) 457-6420

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's First Set of Interrogatories in Civil Action No. 93-844-A, was served by hand delivery, this 20th day of July 1993 to:

Jamie S. Gorelick, Esq.
General Counsel
Department of Defense
The Pentagon
Washington, D.C. 20301-1600

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

United States Attorney
Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, Virginia 22314

Benjamin G. Chew

Document Separator

United States District Court

EASTERN DISTRICT OF VIRGINIA

CHARLES E. SMITH MANAGEMENT, INC.
2345 Crystal Drive
Arlington, Virginia 22202

Plaintiff,

v.

LES ASPIN
In His Official Capacity As
SECRETARY OF DEFENSE
The Pentaton
Washington, D.C. 20301

and

THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

Defendants.

Amended Comp.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 93-944-A

TO: (Name and Address of Defendant)

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Benjamin C. Chew, Esq.
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

DORIS R. CASEY, Clerk
CLERK

7/20/93
DATE

Sandra L. Sacchetti
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Charles E. Smith Management, Inc., by and through counsel, submits its Amended Complaint and for its cause of action states as follows:

Introductory Statement

1. This case challenges the authority under the Base Closure and Realignment Act of 1990 (the "Base Closure Act" or "Act") for action by the Executive Branch to realign office buildings that the U.S. Department of the Navy's Systems Commands

("Naval Systems Commands" or "Systems Commands") have occupied for two decades in the Crystal City area of Arlington, Virginia. Those office buildings are owned privately and leased by the U.S. General Services Administration ("GSA"). During the last five years, the Department of the Navy has explored moving the Naval Systems Commands to government-owned space. Until mid-1992, the Navy took the position that its authority to relocate from the buildings at Crystal City was governed by the Public Buildings Act of 1959, and the Federal Property and Administrative Services Act of 1949. In reliance on this legal position, the Navy and the GSA requested and secured congressional authorization and appropriations to construct a new, government-owned building in Northern Virginia for the Naval Systems Commands, and solicited and accepted offers for the actual construction of the building.

Just a year ago, however, the Navy's legal position and actions abruptly changed. First, the Navy decided not to pursue the construction of new offices in Northern Virginia. Second, the Navy requested and the Secretary of Defense recommended that the Naval Systems Commands' facilities be placed on the list of military installations to be closed and realigned under the 1993 process of the Base Closure Act, and that the Commands be moved to government-owned facilities in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

Plaintiff seeks a ruling that the relocation of the Naval Systems Commands from offices leased by GSA to government-owned

offices is an invalid purpose under the Base Closure Act, and that the decision to do so by the Defense Base Closure and Realignment Commission, as approved by the President, exceeds the authority granted by that Act. For this reason, the Court should enjoin implementation of the decision by the Secretary of Defense.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. Venue is proper under 28 U.S.C. § 1391(e).

The Parties

3. Plaintiff Charles E. Smith Management, Inc. is a corporation, organized under the laws of the District of Columbia, whose principal place of business is 2345 Crystal Drive, Arlington, Virginia, 22202. It is the managing agent for various real estate limited partnerships that own certain office buildings which are the subject of the Defense Base Closure and Realignment Commission's (the "Commission") July 1, 1993, report to the President, and the President's July 2, 1993, report to the Congress, under the Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, §§ 2901-2910, 104 Stat. 1808 (1990), as amended. As a result of the actions complained of herein, the office buildings managed by Plaintiff in Arlington, Virginia, will no longer serve as the locations of the Naval Systems Commands.

4. Defendant Les Aspin is named as a defendant in his official capacity as Secretary of Defense. As the head of the U.S. Department of Defense, the Secretary is charged under the Base Closure Act with recommending military installations to be closed or realigned, id. at § 2903(c), 104 Stat. at 1811, and with implementing closures and realignments that the Commission has recommended and the President has approved, id. at § 2905, 104 Stat. at 1813-15.

5. Defendant Defense Base Closure and Realignment Commission is an independent commission established under section 2902 of the Base Closure Act. Id. at § 2902, 104 Stat. at 1808. Its principal place of business is 1700 North Moore Street, Suite 1425, Arlington, Virginia 22209. Pursuant to the Base Closure Act, the Commission reviewed the Secretary of Defense's recommended closures and realignments of military installations, made findings and conclusions based on that review, and, on July 1, 1993, formulated and reported its own recommendations of closures and realignments to the President. On July 2, 1993, the President approved the Commission's report, and its recommendations, and transmitted the report to the Commission and to Congress.

Statement of the Facts

The Navy's Occupancy of GSA-Leased Buildings in Crystal City

6. For more than twenty years, Plaintiff has leased directly to GSA office buildings in the area known as "Crystal City" in Arlington, Virginia. During all this time, the following Naval Systems Commands have occupied these office buildings: Naval Sea Systems Command; Naval Air Systems Command; Naval Supply Systems Command; Space and Naval Warfare Systems Command; Naval Facilities Engineering Command; Naval Recruiting Command; Navy Field Support Activity; International Programs Office; Naval Criminal Investigative Service; Navy Regional Contracting Center; Strategic Systems Program Office; and the Bureau of Personnel.

7. The Crystal City office buildings that GSA leases from Plaintiff and that the Naval Systems Commands occupy constitute "general purpose space" under the Federal Property and Administrative Services Act ("FPASA"), 40 U.S.C. § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101.

8. The FPASA, 40 U.S.C § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101 govern the acquisition, management, assignment, and utilization of "general purpose space."

9. GSA has exclusive jurisdiction over "general purpose space." FPASA, 40 U.S.C. § 490; Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950); 41 C.F.R. part 101. See National Defense

Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 2804, 104 Stat. 1784-86 (1990) (codified at 10 U.S.C. § 2674).

The Base Closure and Realignment Act of 1990.

10. Since 1977, 10 U.S.C. § 2687 has governed generally all major base closure and realignment actions. Section 2687 sets forth a procedure to which the Secretary of Defense must adhere in closing or realigning any military installation at which 300 civilian personnel are authorized to be employed.

11. On November 5, 1990, the Base Closure and Realignment Act of 1990 was enacted as one part of the National Defense Authorization Act for Fiscal Year 1991. Pub. L. No. 101-510, §§ 2901 - 2910, 104 Stat. 1808 (1990). The Base Closure Act specifies that it will apply to any action that section 2687 would otherwise cover. Id. at § 2909, 104 Stat. at 1818-19.

12. The Base Closure Act establishes an exclusive process for recommending and implementing base closures and realignments. Id. In this regard, it prescribes that from the date of enactment (November 5, 1990) until December 31, 1995, the Act:

> shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

Id. at § 2909(a), 104 Stat. at 1818. Except for closures and realignments authorized under the Base Closure Act, and certain other exceptions not applicable to the actions complained of in this Amended Complaint, the Base Closure Act prohibits the use of any of its funds available to the Department of Defense from November 5, 1990, to December 31, 1995:

(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure of realignment; or

(2) to carry out any closure or realignment of a military installation inside the United States.

13. The Base Closure Act applies solely to the closure or realignment of a "military installation." Id. at § 2901, 104 Stat. at 1808; § 2904, 104 Stat. at 1812-13. The Base Closure Act defines a "military installation" as:

> a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

Id. at § 2910(4), 104 Stat. at 1819, as amended by National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, § 2821(h), 105 Stat. 1546 (1991).

14. The Base Closure Act adopted the definition of "military installation" that had been in 10 U.S.C. § 2687, and then added a clarifying amendment with the insertion of the term "including any leased facility."

15. The Act does not define the term "closure" or "close." The Act defines "realignment," however, as including:

> any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force (only) resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

Id. at § 2910(5), 104 Stat. at 1819.

16. The Base Closure Act authorizes three biennial processes, beginning in 1991, for formulating recommendations of military installations to be closed or realigned. Id. at § 2903(c), 104 Stat. at 1811. The process is initiated by the Secretary of Defense, who may recommend to the Commission closures and realignments based on final selection criteria and the force-structure plan, both of which are prescribed under the Act. Id. at § 2903(a) & (b), 104 Stat. at 1810-11. The Commission then holds public hearings on the recommendations, reviews and analyzes them, makes findings and conclusions on the basis of its review and analysis, and then issues its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. If the President approves the recommendations, he submits a report to the Congress, and the Commission, certifying his approval. Id. at § 2903(e), 104 Stat. at 1812. Congress then has forty-five (45) legislative days to pass a joint resolution disapproving the recommendations as a whole. The Act ensures that Congress may not reject certain recommendations and approve others. Unless Congress passes a timely joint resolution, the recommendations are binding on the Department of Defense. Id. at § 2904(b), 104 Stat. at 1813.

17. The Secretary of Defense is charged with implementing the recommendations within six (6) years from the date the President submits his report to Congress certifying his approval. Id. at § 2904, 104 Stat. at 1812-13. The Act prescribes what actions the Secretary may take in closing or realigning a military installation. Id. at § 2905, 104 Stat. at 1813-15.

18. The Base Closure Act provides a limited statutory exception to the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 - 4370b. That exception applies only to the implementation of lawful closure and realignment recommendations made under the Act. The Base Closure Act states that during the process of implementing such recommendations, the Secretary of Defense and the Secretary of a military department do not have to consider:

> (i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;
>
> (ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or
>
> (iii) military installations alternative to those recommended or selected.

Id. at § 2905(b), 104 Stat. at 1815.

Section 2803 of the National Defense Authorization Act for Fiscal Year 1991.

19. The Base Closure Act is a part of the National Defense Authorization Act for Fiscal Year 1991. Another provision of that act (section 2803) separately addressed the Department of

Defense's moving out of GSA-leased space. Section 2803 schedules the Department of Defense's reduction of its occupancy of leased general purpose space, including space GSA leases for use by the Department of Defense. The years covered by section 2803 are years during which the Base Closure Act and its exclusive biennial process for closing and realigning military installations were in effect.

Look up

The Navy's Efforts Outside of the Base Closure Act to Relocate Into Government-Owned Offices

20. Just before and well after enactment of the Base Closure Act in 1990, the Navy attempted to move its Systems Commands from the Crystal City office buildings into a government-owned building that GSA would construct in Arlington, Virginia. The Navy and the GSA made this effort under the Public Buildings Act of 1959 ("PBA"), 40 U.S.C. §§ 601 et seq., in conjunction with the FPASA, 40 U.S.C. § 490. The steps that the Navy and GSA took to implement this action included:

lease-to own- → not closure not realign →

a. On March 29, 1990, the Office of Management and Budget forwarded a prospectus prepared by GSA to the Congress, as required under section 7 of the PBA, 40 U.S.C. § 606, seeking authorization to construct a building in Northern Virginia to house the Naval Systems Commands, and asking for the appropriation of funds necessary for the building's design, site acquisition, and construction.

b. Pursuant to 40 U.S.C. § 606, in June 1990 and October 1990 the House Committee on Public Works and the Senate Committee on Public Works, respectively, adopted resolutions

authorizing the construction of a new building in Northern Virginia for the Naval Systems Commands.

c. On November 5, 1990, the same date that the Base Closure Act became law, the fiscal year 1991 Treasury, Postal Service and General Government Appropriations Act was enacted, providing $273 million for the construction of a building in Northern Virginia for the Naval Systems Commands. Pub. L. No. 101-509, 104 Stat. 1407 (1990).

d. In November 1990, the Navy issued a draft environmental impact statement under NEPA discussing the environmental impacts of and all reasonable alternatives to the proposed consolidation of the Naval Systems Commands.

e. In April 1991, GSA solicited offers to sell land in Northern Virginia on which a building to house the Naval Systems Commands would be constructed.

f. In February 1992, the Navy issued a supplemental environmental impact statement under NEPA concerning the proposed consolidation.

21. However, in July 1992, the Secretary of the Navy announced that the Navy would not proceed with the planned consolidation.

22. The Navy took all the actions described in Paragraph 20 of this Amended Complaint to move out of GSA-leased space in Crystal City pursuant to the PBA and the FPASA, notwithstanding that the Base Closure Act, which contains the phrase "including any leased facility" in its definition of "military installation," became effective on November 5, 1990.

I want going to close it really!

23. Neither the Secretary of Defense nor the Commission placed the Crystal City office buildings on their respective lists of recommended closures and realignments in 1991.

The 1993 Base Closure Process.

24. On December 15, 1992, the Secretary of Defense published in the Federal Register the final selection criteria required under section 2903(b) of the Act. 57 Fed. Reg. 59,334 (1992) The Secretary established the following eight selection criteria, in descending order of importance:

Military Value

(1) Current and future mission requirements and the impact of operational readiness of the Department of Defense's total force.

(2) The availability and condition of land, facilities, and associated airspace at both the existing and potential receiving locations.

(3) The ability to accommodation contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

(4) The cost and manpower implications.

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 closure or realignment, for the savings to exceed costs.

Local Economic and Environmental Impact

(6) The economic impact on local communities.

(7) The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

(8) The environmental impact.

25. As authorized under section 2903(c) of the Act, id. at § 2903(c), 104 Stat. at 1811, on March 12, 1993, the Secretary of Defense transmitted to the Commission his recommendations of military installations to be closed and realigned. 58 Fed. Reg. 14,001 (1993).

26. One of the Secretary's recommendations to the Commission was to move the Naval Systems Commands from buildings leased by GSA in Crystal City. Id. at 14,094. This movement would displace approximately 11,000 Navy civilian and military personnel from Crystal City and close these offices as the home for those commands.

27. Plaintiff leases to GSA approximately 1.2 million square feet of space in office buildings in Crystal City for use by the Navy Systems Commands that were the subject of the Secretary's recommendations.

28. Private entities that perform work for the Naval Systems Commands lease in excess of an additional one million square feet of Crystal City office space from Plaintiff.

29. On June 7, 1993, Plaintiff presented to the Commission a memorandum addressing the lack of authority under the Base Closure Act to recommend or implement a closure of GSA-leased space, including the Crystal City office buildings. Plaintiff again questioned the Commission's jurisdiction over the Crystal City buildings in a letter dated June 15, 1993. At a hearing on June 18, 1993, the Commission rejected Plaintiff's position.

no such action

30. The Act requires the Commission to conduct public hearings on the Secretary of Defense's recommendations, review and analyze the Secretary's recommendations, make findings and conclusions on the basis if its review and analysis, and then issue its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. In making its recommendations, the Commission is authorized to change any of the Secretary of Defense's recommendations if it finds that the Secretary deviated substantially from the final selection criteria and the force-structure plan. Id. at § 2903(d)(2)(B), 104 Stat. at 1811-12.

31. On June 27, 1993, the Commission announced at a public hearing that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City.

32. On July 1, 1993, the Commission transmitted to the President its report in which it recommended the closure of thirty-one (31) bases inside the United States. With respect to the Naval Systems Commands located in Crystal City, the Commission (i) concluded that the Secretary did not deviate substantially from the force-structure plan and final selection criteria in recommending the movement of the Naval Systems Commands from the Crystal City office buildings, and (ii) recommended that the Systems Commands be moved from Crystal City to sites in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

33. On July 2, 1993, the President approved the Commission's recommendations and transmitted to Congress a report with his certification of approval. Id. at § 2903(e), 104 Stat. at 1812. That decision is final and effective, even though Congress has forty-five (45) days from the date of the President's approval to pass a joint resolution disapproving the President's entire report.

COUNT I

34. Plaintiff realleges, as if fully set forth herein, Paragraphs 1 through 33, inclusive, of this Amended Complaint.

35. The Base Closure Act limits the Commission's authority to recommending the closure or the realignment of a "military installation."

36. The Crystal City office buildings that Plaintiff leases to GSA for use by the Naval Systems Commands are not "military installations" under the Base Closure Act. The Act applies only to installations under the jurisdiction of the Department of Defense. These buildings are under the "jurisdiction" of GSA. (See Paragraphs 7 through 9, supra.)

not true what does "jurisdiction" mean - property? rely

37. Plaintiff has exhausted its administrative remedies. (See Paragraph 29, supra.)

38. On July 1, 1993, the Commission adopted the Secretary of Defense's recommendation and recommended to the President the movement of certain Naval Systems Commands and other functions now located in buildings leased by GSA in Crystal City. On July 2, 1993, the President transmitted the Commission's report, along with his approval, to Congress and the Commission.

Case is not ripe

39. The Commission's decision, as approved by the President, to move the Naval Systems Commands from GSA-leased buildings in Crystal City exceeds the jurisdiction and authority provided by the Base Closure Act, and is, therefore, contrary to law.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff Charles E. Smith Management, Inc., respectfully requests that judgment be entered in its favor and against the Secretary of Defense, and the Commission as follows:

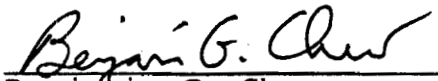
A. That the Court declare that the Crystal City office buildings are not "military installation" subject to the jurisdiction of the Base Closure Act, and, therefore, are not a valid and lawful subject of the Secretary of Defense's recommendations, the Commission's recommendations and report, and President's approval of the Commission's recommendations and report;

B. That the Court enjoin Defendants from taking any action under the Base Closure Act to implement the Commission's recommendations with respect to the Crystal City office buildings;

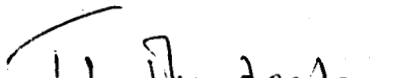
NOT RIPE

C. That the Court grant such other relief as the Court may deem just and proper.

Respectfully submitted,



Benjamin G. Chew
Virginia Bar No. 29113



John L. Oberdorfer
James A. King
Edward J. Newberry

PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

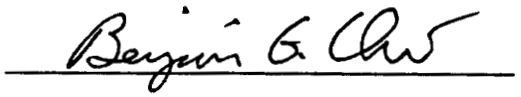
Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Amended Complaint for Declaratory and Injunctive Relief in Civil Action No. 93-844-A, was served by hand delivery, this 20th, day of July 1993 to:

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

United States Attorney
Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, Virginia 22314



Document Separator

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that, in accordance with Federal Rules of Civil Procedure 26 and 33, Plaintiff Charles E. Smith Management, Inc., hereby requests that Defendant Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000, respond to the following requests for production of documents and things within 45 days after service, or such earlier date as may be agreed upon by the parties or ordered by the Court, in accordance with the definitions and instructions set forth below, as well as those contained in Plaintiff's First Set of

Interrogatories, served concurrently with this set of document requests.

DEFINITIONS AND INSTRUCTIONS

1. Plaintiff incorporates by reference the definitions and rules set forth in the Federal Rules of Civil Procedure. Without limiting the foregoing, the following instructions apply:

2. To the extent necessary to bring within the scope of the documents requested, any information that might otherwise be construed to be outside the scope: (a) the terms "and" and "or," shall be construed either disjunctively or conjunctively; and (b) the singular form of a word shall be interpreted as plural and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these document requests any information or documents which may otherwise be considered to be beyond their scope.

3. All documents produced shall be segregated and identified by the paragraphs to which they are primarily responsive. Any documents that are stored or maintained in files in the normal course of business shall be produced in such files or in a manner so as to preserve and identify the file from which the documents were taken.

4. If any document requested herein was formerly in the possession, custody, or control of the Defendant and has been lost or destroyed, the Defendant is requested to submit in lieu of each such document a written statement that:

(a) Describes in detail the nature of the document and its contents;

(b) Identifies the person who prepared the document and, if applicable, the person to whom the document was sent;

(c) Specifies the date on which the document was prepared or transmitted; and

(d) Specifies, if possible, the date on which the document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction, and the person requesting and performing the destruction.

5. To the extent that the Defendant, objects to producing any document in whole or in part on the basis of a claim of privilege or that the document sought is classified, Defendant is requested to: (a) state the nature of the privilege claimed or the level of classification of the document; (b) state the nature of the document withheld; (c) identify its author, recipient, and all persons who received it at any time; (d) identify each person with a copy of same, indicating for each his name, business affiliation, business address, and title at the time he saw the document; (e) set forth the date of the document, or if undated, the best estimated date of its creation; (f) state the present location of all known copies of the document; and (g) state the general subject matter of the document.

6. These requests for production of documents and things are continuing in nature. If, after responding to these requests, Defendant obtains or becomes aware of any additional information regarding any of these requests, Defendant is

required to furnish supplemental responsive documents to Plaintiff when such information becomes available.

DOCUMENT REQUESTS

Document Request No. 1: Provide a copy of all documents that you identified in response, or upon which you relied or otherwise used to respond, to Plaintiff's First Set of Interrogatories.

Document Request No. 2: To the extent not provide in response to Document Request No. 2, please provide documents created in conjunction with, referencing, or pertaining directly to 1) any relocation, in whole or in part, of the Navy's SPAWARS Command since November 1990; and 2) any relocation, in whole or in part, of any Research and Development Group of DOD since November 1990. For purposes of this request, the term "relocation" includes any movement to or from one building to another. [include realignments? huge!]

Respectfully submitted,

Benjamin G. Chew

Benjamin G. Chew
Virginia Bar No. 29113

John Oberdorfer

John L. Oberdorfer
James A. King
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's First Set of Requests for Production of Documents in Civil Action No. 93-844-A, was served by hand delivery, this 20th day of July 1993 to:

Jamie S. Gorelick, Esq.
General Counsel
Department of Defense
The Pentagon
Washington, D.C. 20301-1600

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

United States Attorney
Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, Virginia 22314

Benjamin G. Chew

Document Separator

United States District Court

EASTERN DISTRICT OF VIRGINIA

CHARLES E. SMITH MANAGEMENT, INC.
2345 Crystal Drive
Arlington, Virginia 22202

Plaintiff,

v.

LES ASPIN
In His Official Capacity As
SECRETARY OF DEFENSE
The Pentaton
Washington, D.C. 20301

and

THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

Defendants.

Amended Comp.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 93-944-A

93-944-A

TO: (Name and Address of Defendant)

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Benjamin C. Chew, Esq.
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037

8/31 mot to Dis/ sg due

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

DORIS R. CASEY, Clerk
CLERK

7/20/93
DATE

Sandra L. Lockette
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Charles E. Smith Management, Inc., by and through counsel, submits its Amended Complaint and for its cause of action states as follows:

Introductory Statement

1. This case challenges the authority under the Base Closure and Realignment Act of 1990 (the "Base Closure Act" or "Act") for action by the Executive Branch to realign office buildings that the U.S. Department of the Navy's Systems Commands

("Naval Systems Commands" or "Systems Commands") have occupied for two decades in the Crystal City area of Arlington, Virginia. Those office buildings are owned privately and leased by the U.S. General Services Administration ("GSA"). During the last five years, the Department of the Navy has explored moving the Naval Systems Commands to government-owned space. Until mid-1992, the Navy took the position that its authority to relocate from the buildings at Crystal City was governed by the Public Buildings Act of 1959, and the Federal Property and Administrative Services Act of 1949. In reliance on this legal position, the Navy and the GSA requested and secured congressional authorization and appropriations to construct a new, government-owned building in Northern Virginia for the Naval Systems Commands, and solicited and accepted offers for the actual construction of the building.

Just a year ago, however, the Navy's legal position and actions abruptly changed. First, the Navy decided not to pursue the construction of new offices in Northern Virginia. Second, the Navy requested and the Secretary of Defense recommended that the Naval Systems Commands' facilities be placed on the list of military installations to be closed and realigned under the 1993 process of the Base Closure Act, and that the Commands be moved to government-owned facilities in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

Plaintiff seeks a ruling that the relocation of the Naval Systems Commands from offices leased by GSA to government-owned

offices is an invalid purpose under the Base Closure Act, and that the decision to do so by the Defense Base Closure and Realignment Commission, as approved by the President, exceeds the authority granted by that Act. For this reason, the Court should enjoin implementation of the decision by the Secretary of Defense.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. Venue is proper under 28 U.S.C. § 1391(e).

The Parties

3. Plaintiff Charles E. Smith Management, Inc. is a corporation, organized under the laws of the District of Columbia, whose principal place of business is 2345 Crystal Drive, Arlington, Virginia, 22202. It is the managing agent for various real estate limited partnerships that own certain office buildings which are the subject of the Defense Base Closure and Realignment Commission's (the "Commission") July 1, 1993, report to the President, and the President's July 2, 1993, report to the Congress, under the Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, §§ 2901-2910, 104 Stat. 1808 (1990), as amended. As a result of the actions complained of herein, the office buildings managed by Plaintiff in Arlington, Virginia, will no longer serve as the locations of the Naval Systems Commands.

4. Defendant Les Aspin is named as a defendant in his official capacity as Secretary of Defense. As the head of the U.S. Department of Defense, the Secretary is charged under the Base Closure Act with recommending military installations to be closed or realigned, id. at § 2903(c), 104 Stat. at 1811, and with implementing closures and realignments that the Commission has recommended and the President has approved, id. at § 2905, 104 Stat. at 1813-15.

5. Defendant Defense Base Closure and Realignment Commission is an independent commission established under section 2902 of the Base Closure Act. Id. at § 2902, 104 Stat. at 1808. Its principal place of business is 1700 North Moore Street, Suite 1425, Arlington, Virginia 22209. Pursuant to the Base Closure Act, the Commission reviewed the Secretary of Defense's recommended closures and realignments of military installations, made findings and conclusions based on that review, and, on July 1, 1993, formulated and reported its own recommendations of closures and realignments to the President. On July 2, 1993, the President approved the Commission's report, and its recommendations, and transmitted the report to the Commission and to Congress.

Statement of the Facts

The Navy's Occupancy of GSA-Leased Buildings in Crystal City

6. For more than twenty years, Plaintiff has leased directly to GSA office buildings in the area known as "Crystal City" in Arlington, Virginia. During all this time, the following Naval Systems Commands have occupied these office buildings: Naval Sea Systems Command; Naval Air Systems Command; Naval Supply Systems Command; Space and Naval Warfare Systems Command; Naval Facilities Engineering Command; Naval Recruiting Command; Navy Field Support Activity; International Programs Office; Naval Criminal Investigative Service; Navy Regional Contracting Center; Strategic Systems Program Office; and the Bureau of Personnel.

7. The Crystal City office buildings that GSA leases from Plaintiff and that the Naval Systems Commands occupy constitute "general purpose space" under the Federal Property and Administrative Services Act ("FPASA"), 40 U.S.C. § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101.

8. The FPASA, 40 U.S.C § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101 govern the acquisition, management, assignment, and utilization of "general purpose space."

9. GSA has exclusive jurisdiction over "general purpose space." FPASA, 40 U.S.C. § 490; Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950); 41 C.F.R. part 101. See National Defense

Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 2804, 104 Stat. 1784-86 (1990) (codified at 10 U.S.C. § 2674).

The Base Closure and Realignment Act of 1990.

10. Since 1977, 10 U.S.C. § 2687 has governed generally all major base closure and realignment actions. Section 2687 sets forth a procedure to which the Secretary of Defense must adhere in closing or realigning any military installation at which 300 civilian personnel are authorized to be employed.

11. On November 5, 1990, the Base Closure and Realignment Act of 1990 was enacted as one part of the National Defense Authorization Act for Fiscal Year 1991. Pub. L. No. 101-510, §§ 2901 - 2910, 104 Stat. 1808 (1990). The Base Closure Act specifies that it will apply to any action that section 2687 would otherwise cover. Id. at § 2909, 104 Stat. at 1818-19.

12. The Base Closure Act establishes an exclusive process for recommending and implementing base closures and realignments. Id. In this regard, it prescribes that from the date of enactment (November 5, 1990) until December 31, 1995, the Act:

> shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

Id. at § 2909(a), 104 Stat. at 1818. Except for closures and realignments authorized under the Base Closure Act, and certain other exceptions not applicable to the actions complained of in this Amended Complaint, the Base Closure Act prohibits the use of any funds available to the Department of Defense from November 5, 1990, to December 31, 1995:

(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure of realignment; or

(2) to carry out any closure or realignment of a military installation inside the United States.

13. The Base Closure Act applies solely to the closure or realignment of a "military installation." Id. at § 2901, 104 Stat. at 1808; § 2904, 104 Stat. at 1812-13. The Base Closure Act defines a "military installation" as:

> a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

Id. at § 2910(4), 104 Stat. at 1819, as amended by National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, § 2821(h), 105 Stat. 1546 (1991).

14. The Base Closure Act adopted the definition of "military installation" that had been in 10 U.S.C. § 2687, and then added a clarifying amendment with the insertion of the term "including any leased facility."

15. The Act does not define the term "closure" or "close." The Act defines "realignment," however, as including:

> 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.

Id. at § 2910(5), 104 Stat. at 1819.

16. The Base Closure Act authorizes three biennial processes, beginning in 1991, for formulating recommendations of military installations to be closed or realigned. Id. at § 2903(c), 104 Stat. at 1811. The process is initiated by the Secretary of Defense, who may recommend to the Commission closures and realignments based on final selection criteria and the force-structure plan, both of which are prescribed under the Act. Id. at § 2903(a) & (b), 104 Stat. at 1810-11. The Commission then holds public hearings on the recommendations, reviews and analyzes them, makes findings and conclusions on the basis of its review and analysis, and then issues its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. If the President approves the recommendations, he submits a report to the Congress, and the Commission, certifying his approval. Id. at § 2903(e), 104 Stat. at 1812. Congress then has forty-five (45) legislative days to pass a joint resolution disapproving the recommendations as a whole. The Act ensures that Congress may not reject certain recommendations and approve others. Unless Congress passes a timely joint resolution, the recommendations are binding on the Department of Defense. Id. at § 2904(b), 104 Stat. at 1813.

17. The Secretary of Defense is charged with implementing the recommendations within six (6) years from the date the President submits his report to Congress certifying his approval. Id. at § 2904, 104 Stat. at 1812-13. The Act prescribes what actions the Secretary may take in closing or realigning a military installation. Id. at § 2905, 104 Stat. at 1813-15.

18. The Base Closure Act provides a limited statutory exception to the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 - 4370b. That exception applies only to the implementation of lawful closure and realignment recommendations made under the Act. The Base Closure Act states that during the process of implementing such recommendations, the Secretary of Defense and the Secretary of a military department do not have to consider:

> (i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;
>
> (ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or
>
> (iii) military installations alternative to those recommended or selected.

Id. at § 2905(b), 104 Stat. at 1815.

Section 2803 of the National Defense Authorization Act for Fiscal Year 1991.

19. The Base Closure Act is a part of the National Defense Authorization Act for Fiscal Year 1991. Another provision of that act (section 2803) separately addressed the Department of

Defense's moving out of GSA-leased space. Section 2803 schedules the Department of Defense's reduction of its occupancy of leased general purpose space, including space GSA leases for use by the Department of Defense. The years covered by section 2803 are years during which the Base Closure Act and its exclusive biennial process for closing and realigning military installations were in effect.

The Navy's Efforts Outside of the Base Closure Act to Relocate Into Government-Owned Offices

20. Just before and well after enactment of the Base Closure Act in 1990, the Navy attempted to move its Systems Commands from the Crystal City office buildings into a government-owned building that GSA would construct in Arlington, Virginia. The Navy and the GSA made this effort under the Public Buildings Act of 1959 ("PBA"), 40 U.S.C. §§ 601 et seq., in conjunction with the FPASA, 40 U.S.C. § 490. The steps that the Navy and GSA took to implement this action included:

a. On March 29, 1990, the Office of Management and Budget forwarded a prospectus prepared by GSA to the Congress, as required under section 7 of the PBA, 40 U.S.C. § 606, seeking authorization to construct a building in Northern Virginia to house the Naval Systems Commands, and asking for the appropriation of funds necessary for the building's design, site acquisition, and construction.

b. Pursuant to 40 U.S.C. § 606, in June 1990 and October 1990 the House Committee on Public Works and the Senate Committee on Public Works, respectively, adopted resolutions

authorizing the construction of a new building in Northern Virginia for the Naval Systems Commands.

c. On November 5, 1990, the same date that the Base Closure Act became law, the fiscal year 1991 Treasury, Postal Service and General Government Appropriations Act was enacted, providing $273 million for the construction of a building in Northern Virginia for the Naval Systems Commands. Pub. L. No. 101-509, 104 Stat. 1407 (1990).

d. In November 1990, the Navy issued a draft environmental impact statement under NEPA discussing the environmental impacts of and all reasonable alternatives to the proposed consolidation of the Naval Systems Commands.

e. In April 1991, GSA solicited offers to sell land in Northern Virginia on which a building to house the Naval Systems Commands would be constructed.

f. In February 1992, the Navy issued a supplemental environmental impact statement under NEPA concerning the proposed consolidation.

21. However, in July 1992, the Secretary of the Navy announced that the Navy would not proceed with the planned consolidation.

22. The Navy took all the actions described in Paragraph 20 of this Amended Complaint to move out of GSA-leased space in Crystal City pursuant to the PBA and the FPASA, notwithstanding that the Base Closure Act, which contains the phrase "including any leased facility" in its definition of "military installation," became effective on November 5, 1990.

23. Neither the Secretary of Defense nor the Commission placed the Crystal City office buildings on their respective lists of recommended closures and realignments in 1991.

The 1993 Base Closure Process.

24. On December 15, 1992, the Secretary of Defense published in the Federal Register the final selection criteria required under section 2903(b) of the Act. 57 Fed. Reg. 59,334 (1992) The Secretary established the following eight selection criteria, in descending order of importance:

Military Value

(1) Current and future mission requirements and the impact of operational readiness of the Department of Defense's total force.

(2) The availability and condition of land, facilities, and associated airspace at both the existing and potential receiving locations.

(3) The ability to accommodation contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

(4) The cost and manpower implications.

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 closure or realignment, for the savings to exceed costs.

Local Economic and Environmental Impact

(6) The economic impact on local communities.

(7) The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

(8) The environmental impact.

25. As authorized under section 2903(c) of the Act, id. at § 2903(c), 104 Stat. at 1811, on March 12, 1993, the Secretary of Defense transmitted to the Commission his recommendations of military installations to be closed and realigned. 58 Fed. Reg. 14,001 (1993).

26. One of the Secretary's recommendations to the Commission was to move the Naval Systems Commands from buildings leased by GSA in Crystal City. Id. at 14,094. This movement would displace approximately 11,000 Navy civilian and military personnel from Crystal City and close these offices as the home for those commands.

27. Plaintiff leases to GSA approximately 1.2 million square feet of space in office buildings in Crystal City for use by the Navy Systems Commands that were the subject of the Secretary's recommendations.

28. Private entities that perform work for the Naval Systems Commands lease in excess of an additional one million square feet of Crystal City office space from Plaintiff.

29. On June 7, 1993, Plaintiff presented to the Commission a memorandum addressing the lack of authority under the Base Closure Act to recommend or implement a closure of GSA-leased space, including the Crystal City office buildings. Plaintiff again questioned the Commission's jurisdiction over the Crystal City buildings in a letter dated June 15, 1993. At a hearing on June 18, 1993, the Commission rejected Plaintiff's position.

30. The Act requires the Commission to conduct public hearings on the Secretary of Defense's recommendations, review and analyze the Secretary's recommendations, make findings and conclusions on the basis if its review and analysis, and then issue its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. In making its recommendations, the Commission is authorized to change any of the Secretary of Defense's recommendations if it finds that the Secretary deviated substantially from the final selection criteria and the force-structure plan. Id. at § 2903(d)(2)(B), 104 Stat. at 1811-12.

31. On June 27, 1993, the Commission announced at a public hearing that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City.

32. On July 1, 1993, the Commission transmitted to the President its report in which it recommended the closure of thirty-one (31) bases inside the United States. With respect to the Naval Systems Commands located in Crystal City, the Commission (i) concluded that the Secretary did not deviate substantially from the force-structure plan and final selection criteria in recommending the movement of the Naval Systems Commands from the Crystal City office buildings, and (ii) recommended that the Systems Commands be moved from Crystal City to sites in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

33. On July 2, 1993, the President approved the Commission's recommendations and transmitted to Congress a report with his certification of approval. Id. at § 2903(e), 104 Stat. at 1812. That decision is final and effective, even though Congress has forty-five (45) days from the date of the President's approval to pass a joint resolution disapproving the President's entire report.

huh?

COUNT I

34. Plaintiff realleges, as if fully set forth herein, Paragraphs 1 through 33, inclusive, of this Amended Complaint.

35. The Base Closure Act limits the Commission's authority to recommending the closure or the realignment of a "military installation."

36. The Crystal City office buildings that Plaintiff leases to GSA for use by the Naval Systems Commands are not "military installations" under the Base Closure Act. The Act applies only to installations under the jurisdiction of the Department of Defense. These buildings are under the jurisdiction of GSA. (See Paragraphs 7 through 9, supra.)

37. Plaintiff has exhausted its administrative remedies. (See Paragraph 29, supra.)

38. On July 1, 1993, the Commission adopted the Secretary of Defense's recommendation and recommended to the President the movement of certain Naval Systems Commands and other functions now located in buildings leased by GSA in Crystal City. On July 2, 1993, the President transmitted the Commission's report, along with his approval, to Congress and the Commission.

39. The Commission's decision, as approved by the President, to move the Naval Systems Commands from GSA-leased buildings in Crystal City exceeds the jurisdiction and authority provided by the Base Closure Act, and is, therefore, contrary to law.

PRAYER FOR RELIEF

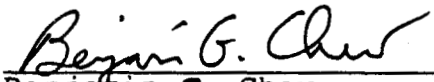
WHEREFORE, for the reasons stated above, Plaintiff Charles E. Smith Management, Inc., respectfully requests that judgment be entered in its favor and against the Secretary of Defense, and the Commission as follows:

A. That the Court declare that the Crystal City office buildings are not "military installation" subject to the jurisdiction of the Base Closure Act, and, therefore, are not a valid and lawful subject of the Secretary of Defense's recommendations, the Commission's recommendations and report, and President's approval of the Commission's recommendations and report;

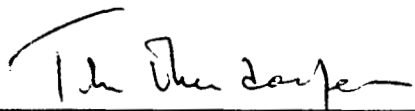
B. That the Court enjoin Defendants from taking any action under the Base Closure Act to implement the Commission's recommendations with respect to the Crystal City office buildings;

C. That the Court grant such other relief as the Court may deem just and proper.

Respectfully submitted,



Benjamin G. Chew
Virginia Bar No. 29113



John L. Oberdorfer
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PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Amended Complaint for Declaratory and Injunctive Relief in Civil Action No. 93-844-A, was served by hand delivery, this 20th, day of July 1993 to:

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

United States Attorney
Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, Virginia 22314

Benjamin G. Chew

Document Separator

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

PLAINTIFF'S FIRST SET OF INTERROGATORIES

PLEASE TAKE NOTICE that, in accordance with Federal Rules of Civil Procedure 26 and 33, Plaintiff Charles E. Smith Management, Inc., hereby requests that the Defendant Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000, respond to the following interrogatories within 45 days after service, or such earlier date as may be agreed upon by the parties or ordered by the Court, in accordance with the definitions and instructions set forth below, as well as those

contained in Plaintiff's First Request for Production of Documents, served concurrently with this set of interrogatories.

DEFINITIONS AND INSTRUCTIONS

1. Plaintiff incorporates by reference the definitions and rules set forth in the Federal Rules of Civil Procedure. Without limiting the foregoing, the terms used below shall have the following meanings:

2. The term "Plaintiff" means Charles E. Smith Management, Inc.

3. The term "Defendant" means Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000.

4. The term "Department of Defense" or "DOD" means the U.S. Department of Defense; the Office of the Secretary of Defense; the Joint Chiefs of Staff; the Joint Staff; the Defense Agencies; the Department of Defense Field Activities; the Department of the Army; the Department of the Navy; the Department of the Air Force; the unified and specified combatant commands; and all offices, agencies, instrumentalities, and commands under the control or supervision of any of the foregoing.

5. The term "General Services Administration" or "GSA" means the U.S. General Services Administration; the Administrator of General Services; and all offices, agencies, or instrumentalities under the control or supervision of any of the foregoing.

6. The term "you" or "your" means the Defendant, the Department of Defense, its representatives, and any other person acting (or person who acted or purported to act) on its behalf.

7. The term "person" or "persons" shall include without limitation: individuals, agencies, headquarters, forces, instrumentalities, functions, divisions, offices, groups, branches, sections, contractors, consultants, associations, companies, divisions, corporations, and any other governmental or business entity.

8. The term "document" or "documents" includes, without limitation: correspondence, memoranda, policy statements, guidelines, notes, drafts, minutes, plans, estimates, reports, studies, analyses, evaluations, assessments, leases, contracts, contract papers, logs, diaries, trip reports, computer software, telephone records, computer data, computer disks, computerized files, manuals, photographs, video recordings, motion pictures, sound recordings, and intra-agency or inter-agency communications of any type that have been memorialized in writing or in some other documentary fashion. Such term includes copies or reproductions of the foregoing upon which notations in writing have been made that do not appear on the original. If any document requested was, but is no longer, in the Defendant's possession or subject to the Defendant's control, state what disposition was made and the current location and custodian, if any, of each document.

9. The term "lease" means a contract between an agency of the United States and the owner of a building or buildings that permits the United States and any of its agencies to use the building or buildings, which may include the land incidental thereto, for a specified period of time.

10. The term "general purpose space" has the meaning provided under 41 C.F.R. § 101-17.003-2, and includes "administrative space" as defined under Department of Defense Instructions 5305.3, 5305.4, and 5305.5.

11. The term "special purpose space" has the meaning provided under 41 C.F.R. § 101-17.003-3.

12. The term "government-owned space" has the meaning provided under 41 C.F.R. § 101-17.003-4.

13. The term "leased space" has the meaning provided under 41 C.F.R. § 101-17.003-5.

14. The term "assignment" or "space assignment" has the meaning provided under 41 C.F.R. § 101-17.003-1.

15. The term "DOD Civilian employees" means direct-hire, permanent civilian employees of the Department of Defense.

16. The term "relocate" or "relocation" includes any movement to or from one building to another.

17. Where these interrogatories request you to identify a document, please state the following:

(a) The name of the person who prepared the document;

(b) The name of the person who signed the document or over whose name it was issued;

(c) The name of each person to whom the document was addressed or distributed;

(d) The document's nature and substance with sufficient particularity to enable it to be identified;

(e) The document's date and the date that it was prepared;

(f) Each of the document's identifying numbers, titles, and designations;

(g) The document's physical location and identity of its custodian or custodians; and

(h) If the document was, but is no longer, in your possession or subject to your control, state what disposition was made of it and the date of such disposition. With respect to document identification, documents prepared after the time or period specified in the Interrogatory but which relate to such time or period are to be included.

18. Where these interrogatories request you to identify a person, please state the following:

(a) The person's full name;

(b) The person's current employment, including title or position, military or civilian grade (if employed by the Government), and employer (if the Government, please state the specific agency);

(c) The person's current or last known address specifying which is being provided;

(d) the person's current or last known telephone number specifying which is being provided.

19. To the extent necessary to bring within the scope of the interrogatories or documents requested contained herein, with respect to any information that might otherwise be construed to be outside the scope, (a) the terms "and" and "or" shall be construed either disjunctively or conjunctively; and (b) the singular form of a word shall be interpreted as plural and the plural form of a word shall be interpreted as singular

20. The inability to answer completely a given Interrogatory shall not serve as a bar to answering that portion of the Interrogatory that is answerable. In such a case, that portion to which no response is given shall be identified in the response, along with the reason for no response.

21. To the extent that you consider any of the following Interrogatories objectionable, answer so much of each Interrogatory and each part that is not objectionable in your view, and separately state that part of each Interrogatory to which you object and each ground for your objection.

22. To the extent that you consider any document responsive to any of the following Interrogatories privileged (such as, but not limited to, either attorney-client communication or attorney work product), or classified, please:

(a) State the nature of the privilege claimed or the level of classification;

(b) Describe the general subject matter of the document;

(c) State the nature of the document or;

(d) Identify its author, recipient, and all persons who received it at any time;

(e) Identify each person with a copy of the document, indicating for each person his name, business affiliation, business address, and title at the time he saw the document;

(f) Set forth the date of the document, or, if undated, the best estimated date of its creation; and

(g) State the present location known copies of the document;

23. These interrogatories are continuing in nature. If, after responding to these interrogatories, Defendant obtains or becomes aware of any additional information regarding any of these interrogatories, Defendant is required to furnish a supplemental response to Plaintiff when the information becomes available.

INTERROGATORIES

Interrogatory No. 1: Please identify all leases in effect during all or part of calendar year 1990 (i.e., January 1, 1990, through December 31, 1990) under or pursuant to which the Defense Logistics Agency's Defense Contract Administration regional offices in Cleveland, Ohio; Dallas, Texas; New York, New York; and St. Louis, Missouri, respectively, occupied general purpose space.

Response:

Interrogatory No. 2: Please identify any delegations of leasing authority in accordance with 41 C.F.R. § 101-18:104 from GSA to DOD concerning any leases identified in response to Interrogatory No. 1.

Response:

Interrogatory No. 3: Please identify all Standard Forms 81, Request for Space, for, or created in conjunction with, referencing, or pertaining directly to, any leases identified in response to Interrogatory No. 1.

Response:

Interrogatory No. 4: Please identify all leases in effect during all or part of calendar year 1990 (i.e., January 1, 1990, through December 31, 1990) under or pursuant to which the Defense Logistics Agency's Defense Contract Administration regional offices in Cleveland, Ohio; Dallas, Texas; New York, New York; and St. Louis, Missouri, respectively, occupied special purpose space.

Response:

Interrogatory No. 5: Please identify any delegations of leasing authority in accordance with 41 C.F.R. § 101-18.104 from GSA to DOD concerning any leases identified in response to Interrogatory No. 4.

Response:

Interrogatory No. 6: Please identify all Standard Forms 81, Request for space, for, or created in conjunction with, referencing, or pertaining directly to, any leases identified in response to Interrogatory No. 4.

Response:

Interrogatory No. 7: Please identify all leases entered into by DOD after November 5, 1990, for general purpose space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 8: Please identify all leases entered into by GSA after November 5, 1990, for special purpose space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 9: Please identify all space assignments by GSA to DOD after November 5, 1990, of leased space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 10: Please identify which assignments identified in response to the preceding interrogatory are of general purpose space.

Response:

Interrogatory No. 11: Please identify all space assignments by GSA to DOD after November 5, 1990, of government-owned space at which at least three hundred DOD civilian employees are, or are authorized to be, employed.

Response:

Interrogatory No. 12: Please identify which space assignments identified in response to Interrogatory No. 11 are of general purpose space.

Response:

Interrogatory No. 13: Please identify all relocations of DOD civilian employees or functions after November 5, 1990, to or from general purpose space at which at least three hundred DOD civilian personnel are, or are authorized to be, employed.

Response:

Interrogatory No. 14: For each relocation identified in response to Interrogatory No. 13, please:

a. Identify whether the general purpose space involved is leased or government-owned;

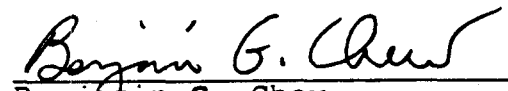
b. Identify which agency -- DOD or GSA -- leased the space;

c. State the number of DOD civilian employees relocated; and

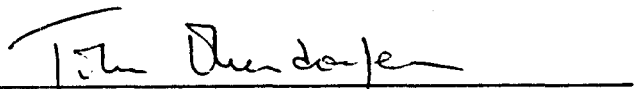
d. State the number of DOD civilian employees whose employment was terminated as a consequence of the relocation.

Response:

Respectfully submitted,



Benjamin G. Chew
Virginia Bar No. 29113



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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's First Set of Interrogatories in Civil Action No. 93-844-A, was served by hand delivery, this 20th day of July 1993 to:

Jamie S. Gorelick, Esq.
General Counsel
Department of Defense
The Pentagon
Washington, D.C. 20301-1600

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
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United States Attorney
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Alexandria, Virginia 22314

Benjamin G. Chew

Document Separator

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that, in accordance with Federal Rules of Civil Procedure 26 and 33, Plaintiff Charles E. Smith Management, Inc., hereby requests that Defendant Secretary of Defense Les Aspin, in his official capacity as head of the Department of Defense, The Pentagon, Washington, D.C. 20301-1000, respond to the following requests for production of documents and things within 45 days after service, or such earlier date as may be agreed upon by the parties or ordered by the Court, in accordance with the definitions and instructions set forth below, as well as those contained in Plaintiff's First Set of

Interrogatories, served concurrently with this set of document requests.

DEFINITIONS AND INSTRUCTIONS

1. Plaintiff incorporates by reference the definitions and rules set forth in the Federal Rules of Civil Procedure. Without limiting the foregoing, the following instructions apply:

2. To the extent necessary to bring within the scope of the documents requested, any information that might otherwise be construed to be outside the scope: (a) the terms "and" and "or," shall be construed either disjunctively or conjunctively; and (b) the singular form of a word shall be interpreted as plural and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these document requests any information or documents which may otherwise be considered to be beyond their scope.

3. All documents produced shall be segregated and identified by the paragraphs to which they are primarily responsive. Any documents that are stored or maintained in files in the normal course of business shall be produced in such files or in a manner so as to preserve and identify the file from which the documents were taken.

4. If any document requested herein was formerly in the possession, custody, or control of the Defendant and has been lost or destroyed, the Defendant is requested to submit in lieu of each such document a written statement that:

(a) Describes in detail the nature of the document and its contents;

(b) Identifies the person who prepared the document and, if applicable, the person to whom the document was sent;

(c) Specifies the date on which the document was prepared or transmitted; and

(d) Specifies, if possible, the date on which the document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction, and the person requesting and performing the destruction.

5. To the extent that the Defendant, objects to producing any document in whole or in part on the basis of a claim of privilege or that the document sought is classified, Defendant is requested to: (a) state the nature of the privilege claimed or the level of classification of the document; (b) state the nature of the document withheld; (c) identify its author, recipient, and all persons who received it at any time; (d) identify each person with a copy of same, indicating for each his name, business affiliation, business address, and title at the time he saw the document; (e) set forth the date of the document, or if undated, the best estimated date of its creation; (f) state the present location of all known copies of the document; and (g) state the general subject matter of the document.

6. These requests for production of documents and things are continuing in nature. If, after responding to these requests, Defendant obtains or becomes aware of any additional information regarding any of these requests, Defendant is

required to furnish supplemental responsive documents to Plaintiff when such information becomes available.

DOCUMENT REQUESTS

Document Request No. 1: Provide a copy of all documents that you identified in response, or upon which you relied or otherwise used to respond, to Plaintiff's First Set of Interrogatories.

Document Request No. 2: To the extent not provide in response to Document Request No. 2, please provide documents created in conjunction with, referencing, or pertaining directly to 1) any relocation, in whole or in part, of the Navy's SPAWARS Command since November 1990; and 2) any relocation, in whole or in part, of any Research and Development Group of DOD since November 1990. For purposes of this request, the term "relocation" includes any movement to or from one building to another.

Respectfully submitted,

Benjamin G. Chew
Virginia Bar No. 29113

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Washington, DC 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: July 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's First Set of Requests for Production of Documents in Civil Action No. 93-844-A, was served by hand delivery, this 20th day of July 1993 to:

Jamie S. Gorelick, Esq.
General Counsel
Department of Defense
The Pentagon
Washington, D.C. 20301-1600

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

United States Attorney
Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, Virginia 22314

Benjamin G. Chew

Document Separator

Please refer to this number
930908-1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

DEFENDANTS' MOTION TO DISMISS

Les Aspin, Secretary of Defense, and the Defense Base Closure and Realignment Commission, defendants in the above-captioned case, hereby move to dismiss this action, pursuant to Rule 12(b)(1) and(6) of the Federal Rules of Civil Procedure, for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. In support of this motion, the Court is respectfully referred to the attached memorandum of points and authorities.

Respectfully submitted,

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Assistant Attorney General

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Telephone: (202) 514-3395

Attorneys for Defendants

Dated: August 31, 1993

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-844-A

LES ASPIN, et al.,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

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United States Attorney

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Attorneys for Defendants

Dated: August 31, 1993

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-844-A

LES ASPIN, et al.,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

PRELIMINARY STATEMENT

In clear, unambiguous language, the 1990 Defense Base Closure and Realignment Act[1] (the Act or Base Closure Act), authorizes the closure and realignment of activities conducted under the jurisdiction of the Department of Defense in leased space. Plaintiff, a property management company that leases space to the General Services Administration (GSA) in Crystal City, Virginia, argues nevertheless that the Navy's activities at Crystal City are not within the jurisdiction of the Base Closure Act, because only GSA, a non-party, has authority over government-leased space. Under plaintiff's logic, GSA's authority to lease property is transformed into authority over the substantive activities of all government agencies conducted in leased space, including activities of the Secretary of Defense that impact on vital national security and foreign policy concerns.

[1] Pub. L. No. 101-510, 104 Stat. 1808 (1990), as amended by Pub. L. No. 102-910, § 2821, 150 Stat. 1290 (1991).

Even to state the gravamen of plaintiff's claim -- that the Secretary of Defense lacks jurisdiction over the activities conducted by the Navy in the Crystal City space -- is to reveal its absurdity. That the GSA is empowered to lease space for the Navy's use says nothing about the Secretary's authority to control Navy activities, whether conducted on government-owned or leased space. Indeed, to accept plaintiff's argument would read out of existence that part of the Base Closure Act that expressly authorizes realignment of Defense activities in leased space.

While the substance of this action is so transparently lacking in merit that it should be dismissed for failure to state a claim upon which relief can be granted, there are numerous jurisdictional bars to even reaching the merits. First, plaintiff has failed to allege, much less demonstrate, that it has or will suffer any injury from actions of these defendants and, accordingly, lacks standing to maintain this action. To the extent plaintiff may fear the possibility that its leases would be terminated prematurely when the Navy moves out of the Crystal City leased space, something the amended complaint does not allege, that would result from actions of the GSA, not the defendants. In addition, the interest plaintiff appears to be asserting -- to have certain components of the Navy as tenants -- is not within any zone of interest protected by the Base Closure Act. Finally, plaintiff's claim against the Commission is not redressable by the relief plaintiff seeks. The Commission fully discharged its statutory obligations when it made its non-binding

recommendations to the President, and has no role to play in implementing the President's decisions.

Second, the Court cannot review this action, given the absence of a waiver of sovereign immunity and the non-justiciable nature of plaintiff's claims. There is no review under the Administrative Procedure Act (APA) for several reasons. There is no final agency action for the Court to review. The recommendations of the Secretary of Defense and the Commission are not final agency action; they are merely recommendations that the President is free to accept or reject. Moreover, neither the President nor Congress, who are not named defendants in this action, is an agency subject to review under the APA, the only potential waiver of sovereign immunity available to plaintiff.

In addition, the APA limits judicial review to final agency action made reviewable by statute, or "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. To the extent plaintiff has advanced even a possible injury, it boils down to an economic injury plaintiff fears may result, should the GSA terminate its leases with plaintiff due to the realignment of certain Navy activities now conducted in space managed by plaintiff. In that event, however, plaintiff's remedy -- indeed, its only remedy -- is an action before the General Services Administration Board of Contract Appeals (GSBCA), 41 U.S.C. § 606, or a suit against the United States in the U.S. Court of Federal Claims for damages flowing from any improper termination of leases. 41 U.S.C. § 609.

Third, plaintiff's claim is not otherwise reviewable by statute. Indeed, the statutory scheme and legislative history of the Base Closure Act confirm that Congress intended that all challenges, including that brought by plaintiff, be judicially non-reviewable. To allow review here would interfere improperly with the merits of the President's decision. Under the political question doctrine and separation of powers principles, resolution of this controversy is reserved to the Executive and Legislative Branches.

STATUTORY BACKGROUND

The Defense Base Closure and Realignment Act of 1990 is the most recent attempt to legislate the process by which domestic military installations are closed and realigned. The 1990 Act, like a similar statute enacted in 1988,[2] was designed to break years of deadlock over the closure and realignment of unneeded military installations. For years, Congress, desiring to keep local installations open for the political benefit of individual members, effectively blocked efforts to close, move or consolidate those facilities. During this impasse, while foreign threats diminished and budget deficits soared, no domestic military installations were closed or realigned.

The 1990 Act is a political compromise that reflects both the commitment of the Executive Branch to a fair and impartial selection process and congressional recognition that unneeded

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[2] See Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Pub. L. No. 100-526, §§ 201-209, 102 Stat. 2623, 2627-34 (1988).

military installations should be closed or realigned, despite impacts on local communities. This spirit of inter-branch cooperation pervades the structure and operation of the 1990 Act, which has the avowed purpose of providing "a fair process that will result in the timely closure and realignment of military installations inside the United States." § 2901(b) (emphasis added).

Of particular relevance here, a "military installation" is defined explicitly as:

> a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

§ 2910(4) (emphasis added).

The Act established an independent Defense Base Closure and Realignment Commission to meet in 1991, 1993, and 1995. §§ 2902(a), (e). It requires the Secretary of Defense to develop a six-year force structure plan, which assesses national security threats and the force structure needed to meet them. §§ 2903(a)(1)(2). The Secretary is to provide the plan to the Commission. § 2903(a). The Act also requires the Secretary to publish in the Federal Register for notice and comment the selection criteria he proposes to use to recommend installations for closure or realignment. § 2903(b).

Under the timetable provided in the 1991 amendments to the Act, the Secretary is required to recommend installations for closure and realignment by March 15, based on the force structure plan and selection criteria. § 2903(c)(1). The Act directs the Secretary to summarize in the Federal Register the process by which each installation was recommended for closure or realignment and to provide a justification of each recommendation. § 2903(c)(2). The Act requires the Comptroller General, the head of the General Accounting Office (GAO), to analyze and report to Congress on the Secretary's recommendations and selection process by April 15. § 2903(d)(5).

Congress charged the Commission with reviewing the Secretary's recommendations, and with preparing a report for the President containing its assessment of the Secretary's proposals and its own closure and realignment recommendations. § 2903(d)(2). The Comptroller General, to the extent requested, is directed to assist the Commission in its review. § 2903(d)(5). The Act requires the Commission to hold public hearings on the Secretary's recommendations. § 2903(d)(1). The Commission may change any of the Secretary's recommendations if they "deviate[] substantially" from the force structure plan and final criteria. § 2903(d)(2)(B). If the Commission proposes to change the Secretary's recommendations by adding military installations to the list for closure or realignment, it must publish the proposed changes in the Federal Register thirty days prior to submitting

its recommendations to the President and hold public hearings on the proposed changes. § 2903(d)(2)(C).

The Commission must report its recommendations to the President by July 1. § 2903(d)(2)(A). The President then has two weeks in which to approve or disapprove the Commission's recommendations in whole or in part and must transmit this determination to the Commission and Congress. § 2903(e). If the President disapproves any recommendations, the Commission has until August 15 to submit a revised list of recommended closures and realignments to him. § 2903(e)(3). If the President does not approve the revised list of recommendations by September 1, the process for that year terminates. § 2903(e)(5).

If the President approves the Commission's recommendations, Congress has 45 days from the date of approval or until the adjournment of Congress sine die, whichever is earlier, to pass a joint resolution (which is subject to presentment to the President) disapproving the recommendations in toto. §§ 2904(b), 2908. Congress may not pick and choose among the recommendations; it must approve or disapprove them in their entirety without amendment. If a joint resolution of disapproval is passed, the Secretary of Defense may not carry out the closures and realignments approved by the President. § 2904(b).

If Congress does not, through a joint resolution, disapprove the recommendations, the Secretary is required to implement them. The Secretary must initiate all recommended closures and realignments no later than two years after the date on which the

President sent his report to Congress. § 2904(a)(3). All such closures and realignments must be completed within six years from the date of the President's report to Congress. § 2904(a)(4).

FACTUAL BACKGROUND

1. The 1993 Navy Selection Process

To facilitate its selection process for the 1993 round of base closings, the Department of the Navy established a Base Structure Evaluation Committee (BSEC), responsible for closure and realignment recommendations. Defense Base Closure and Realignment Commission 1993 Report to the President (Report), p. 3-3 (Exhibit A). The Navy also established a Base Structure Analysis Team (BSAT) to provide support to the Committee. Id.

The BSEC began its analysis by categorizing installations according to the types of support they provided to Navy and Marine Corps operational forces. Id. Additional information regarding excess capacity and military value was adduced through "data calls" on installations. Id. at pp. 3-3, 3-4. Military value was determined based on an assessment of facilities, readiness, mobilization capability, and cost and manpower implications. Id. at 3-4.

In the next phase the BSEC used computer models to develop closure and realignment recommendations. Id. Recommendations were based on military judgment as applied to the computer results. Id.

The Navy evaluated all potential candidates for closure or realignment against the final criteria. Id. Its recommendations

were submitted to the Chief of Naval Operations who, as the Acting Secretary of the Navy, nominated installations to the Secretary of Defense for closure or realignment. Id.

2. The 1993 Base Closure Commission Process

The Secretary of Defense, in turn, submitted his recommendations to the Base Closure Commission. Those recommendations included the realignment and relocation of the Naval Sea Systems Command, Naval Air Systems Command, Naval Supply Systems Command, Space and Naval Warfare Systems Command, Naval Facilities Engineering Command, Naval Recruiting Command, Navy Field Support Activity, International Programs Office, Naval Criminal Investigative Service, Navy Regional Contracting Center, Strategic Systems Programs Office, and the Bureau of Naval Personnel. Id. at 1-58, 1-59.[3]

Upon receipt of the Secretary's recommendations, the Commission held investigative hearings, 17 regional hearings nationwide to hear from potentially affected communities, and conducted over 125 fact-finding visits to installations recommended for closure or realignment. Report, Executive Summary, p. vii. The Commission also held seven investigative hearings in Washington, D.C., questioning Defense Department representatives involved in preparing the Secretary's

[3] Some of these commands and organizations occupy leased space in the National Capital Region, some of which is managed by plaintiff. See Report at 1-58; Amended Comp., ¶ 6. For ease of reference, these activities are referred to generally as the Naval Systems Commands, consistent with the nomenclature of the Amended Complaint, although all are not actually Naval Systems Commands.

recommendations. Id. After this comprehensive, extensive and independent review, the Commission recommended to the President that 130 installations be closed and 45 be realigned. Id. at viii.

The Commission's recommendations included the realignment of the Naval Systems Commands from the Crystal City leased space to sites in Maryland, Pennsylvania, Tennessee, and the National Capital Region. Report, p. 1-59. The Commission noted that the realignment of the National Capital Regional activities would produce "substantial" cost savings. Id.

On July 2, 1993, President Clinton approved the recommendations of the Commission. The period for congressional action has not yet elapsed and Congress has not yet voted on a proposed joint resolution of disapproval.

3. Plaintiff's Allegations

Plaintiff, Charles E. Smith Management, Inc., is a managing agent for the Crystal City office buildings in which the activities of the Naval Systems Commands are conducted. First Amended Complaint for Declaratory Judgment and Injunctive Relief (Amended Comp.), ¶ 3.[4] Plaintiff leases the space directly to GSA. Id., ¶¶ 6, 27.

Plaintiff asserts that under the Federal Property and Administrative Services Act, 40 U.S.C. § 490, the General Services Administration has exclusive jurisdiction over the

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[4] For purposes of this motion only, the factual allegations of the amended complaint, as referenced herein, are assumed to be true.

Crystal City leased property. Id., ¶¶ 7-9. According to plaintiff, because this space is under the jurisdiction of GSA, the Naval Systems Commands are not a "military installation" within the meaning of the Base Closure Act. Id., ¶ 36. Thus, plaintiff alleges, the recommendation of the Commission, subsequently approved by the President, to move the Navy activities conducted in the GSA-leased space "exceeds the jurisdiction and authority provided by the Base Closure Act . . . ." Id. at ¶ 39. For relief, plaintiff requests that the Court "declare that the Crystal City office buildings are not 'military installation' [sic] subject to the jurisdiction of the Base Closure Act," id., Prayer for Relief, ¶ A, and enjoin the defendants "from taking any action under the Base Closure Act to implement the Commission's recommendations with respect to the Crystal City office buildings." Id., ¶ B.

ARGUMENT

I. PLAINTIFF LACKS STANDING TO MAINTAIN THIS ACTION

Article III of the Constitution limits federal court jurisdiction to "actual cases or controversies." Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 37 (1976). This requirement dictates that a plaintiff demonstrate, as an "irreducible minimum," that it has suffered an injury in fact, that the injury is "fairly traceable" to the challenged action, and that the injury is likely to be redressed by the relief sought. Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 472

(1982); Simon, 426 U.S. at 38, 41. A plaintiff "must clearly and specifically set forth facts sufficient to satisfy these Art. III standing requirements," Whitmore v. Arkansas, 495 U.S. 149, 155 (1990); "standing cannot be 'inferred argumentatively from averments in the pleadings . . . .'" FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990) (citations omitted).

Even where the plaintiff demonstrates an injury in fact, it must still establish that it is "within the zone of interests sought to be protected" by the statute in question. Air Courier Conf. v. American Postal Workers Union, 498 U.S. 517, 523-4 (1991) (citations omitted); Valley Forge Christian College, 454 U.S. at 457.[5] Plaintiff's claims against the Secretary of Defense and the Base Closure Commission fail to satisfy each of these constitutional requirements.

A. Plaintiff Cannot Demonstrate An Injury In Fact

To meet the injury-in-fact requirement, a plaintiff must allege and establish more than a subjective, hypothetical or speculative injury. O'Shea v. Littleton, 414 U.S. 488, 494 (1974); Golden v. Zwickler, 395 U.S. 103, 109-110 (1969). The

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[5] This prudential component of standing is derived here from the requirement of the Administrative Procedure Act that a plaintiff be "aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702; see Clarke v. Securities Industry Ass'n, 479 U.S. 388, 394, 400 n.16 (1987). Plaintiff does not bring this action specifically under the APA, the only potential waiver of sovereign immunity for a claim of statutory construction, as this one, where the statute in question does not contain a waiver of immunity or reflect any intent to allow private parties to sue under its provisions. As discussed below, plaintiff cannot, in any event, avail itself of the APA for a variety of reasons.

harm must be concrete, objective, immediate and direct. O'Shea, 414 U.S at 494; Laird v. Tatum, 408 U.S. 1, 13-14 (1972). If the plaintiff cannot demonstrate a "distinct and palpable injury," Warth v. Seldin, 422 U.S. 490, 501 (1975), "no other inquiry is relevant to consideration of standing," and the complaint should be dismissed. Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 227 n.16 (1974).

The amended complaint is devoid of any allegation that plaintiff has or will suffer an injury of any kind. Plaintiff alleges merely that, as a result of the relocations and realignments recommended by the Secretary and approved by the President, "the office buildings managed by Plaintiff in Arlington, Virginia, will no longer serve as the locations of the Naval Systems Commands." Amended Comp., ¶ 3.

This allegation, on its face, hardly qualifies as an injury in fact sufficient to support plaintiff's standing. At most, plaintiff appears to be claiming it will be injured because the Naval Systems Commands will no longer be its tenant. On its face, this claim is a non-sequitur. Plaintiff leases the space to GSA (see Amended Comp., ¶ 1), and the GSA, not these defendants, acts as the government's broker in the procurement of leased space. See 40 U.S.C. § 490; 40 C.F.R. Part 101-18. GSA, however, is not a party to this action, and there is no privity of contract between plaintiff and these defendants, cf. United States v. Johnson Controls, Inc., 713 F.2d 1541 (Fed. Cir. 1983).

Plaintiff can therefore assert no credible harm if the Crystal City space is no longer used by the Naval Systems Commands.[6]

The conjectural nature of any such possible injury is underscored by the fact that the Secretary has two years from the President's approval to initiate closures and realignments, and must complete them within six years. §§ 2904(a)(3) and (4). Plaintiff has not alleged which lease terms for the Crystal City space it manages and that is now occupied by the Naval Systems Commands extend beyond six years.[7]

Finally, plaintiff is merely the managing agent for the Crystal City office space now occupied by the Naval Systems Commands, Amended Comp., ¶ 3, and has not identified how it, and not the owners of the space, would suffer any harm if any leases were broken by GSA subsequent to the relocation of the Naval Systems Commands.

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[6] Moreover, even if plaintiff had asserted the possibility of an economic injury, such as the potential that GSA might break its leases with plaintiff, such harm would not result from any action of these defendants, and would be far too conjectural to confer standing. Compare People of the State of Illinois ex rel. Hartigan v. Cheney, 726 F. Supp. 219 (C.D. Ill. 1989). In Illinois, the state challenged the 1988 Base Closure Act on constitutional grounds. The court held that the plaintiff lacked standing, notwithstanding a study the state produced which concluded that the closing of two military bases in Illinois would cost the state nearly $250 million. 726 F. Supp. at 223. The court rejected these claims of injury as "conjectural and speculative." Id. at 225.

[7] Even if the lease terms were longer than six years, there is no indication that GSA would terminate the leases, rather than elect to use the space for other government activities. And even if GSA were to terminate prematurely its leases with the plaintiff, the space is in a prime and very desirable location, making it well-suited to re-lease and, accordingly, the mitigation of any potential damages.

B. Plaintiff Is Not Within Any Zone Of Interest Of The Base Closure Act

Even if plaintiff were able to show that it has or will suffer an injury in fact sufficient to satisfy standing requirements, plaintiff must also demonstrate that it falls within a zone of interest protected by the Base Closure Act. See Air Courier Conference, 498 U.S. at 523-24 (citing Lujan v. Nat'l Wildlife Federation, 497 U.S. 871, 883 (1990)). The essential inquiry posed by this requirement is one of congressional intent: "whether Congress 'intended for a particular class of plaintiffs to be relied upon to challenge agency disregard of the law.'" Clarke, 479 U.S. at 399 (quoting Block v. Community Nutrition Inst., 467 U.S. 340, 347 (1984); Air Courier Conference, 498 U.S. at 524. The purpose of the zone-of-interest test is to "exclude those plaintiffs whose suits are more likely to frustrate rather than to further statutory objectives." Clarke, 479 U.S. at 397 n.12.

Plaintiff, a private real estate management company, does not fall within any zone of interest of the Base Closure Act.[8] The purpose of the Act is to facilitate the closure or realignment of military installations no longer needed in light of a diminished military threat. See H.R. Rep. 101-665, 101st Cong., 2d Sess. 341, reprinted in 1990 U.S. Code Cong. & Admin. News 2931, 3067 (H.R. Rep. 101-665). Congress acknowledged the

[8] In fact, as discussed below, no plaintiff challenging a closure or realignment recommendation could satisfy the zone-of-interests test with respect to the Base Closure Act, since the Act precludes judicial review over all such challenges.

need to close military installations despite the economic dislocations that might result. Id. Moreover, Congress recognized that closures might be derailed through litigation and, accordingly, expressed its belief that military determinations, such as the Secretary of Defense's realignment and closure recommendations, should not be and are not subject to judicial review. H. Conf. Rep. No. 101-923, 101st Cong., 2d Sess. 705, reprinted in 1990 U.S. Code Cong. & Admin. News 3110, 3257 (H.R. Conf. Rep. 101-923).

Plaintiff's interest in blocking the realignment of the Naval Systems Commands, contrary to the recommendations of the Secretary and the Commission, and the decision of the President, is antithetical to the Act's purpose to establish a streamlined process that would ensure the prompt closure and realignment of military installations. Nor is there anything in the Act or its legislative history that reflects a congressional intent to protect the economic interests plaintiff may be asserting, or its interest in having the space it manages occupied by the Naval Systems Commands. Compare National Federation of Federal Employees v. United States, 727 F. Supp. 17, 22 (D.D.C. 1989), aff'd 905 F.2d 400 (D.C. Cir. 1990) (government contractor alleging deprivation of its business from contracts with bases scheduled for closure under the 1988 Base Closure Act and a union representing civilians employed by bases scheduled for closure were not within the zone of interests of the Act); Illinois, 726 F. Supp. at 227 (state not within any zone of interest of the

1988 Base Closure Act, where it was not the subject of any base closing decision, and did not have any role in federal military policy).

C. Plaintiff's Claims Against The Commission Are Not Redressable By The Relief Plaintiff Seeks

Under the Base Closure Act, the role of the Commission is limited to making recommendations; once the President takes final action that is not disapproved by Congress, only the Secretary of Defense is charged with implementing the approved closures and realignments.[9] Indeed, the Commission goes largely out of existence after each of the biennial base closure sessions; it meets only during 1991, 1993, and 1995, and the terms of most of its members expire at the end of the session of Congress in which they were appointed. §§ 2902(d)(1) and(e)(1). Thus, when the Commission transmitted its recommendations and report to the President, it discharged fully its statutory obligations under the Act for the 1993 round.

Plaintiff is asking this Court to declare that the Crystal City office space is not subject to the recommendations of the Secretary, the Commission and the President, Amended Comp., Prayer for Relief, ¶ A, and seeks to "enjoin Defendants from taking any action under the Base Closure Act to implement the Commission's recommendations with respect to the Crystal City

[9] Here, of course, Congress has not acted and the 45-day period has not yet run. Plaintiff's challenge is, therefore, premature. Should Congress disapprove the President's recommendations, none of the recommended closures and relocations may be implemented, including the Crystal City space at issue here. See § 2904.

office buildings . . . ." Id. at ¶ B. Although the Commission is a named party and plaintiff nominally seeks declaratory relief that would include the Commission, in reality such relief would be meaningless. The President, not the Commission, makes the final decisions as to which military installations are to be closed or realigned, subject to congressional disapproval.

The requested injunctive relief against the Commission is equally meaningless. The Commission has no role in implementing the President's decisions and an injunction that precluded it from taking any action to implement those decisions would have no effect. Because plaintiff's claims against the Commission are not redressable by the relief it seeks, the Commission should be dismissed from this suit.

II. DEFENDANTS' ACTIONS ARE NOT SUBJECT TO JUDICIAL REVIEW

In the absence of congressional consent to entertain a claim against the United States, the Court lacks authority to hear the claims or grant relief. See United States v. Testan, 424 U.S. 392, 399 (1976). The amended complaint here purports to raise an issue of statutory construction under the Base Closure Act, but fails to identify a waiver of the government's sovereign immunity to permit this Court's review. The Base Closure Act does not waive the government's immunity to suit. To the contrary, it reflects Congress' intent that its provisions be non-reviewable. Nor is review available under the APA for actions such as these, which are non-final, and for which relief is otherwise available.

Plaintiff's claims must therefore be dismissed as non-reviewable.

A. Plaintiff's Claims Are Not Subject To Review Under The APA Because There Is No Final Agency Action

Absent specific statutory authorization, only "final agency action for which there is no other adequate remedy in a court" is subject to judicial review under the Administrative Procedure Act. 5 U.S.C. § 704. As the Supreme Court explained recently, the "core question" in determining whether agency action is "final" is "whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties." Franklin v. Massachusetts, 112 S. Ct. 2767, 2773 (1992).

In Franklin, the Court held that an APA challenge to the decennial reapportionment of the House of Representatives could not be entertained, because none of the actions at issue in the case constituted final agency action. Under the applicable census statutes, the Secretary of Commerce submitted a census report to the President, who in turn determined the number of Representatives due each state and reported that decision to Congress. The Court concluded that the actions of the Secretary were not "final," reasoning that "the Secretary's report to the President carries no direct consequences . . . it serves more like a tentative recommendation than a final and binding determination . . . ." Id. at 2774. As the Franklin Court recognized, "the action that . . . has a direct effect on the reapportionment is the President's statement to Congress, not the

Secretary's report to the President," because nothing barred the President from directing the Secretary to change the census. Id.[10]

Here, as in Franklin, the acts of the Secretary of Defense and the Commission in preparing the recommendations are not final agency action and are not subject to review under the APA. The report of the Commission recommending closures and realignments, like the census report of the Secretary, is not binding on the President and does not have any "direct consequences" (Franklin, 112 S. Ct. at 2774), since it takes effect only if the President accepts it and Congress does not disapprove it. See p. 7, supra. The President has the authority to request revisions to the

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[10] Franklin also held that even though the final action complained of was that of the President, because the President is not an agency within the meaning of the APA, his actions are not subject to review. 112 S. Ct. 2767. Plaintiff here has not named the President as a defendant, although it complains of a "decision . . . by the Defense Base Closure and Realignment Commission, as approved by the President . . . ." Amended Comp., ¶ 1. Moreover, the relief it seeks is a declaration that the Crystal City office space is not a valid subject of the Secretary's recommendations, the Commission's recommendations and report, and the "President's approval of the Commission's recommendations and report . . . ." Id. at Prayer for Relief, ¶ A. To the extent its complaint can be construed as a challenge to Presidential action, that action is not subject to review. Moreover, to grant plaintiff its requested relief would unduly interfere with the President's unreviewable discretion to determine which bases and military installations should be subject to relocation or realignment and would, effectively, permit plaintiff to make an end-run around the APA. See Franklin, 112 S. Ct. at 2776; Armstrong v. Bush, 924 F.2d 282, 289 (D.C. Cir. 1991). Cf. Specter v. Garrett, 971 F.2d 936 (3d Cir. 1992) (judicial review under the Base Closure Act not precluded for certain procedural challenges), vacated sub nom. O'Keefe v. Specter, 113 S. Ct. 455 (1983), aff'd on remand, 995 F.2d 404 (3d Cir. 1993), petition for cert. filed.

Commission's report and to reject the Commission's recommendations, thereby terminating a base-closing cycle altogether. Id.; Cohen v. Rice, 992 F.2d 376, 381-2 (1st Cir. 1993).

The Secretary of Defense plays an even more preliminary role in the closure and realignment process, see pp. 5-6, supra. The President bases his approval or disapproval on the report of the Commission, rather than the Secretary's list of recommended closures and realignments. Id. Accordingly, the Secretary's recommendations, like those of the Commission, do not constitute "final" agency action under Franklin.[11]

B. Plaintiff May Not Obtain APA Review Of Its Claim, Because It Has An Adequate Remedy Should GSA Break Its Leases With Plaintiff At Some Future Date

Judicial review under the APA is limited to final agency action "for which there is no other adequate remedy in a court." The amended complaint does not delineate any injury, beyond noting plaintiff's complaint that the buildings it manages will no longer have the Naval Systems Commands as a tenant. Amended Comp., ¶ 3. To the extent the amended complaint can be construed as raising a fear that the loss of this tenancy will prompt GSA

[11] Even where, as here, the President has acted on those recommendations, the actions of the Secretary and the Commission remain non-final recommendations and are, therefore, not reviewable by this Court. See Cohen, 992 F.2d at 379, 391-2 (affirming the dismissal of a challenge to the Secretary of Defense's 1991 base closing recommendations, brought after the President had approved those recommendations and Congress had rejected overwhelmingly a proposed disapproval resolution, on the ground that, under Franklin, they were not final agency actions subject to judicial review).

to break its leases with plaintiff, causing plaintiff an economic injury, plaintiff has an adequate remedy at law.

Should GSA terminate prematurely any leases it has with plaintiff, plaintiff can sue the United States before the General Services Administration Board of Contract Appeals or in the U.S. Court of Federal Claims for damages resulting from GSA's allegedly improper termination of its leases. See generally Sun Cal, Inc. v. United States, 25 Cl. Ct. 426 (Cl. Ct. 1992); J.H. Milstein & Fanny Milstein, Trustees Milstein Children c/o Milstein Industries, GSBCA Nos. 7665, 7904, 86-3BCA 19,025. Not only would this remedy fully and adequately compensate plaintiff for any injury it may suffer, id., but the GSBCA and the U.S. Court of Federal Claims are the only forums for such relief. 41 U.S.C. §§ 606, 609. See also Spectrum Leasing Corp. v. United States, 764 F.2d 891, 892-93 (D.C. Cir. 1985).[12] Plaintiff's

[12] In Spectrum Leasing Corp., the court held that it lacked subject-matter jurisdiction over plaintiff's claim that the government had failed to comply with the Debt Collection Act, because the Tucker Act provided a waiver of immunity and prescribed a particular remedy available exclusively in the Claims Court. Accordingly, even though plaintiff was seeking declaratory and injunctive relief -- relief not available under the Tucker Act -- plaintiff's claim was not subject to review under section 702 of the APA, which waives sovereign immunity only to the extent that another statute does not "expressly or impliedly forbid[] the relief which is sought." 764 F.2d at 893. Here, too, the availability of a statutory remedy in §§ 606 and 609 precludes review under the APA, even where injunctive and declaratory relief is sought.

claims against the Secretary and the Commission, therefore, are not reviewable under the APA and should be dismissed.[13]

C. Judicial Review Is Precluded By The Base Closure Act

The closure and realignment of military installations involve fundamental issues of military policy and national security which generally are non-reviewable. Cf. Department of the Navy v. Egan, 484 U.S. 518, 526-27 (1987) (presumption of reviewability "runs aground when it encounters concerns of national security"). Moreover, even if the general presumption of reviewability were applicable to this setting, it would have to yield to the Base Closure Act, which reflects a congressional intent that judicial review be precluded. See Block v. Community Nutrition Institute, 467 U.S. 340, 351 (1984).

The Supreme Court in Block set forth three ways in which the presumption of reviewability may be overcome: (1) "by specific language or specific legislative history"; (2) by an intent which may be "inferred from contemporaneous judicial construction

[13] The APA also applies to agency action made reviewable by statute. 5 U.S.C. § 704. The Base Closure Act does not provide plaintiff with a right of action against defendants. Nor can a private right of action in plaintiff's favor be inferred from the Act. There is no textual support in the Act for implying a private right of action and, indeed, as discussed below, the statutory scheme and legislative history demonstrate an intent of judicial non-reviewability. And plaintiff is not part of a "class for whose especial benefit the statute was enacted." Cort v. Ash, 422 U.S. 66, 78 (1975). To the contrary, the Act was an express political accommodation between the Legislative and Executive Branches, designed specifically to create a process that would break years of gridlock and provide for the prompt realignment and closure of installations, shielded from political pressures and the delays of litigation.

barring review and congressional acquiescence in it, or from the collective import of legislative and judicial history behind a particular statute"; and (3) "by inferences of intent drawn from the statutory scheme as a whole." 467 U.S. at 351. When measured against these standards, a presumption of reviewability -- even if applicable -- is overcome by the Base Closure Act.

First, the Act strikes a delicate balance between the Executive Branch and Congress, a balance designed to produce a package of closures and realignments that is militarily and politically acceptable to both Branches. The Act authorizes the Secretary of Defense and the independent Commission to make recommendations to the President of installations for closure and realignment. The President has unfettered discretion to accept or reject those recommendations. At the same time, the Act provides for direct congressional involvement and oversight, a process that begins with consultations over the membership of the Commission (§ 2902(c)(2)), continues through the deliberations preceding the President's decision (e.g., id., § 2902(e)(2)(B)), and culminates in the consideration of a joint resolution of disapproval. As an integral part of this balance between the Executive Branch and Congress, the Act mandates the creation of a single, indivisible "package" of closures and realignments that stands or falls together. The decision-making process carried out by the President and Congress under the Act is political in a way that ordinary administrative decision-making is not, and it

is fundamental to issues of national security, determining the very makeup of the Nation's defense establishment.

Allowing judicial review of any aspect of this process would upset this elaborate and carefully balanced statutory mechanism in an area of military affairs and foreign relations. Private parties such as this plaintiff could subvert the compromise worked out between the political branches. Cf. Armstrong v. Bush, 924 F.2d at 290.[14] Judicial review would effectively disregard the statute's mechanisms for congressional oversight, which militate strongly against a conclusion that Congress wanted an additional layer of oversight by the courts. Finally, judicial review jeopardizes the statutory goal of creating a single package of closures and realignments that stands or falls together. If individual military installations, like the Naval Systems Commands, can be extracted from the statutory package through litigation by private parties, the military and political assumptions underlying the President's decision and Congress' response will be defeated. See Specter v. Garrett, 995 F.2d 404, 413 (3d Cir. 1993) (Alito, J., dissenting). Such a result is

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[14] In Armstrong, the court considered the Presidential Records Act, 44 U.S.C. §§ 2201, et seq. (PRA), a statute that involved a similarly delicate balance. The court concluded that the PRA precluded judicial review of the President's decision to dispose of certain documents, relying on the careful political compromise underlying the Act between the desire to preserve presidential records for later public access, and the separation of powers concern with interfering in the President's day-to-day business. 924 F.2d at 290. As the Armstrong court noted, "permitting judicial review of the President's compliance with the PRA would upset the intricate statutory scheme Congress carefully drafted to keep in equipoise important competing political and constitutional concerns." Id.

inconsistent with Congress' objective, evident on the face of the Act, to break the political stalemate through the use of a unitary process of closures and realignments overseen by both political branches.

Second, the availability of judicial review would jeopardize the Act's insistence on expedition and finality in the closure and realignment process. Based on Congress' recognition that "[e]xpedited procedures . . . are essential to make the base closure process work" (H.R. Rep. No. 665 at 384), the Act establishes a series of extremely strict time limits that are designed to bring the process to a conclusion as quickly as possible. See pp. 5-6, supra. Congress recognized that delay had been one of the primary causes of the stalemate over closures and realignments. See Specter, 995 F.2d at 414 (Alito, J., dissenting); H.R. Rep. No. 923 at 705 (noting that prior closures had "take[n] a considerable period of time, and involve[d] numerous delays"). Such a strong emphasis on expedition in the process of selection is incompatible with the availability of protracted litigation to displace the results of that process.[15]

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[15] Even after the process is complete, the Act places a continuing premium on expedition and finality. While the Act permits a limited class of NEPA suits concerning the implementation of final closure decisions, the Act subjects such suits to a 60-day time limit. § 2905(c)(3). Moreover, in providing for such suits, Congress "recognize[d] that [NEPA] has been used in some cases to delay and ultimately frustrate base closures." H.R. Rep. No. 1071 at 23. Thus, the Act forecloses all NEPA actions relating to the recommendation and selection process. Allowing other challenges to the process, such as that brought by plaintiff here, is inconsistent with the restriction of NEPA challenges to post-selection implementation actions.

Third, the legislative history of the Act supports the conclusion that Congress intended to preclude all judicial review. The House Report notes, "[s]pecific actions that would not be subject to judicial review include . . . the Secretary of Defense's recommendation of closures and realignments . . . the decision of the President . . . and the Secretary's actions to carry out the recommendations of the Commission." H.R. Rep. No. 923 at 706. While not conclusive, the legislative history is consistent with the strong inferences of preclusion reflected in the structure and purposes of the Act.[16]

III. THE BASE CLOSURE ACT AUTHORIZED THE SECRETARY OF DEFENSE AND THE BASE CLOSURE COMMISSION TO RECOMMEND FOR RELOCATION AND REALIGNMENT THE ACTIVITIES OF THE NAVAL SYSTEMS COMMANDS

Even if plaintiff were able to overcome the jurisdictional hurdles to maintaining this suit, its amended complaint is precluded by the plain language of the Base Closure Act.

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[16] That plaintiff's challenge, like all challenges to the selection process, is not subject to review is underscored by the separation of powers principles embodied in the political question doctrine. See generally Baker v. Carr, 369 U.S. 186, 208-211, 217 (1962). Plaintiffs seek to enjoin defendants from implementing the President's decision to realign the Naval Systems Commands, on the ground that the decision to move those activities exceeds the jurisdiction and authority of the Base Closure Act. Amended Comp., ¶ 39. Even if this challenge is construed as posing an issue of statutory interpretation only and one, therefore, that is typically "within the province of the Courts," it would nevertheless be nonjusticiable, because of the "'possible consequences of judicial action . . . .'" Cranston v. Reagan, 611 F. Supp. 247, 253 (D.D.C. 1985), quoting Baker v. Carr, 369 U.S. at 211-12. The relief plaintiff seeks, and indeed any meaningful relief, would intrude, either directly or indirectly, on the merits and authority of the President's decision. Plaintiff's claim is therefore nonjusticiable.

Plaintiff argues that the Crystal City space is not a "military installation" within the meaning of the Base Closure Act and, therefore, not subject to realignment or relocation. Amended Comp., ¶¶ 36, 39. This is so, plaintiff contends, because the GSA has exclusive jurisdiction to lease the space under the Federal Property and Administrative Services Act, 40 U.S.C. § 490 (the Property Act). Id. at ¶¶ 7-9. Under plaintiff's interpretation of these statutes, any and all government-leased space is apparently under the exclusive jurisdiction for the GSA for all purposes, simply because GSA is authorized by statute to enter into leases on behalf of the government.

Plaintiff's bizarre juxtaposition of the Property Act and the Base Closure Act here is sustained by neither statute, and, indeed, is defeated by the plain language of the Base Closure Act.[17] Pursuant to Reorganization Plan No. 18 of 1950, 15 Fed. Reg. 3177 (1950), "[a]ll functions with respect to acquiring space in buildings by lease, and all functions with respect to assigning and reassigning space in buildings for use by agencies" were transferred to the Administrator of General Services, with limited exceptions not applicable here. 40 U.S.C. § 490 note. As applied here, the Property Act merely gives the GSA authority

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[17] In reviewing an agency's interpretation of its governing statute, the Court must first determine "whether Congress has directly spoken to the precise question at issue." Sullivan v. Everhart, 494 U.S. 83, 89 (1990) (quoting Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984)). Where the language of a statute is unambiguous, that ends this Court's inquiry. Connecticut Nat'l Bank v. Germain, 112 S. Ct. 1146, 1149 (1992).

to lease space from plaintiff for governmental purposes, and to assign that space to federal agencies such as the Department of Defense. See 40 U.S.C. §§ 490(d), (e), and (h). Indeed, this authority is not necessarily enjoyed solely by the GSA; the Administrator is authorized under the Property Act to delegate GSA's leasing authority to other federal agencies upon request. 40 U.S.C. § 486(d).[18]

Neither the Property Act nor any other statute, however, gives the GSA any authority over federal military activities or policies, particularly those implicated by the Base Closure Act. GSA's leasing authority is simply that -- the power to enter leases on behalf of government agencies such as the Department of Defense. By virtue of that authority GSA does not have any jurisdiction over the substantive activities conducted by the various agencies that GSA assigns to the leased space. Indeed, GSA does not even have exclusive control over the choice of location for a particular agency; space is assigned by GSA in cooperation with the various agencies and subject to their requests and needs. See generally 41 C.F.R. Subpart 101-17.

By contrast, the activities of the Navy, including the Naval Systems Commands, whether conducted in government-owned or government-leased space, are under the jurisdiction and authority of the Secretary of Defense. See 10 U.S.C. § 111 (defining the

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[18] By contrast, 40 U.S.C. § 285 provides expressly that certain government-owned space, as delineated therein, is "under the exclusive jurisdiction and control and in the custody of the Administrator of General Services . . . ."

Department of Defense as including the Department of the Navy) and § 113 (granting the Secretary of Defense "authority, direction, and control over the Department of Defense."). This is particularly relevant for purposes of the Base Closure Act, which defines a military installation to include any "activity under the jurisdiction of the Department of Defense, including any leased facility," § 2910(4) (emphasis added), and directs the Secretary of Defense to "consider all military installations inside the United States" for possible closure or realignment. § 2903(c)(1) (emphasis added). The Commission, in turn, is required to review and analyze the Secretary's recommendations and to make its own recommendations for "closures and realignments of military installations inside the United States." § 2903(d)(2)(A).

The Act could not be clearer in its inclusion of leased space as a military installation and requirement that the Secretary and Commission consider activities conducted under the jurisdiction of the Department of Defense in such space for possible closure or relocation. Indeed, to suggest, as plaintiff has, that the activities of the Naval Systems Commands do not fall within the jurisdiction of the Defense Department and cannot, therefore, be subject to the Base Closure Act simply because they are conducted in leased space is not only illogical, but would read that provision of the Act which explicitly incorporates leased space, § 2910(4), out of existence, contrary to recognized principles of statutory construction. See

Sutherland Stat. Const. § 46.06 (5th Ed. 1992) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative, or superfluous, void or insignificant." (footnotes omitted)).

In sum, based on the plain language of the statute, there can be no question that the Secretary of Defense and the Commission were empowered to recommend the closure or realignment of the Naval Systems Commands, currently located in leased space. Plaintiff's claim to the contrary must, therefore, be dismissed for failure to state a claim upon which relief can be granted.

CONCLUSION

For the foregoing reasons, defendants' motion to dismiss should be granted.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

KENNETH E. MELSON
United States Attorney

RICHARD PARKER
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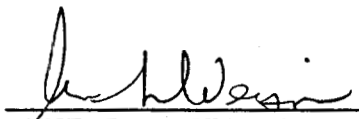
Attorneys for Defendants

Dated: August 31, 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Motion, Defendants' Motion to Dismiss, and Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss were served by first-class mail, postage prepaid, this 21st day of August, 1993, on the following:

Benjamin C. Chew
John L. Overdorfer
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037



ANNE L. WEISMANN

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 17th day of September, 1993, at 10:00 a.m., or as soon thereafter as counsel may be heard, the defendants in the above-captioned action will bring on for hearing their Motion to Dismiss, filed herewith.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

KENNETH E. MELSON
United States Attorney

RICHARD PARKER
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Attorneys for Defendants

Dated: August 31, 1993

Document Separator

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Please refer to this number when responding 930908-2

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Local Rule 11.1(D), defendants, by their undersigned counsel, hereby object to the following discovery: Plaintiff's Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 in their entirety, and Plaintiff's Document Request Nos. 1 and 2 in their entirety.[1]

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

KENNETH E. MELSON
United States Attorney

[1] Without waiving any of these objections, counsel for plaintiff and defendants have conferred, pursuant to Local Rule 11.1(J), and reached the following agreement: defendants have agreed to respond to Interrogatory Nos. 1 and 4, and plaintiff has agreed to stay all other discovery, including the discovery sought in Plaintiff's First Set of Interrogatories and Plaintiff's First Set of Requests for Production of Documents, until the Court has resolved defendants' pending motion to dismiss.

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Attorneys for Defendants

Dated: September 3, 1993

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

DEFENDANTS' RESPONSE TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES AND FIRST
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to the agreement of counsel for plaintiff and defendants, and without waiving any objections defendants otherwise have, defendants respond to plaintiff's Interrogatory Nos. 1 and 4 as follows:

Interrogatory No. 1: Please identify all leases in effect during all or part of calendar year 1990 (i.e., January 1, 1990, through December 31, 1990) under or pursuant to which the Defense Logistics Agency's Defense Contract Administration regional offices in Cleveland, Ohio; Dallas, Texas; New York, New York; and St. Louis, Missouri, respectively, occupied general purpose space.

Response: The Defense Logistics Agency's (DLA) Defense Contract Administration Regional (DCASR) offices in Cleveland, Ohio; New York, New York; and in St. Louis, Missouri were located in Government owned buildings and, therefore, no "leases" were in effect at those locations during 1990.

The DCASR in Dallas, Texas was in leased space in 1990. There were two (2) leases in effect for the DCASR offices in

Dallas. One is identified as the 1200 Main Tower, Dallas location and the other as the "Q" Training Lab at 500 S. Ervay, Dallas. These leases were between the General Services Administration and the owners of the buildings. The leases do not distinguish between general or special purpose space. Copies of the two leases are being made available.

Interrogatory No. 4: Please identify all leases in effect during all or part of calendar year 1990 (i.e., January 1, 1990, through December 31, 1990) under or pursuant to which the Defense Logistics Agency's Defense Contract Administration regional offices in Cleveland, Ohio; Dallas, Texas; New York, New York; and St. Louis, Missouri, respectively, occupied special purpose space.

Response: See the response for Interrogatory No. 1.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on _____.

_____
GEORGE H. SISSON

Respectfully submitted,

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Attorneys for Defendants

Dated: September 3, 1993

Document Separator

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 10th day of September, 1993, at 10:00 a.m., or as soon thereafter as counsel may be heard, Plaintiff Charles E. Smith Management, Inc. will bring on for hearing its Motion to Establish Briefing Schedule, filed herewith.

Respectfully submitted,

Benjamin G. Chew
Va. Bar No. 29113

John L. Oberdorfer
James A. King
Edward J. Newberry

PATTON, BOGGS, & BLOW
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 8, 1993

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

/

PLAINTIFF'S MOTION TO ESTABLISH
BRIEFING SCHEDULE

Plaintiff Charles E. Smith Management, Inc., by and through its undersigned counsel, pursuant to Rule 11 of the Local Rules of this Court, hereby files this Motion to Establish Briefing Schedule.

A Memorandum in Support of this Motion and proposed Order are attached.

Respectfully submitted,

Benjamin G. Chew
Va. Bar No. 29113

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James A. King
Edward J. Newberry

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(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 8, 1993

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO ESTABLISH
BRIEFING SCHEDULE

Plaintiff Charles E. Smith Management, Inc., pursuant to Rule 11 of the Local Rules of this Court, has moved the Court to establish a schedule in this case that will allow oral argument at the same time on (i) Defendants' motion to dismiss and (ii) Plaintiff's motion for summary judgment, which is currently scheduled to be filed on September 14, 1993. In further support of this Motion, Plaintiff states as follows:

Background

This case presents important issues having to do with the lawfulness of a decision made under the Base Closure and Realignment Act to close the Crystal City, Virginia facilities used by the Naval Systems Command. The precise issue is whether the involved facilities fall within the scope of this very special statute.

Plaintiff filed its First Amended Complaint for Declaratory Judgment and Injunctive Relief on July 20, 1993. On the same date, Plaintiff propounded its first set of interrogatories and first set of requests for production of documents. Defendants filed a motion to dismiss on August 31, serving Plaintiff by mail, and noticed a hearing for such motion on September 17. Defendants have not yet fully responded to Plaintiff's discovery responses.1/

Plaintiff's response to the motion to dismiss is currently due on September 14, three days before the noticed hearing. Plaintiff intends to combine its opposition to that motion with its own motion for summary judgment and would like both heard at the same time, and proposes October 1 for that hearing, with a three-day extention of its response date to September 17. If the Court is not inclined to extend the due date for Plaintiff's response, Plaintiff asks that the hearing be deferred to September 24 to enable the Defendants to respond to the motion for summary judgment.

Argument

While they are not identical,2/ the issues raised in Defendants' motion to dismiss and Plaintiff's forthcoming motion

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1/ On September 3, Defendants submitted answers to two of Plaintiff's fourteen interrogatories. Plaintiff has agreed not to press for answers to the remaining discovery requests until resolution of the Motion to Dismiss.

2/ Defendants also posit that Plaintiff lacks standing and that Defendants' actions are not subject to judicial review.

for summary judgment overlap substantially. For example, in their Motion to Dismiss, Defendants argue affirmatively that the Base Closure and Realignment Act, Pub. L. 101-510, §§ 2901 et seq., 104 (1990) Stat. 1808, authorized the decision whose implementation Plaintiff seeks to enjoin. As part of its argument, Defendant raises certain issues of law that Plaintiff also intends to address in a combined Opposition/Motion for Summary Judgment.

Under the current schedule, the Court would hear argument on the Motion to Dismiss on September 17 and might have to hear virtually the identical argument on Plaintiff's Motion for Summary Judgment one or two weeks later. Such repetition would be wasteful of the Court's resources effectively and prejudicial to Plaintiff's ability to put the important issues in the case before the Court.

In the interests of judicial economy, therefore, the Court should establish a briefing schedule which would allow for a full treatment of the issues involved in the potentially dispositive motions and consolidate the two proposed hearings into one. Plaintiff proposes the following schedule:

September 17, 1993	Plaintiff to file (i) its Response to Defendants' Motion to Dismiss and (ii) its Motion for Summary Judgment
September 30, 1993	Defendants to file their Response to Plaintiff's Motion for Summary Judgment
October 1, 1993 (Friday Motions Day)	Oral argument on Defendants' Motion to Dismiss and Plaintiff's Motion for Summary Judgment

Alternatively, Plaintiff proposes September 24 as the date for oral argument on Defendants' motion to dismiss and Plaintiff's motion for summary judgment.

Plaintiff has requested the Defendants' consent, but the Defendants have not agreed to a change in the argument date. See attachment 1. Defendants apparently prefer argument on their motion on September 17 and argument on Plaintiff's at another time.

The schedule contemplated above would provide both parties an adequate opportunity to address the dispositive motions and conserve the Court's time.

Respectfully submitted,

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Va. Bar No. 29113

John L. Oberdorfer BGC
John L. Oberdorfer
James A. King
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Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 8, 1993

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U.S. Department of Justice
Civil Division

Washington, D.C. 20530

attachment 1

SEP 3 1993

BY FACSMILE

John L. Oberdorfer
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037

Re: Charles E. Smith Management, Inc. v. Aspin, et al. (E.D. Va.), Civil No. 93-84-A

Dear John:

As promised, enclosed are the defendants' responses to Interrogatory Nos. 1 and 4. Copies of the relevant leases are being sent to you under separate cover from the Department of Defense.

After further reflection, we are not inclined to change either the briefing schedule or the hearing date for our motion to dismiss, now scheduled for September 17, 1993. These dates do not preclude you from filing a summary judgment motion and noticing such motion for another date. If you have any questions, please give me a call at 202/514-3395.

Very truly yours,

ANNE L. WEISMANN
Assistant Branch Director
Civil Division

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 8, 1993, a true copy of the foregoing Plaintiff's Motion for Establishment of a Briefing Schedule, accompanying Memorandum, Proposed Order and Notice of Motion were sent by messenger to:

Anne L. Weismann, Esq.
United States Department of Justice
Civil Division, Room 1034
901 E Street, N.W.
Washington, D.C. 20004
Telephone: (202) 514-3395

Benjamin G. Chew

Document Separator

DRAFT

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION TO ESTABLISH BRIEFING SCHEDULE

INTRODUCTION

Over two months ago plaintiff commenced this action through the filing of a complaint and a request for a temporary restraining order, which the Court summarily denied. Plaintiff subsequently amended its complaint to add the Secretary of Defense as a defendant, but the substance of plaintiff's claims remained the same.

On August 31, 1993, defendants moved to dismiss the amended complaint on the basis that the Court lacks subject-matter jurisdiction and the amended complaint fails to state a claim upon which relief can be granted. That motion is currently noticed for oral argument on September 17, 1993.

Plaintiff has now requested that the September 17 argument date be set aside and that plaintiff be given more time not only to respond to defendants' motion, but to also prepare a motion for summary judgment. See Memorandum in Support of Plaintiff's Motion to Establish Briefing Schedule (Pl.'s Mem.), p. 2. In addition, plaintiff requests that both defendants' motion to

dismiss and plaintiff's anticipated motion for summary judgment be argued together on October 1.

Defendants hereby oppose plaintiff's motion to establish a briefing schedule, and the dates proposed in that motion, for the grounds set forth below.

ARGUMENT

As a plaintiff, Charles E. Smith Management, Inc. had the choice of when to file both its complaint and its amended complaint and thereby start the litigation clock ticking.[1] Plaintiff also elected the forum for its action which, in this case, is a forum with strict timetables and one that looks with "disfavor" on requests for extensions of time relating to motions. See Local Rule 11(J). Indeed, plaintiff's request for a temporary restraining order, sought contemporaneously with the filing of its first complaint, demonstrates that plaintiff was, or at least should have been, prepared to address the merits of its claims directly right from the outset of this litigation.

In addition, plaintiff's claims are based on events that have been in the making for many months. See Ds' Dismiss Mem., pp. 8-10. The Navy activities conducted at the Crystal City space which plaintiff manages were proposed for relocation early

[1] While plaintiff may argue that outside events dictated the necessity for filing its complaint when it did, there were no such constraints with respect to the filing of the amended complaint. Of course, it is defendants' position that both complaints are premature, as neither challenges final agency action and plaintiffs have not yet suffered an injury in fact sufficient to support standing. See Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss (Ds' Dismiss Mem.), pp. 12-15, 19-21.

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on in the process. Id. at 9. And plaintiff's opposition to that relocation predates the filing of its complaint by at least one month. See Amended Complaint, ¶ 29 (noting that plaintiff presented the Base Closure Commission with "a memorandum addressing the lack of authority under the Base Closure Act to recommend or implement a closure of GSA-leased space, including the Crystal City office buildings" on June 7, 1993).

In short, plaintiff can hardly claim ignorance of the events at issue, the underlying legal issues, and its precise position with respect to those issues. Nor can defendants' motion to dismiss come as a surprise. Standing is a constitutional requirement that a plaintiff must satisfy in every case. The non-reviewability of plaintiff's claims was also anticipated by plaintiff, as reflected in its June 7 memorandum to the Commission.[2] That memorandum relies, in part, on a Third Circuit decision, Specter v. Garrett, 995 F.2d 404 (1993), in which the government raised the precise arguments with respect to non-reviewability as raised here. And, as plaintiff's motion acknowledges, defendants' motion to dismiss for failure to state a claim will "overlap substantially" with plaintiff's forthcoming motion for summary judgment. Pl.'s Mem., pp. 2-3.

Plaintiff nevertheless seeks an enlargement of time in which to respond to defendants' motion, file its own motion, and for

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[2] That memorandum notes, in a footnote, plaintiff's belief that under a recent Third Circuit decision, Specter v. Garrett (cited in Defendants' Dismiss Mem.), "issues pertaining to the extent of the Commission's authority under the Act are subject to judicial review." See June 7, 1993 Memorandum (Attachment A).

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the Court to hear argument on both motions. The sole ground offered in support of this request is "the interests of judicial economy," Pl.'s Mem. at 3, namely that the Court would otherwise have to hear repetitive arguments on identical issues on two separate dates. Id. Plaintiff's request does not satisfy the "good cause" requirement of Local Rule 11(H) and should be denied.

Plaintiff has not demonstrated why, if it is so crucial that the two motions be heard together, plaintiff did not file its summary judgment motion on an earlier date. As discussed above, plaintiff cannot make a plausible argument that the issues raised in defendants' motion are so novel or unexpected that it needs additional time to respond beyond the 11 days provided in the Local Rules. And, most importantly, plaintiff ignores that defendants' motion does not overlap with plaintiff's anticipated motion in one very important respect. Defendants seek dismissal because the Court lacks subject-matter jurisdiction. Indeed, the primacy of this argument dictates that it be heard before the Court even considers the merits of plaintiff's amended complaint. Neither the Court nor defendants should be required to expend the time and resources on the issues plaintiff's summary judgment will raise when the Court lacks jurisdiction. See, e.g., Allied Poultry Processors Co. v. Polin, 134 F. Supp. 278, 279 (D. Del. 1955) ("There can be little question but when the jurisdiction of the Court is challenged or denied, it is the duty of the Court, on application of a party or on its motion, to determine the

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question of jurisdiction before proceeding with other aspects of the case. If the Court has no jurisdiction, it can take no further action . . . ."); United Transport Service Employees v. Nat'l Mediation Bd, 179 F.2d 446, 454 (D.C. Cir. 1949).

CONCLUSION

For the foregoing reasons, defendants request that plaintiff's motion to establish briefing schedule be denied, and that the defendants' motion to dismiss be heard on September 17, 1993, as noticed by defendants.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

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Attorneys for Defendants

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 10th day of September, 1993, at 10:00 a.m., or as soon thereafter as counsel may be heard, Plaintiff Charles E. Smith Management, Inc. will bring on for hearing its Motion to Establish Briefing Schedule, filed herewith.

Respectfully submitted,

Benjamin G. Chew
Va. Bar No. 29113

John L. Oberdorfer
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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 8, 1993

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

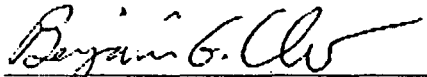
/

PLAINTIFF'S MOTION TO ESTABLISH
BRIEFING SCHEDULE

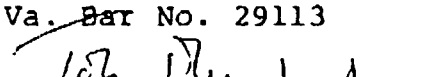
Plaintiff Charles E. Smith Management, Inc., by and through its undersigned counsel, pursuant to Rule 11 of the Local Rules of this Court, hereby files this Motion to Establish Briefing Schedule.

A Memorandum in Support of this Motion and proposed Order are attached.

Respectfully submitted,



Benjamin G. Chew
Va. ~~Bar~~ No. 29113



John L. Oberdorfer
James A. King
Edward J. Newberry

PATTON, BOGGS, & BLOW
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 8, 1993

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v. Civil Action No. 93-84-A

LES ASPIN, et al.,

Defendants.

/

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO ESTABLISH
BRIEFING SCHEDULE

Plaintiff Charles E. Smith Management, Inc., pursuant to Rule 11 of the Local Rules of this Court, has moved the Court to establish a schedule in this case that will allow oral argument at the same time on (i) Defendants' motion to dismiss and (ii) Plaintiff's motion for summary judgment, which is currently scheduled to be filed on September 14, 1993. In further support of this Motion, Plaintiff states as follows:

Background

This case presents important issues having to do with the lawfulness of a decision made under the Base Closure and Realignment Act to close the Crystal City, Virginia facilities used by the Naval Systems Command. The precise issue is whether the involved facilities fall within the scope of this very special statute.

Plaintiff filed its First Amended Complaint for Declaratory Judgment and Injunctive Relief on July 20, 1993. On the same date, Plaintiff propounded its first set of interrogatories and first set of requests for production of documents. Defendants filed a motion to dismiss on August 31, serving Plaintiff by mail, and noticed a hearing for such motion on September 17. Defendants have not yet fully responded to Plaintiff's discovery responses.[1/]

Plaintiff's response to the motion to dismiss is currently due on September 14, three days before the noticed hearing. Plaintiff intends to combine its opposition to that motion with its own motion for summary judgment and would like both heard at the same time, and proposes October 1 for that hearing, with a three-day extention of its response date to September 17. If the Court is not inclined to extend the due date for Plaintiff's response, Plaintiff asks that the hearing be deferred to September 24 to enable the Defendants to respond to the motion for summary judgment.

Argument

While they are not identical,[2/] the issues raised in Defendants' motion to dismiss and Plaintiff's forthcoming motion

---

1/ On September 3, Defendants submitted answers to two of Plaintiff's fourteen interrogatories. Plaintiff has agreed not to press for answers to the remaining discovery requests until resolution of the Motion to Dismiss.

2/ Defendants also posit that Plaintiff lacks standing and that Defendants' actions are not subject to judicial review.

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for summary judgment overlap substantially. For example, in their Motion to Dismiss, Defendants argue affirmatively that the Base Closure and Realignment Act, Pub. L. 101-510, §§ 2901 et seq., 104 (1990) Stat. 1808, authorized the decision whose implementation Plaintiff seeks to enjoin. As part of its argument, Defendant raises certain issues of law that Plaintiff also intends to address in a combined Opposition/Motion for Summary Judgment.

Under the current schedule, the Court would hear argument on the Motion to Dismiss on September 17 and might have to hear virtually the identical argument on Plaintiff's Motion for Summary Judgment one or two weeks later. Such repetition would be wasteful of the Court's resources effectively and prejudicial to Plaintiff's ability to put the important issues in the case before the Court.

In the interests of judicial economy, therefore, the Court should establish a briefing schedule which would allow for a full treatment of the issues involved in the potentially dispositive motions and consolidate the two proposed hearings into one. Plaintiff proposes the following schedule:

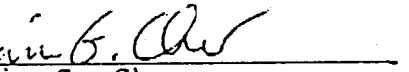
September 17, 1993	Plaintiff to file (i) its Response to Defendants' Motion to Dismiss and (ii) its Motion for Summary Judgment
September 30, 1993	Defendants to file their Response to Plaintiff's Motion for Summary Judgment
October 1, 1993 (Friday Motions Day)	Oral argument on Defendants' Motion to Dismiss and Plaintiff's Motion for Summary Judgment

Alternatively, Plaintiff proposes September 24 as the date for oral argument on Defendants' motion to dismiss and Plaintiff's motion for summary judgment.

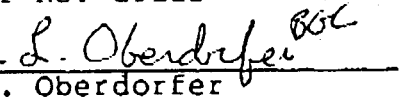
Plaintiff has requested the Defendants' consent, but the Defendants have not agreed to a change in the argument date. See attachment 1. Defendants apparently prefer argument on their motion on September 17 and argument on Plaintiff's at another time.

The schedule contemplated above would provide both parties an adequate opportunity to address the dispositive motions and conserve the Court's time.

Respectfully submitted,



Benjamin G. Chew
Va. Bar No. 29113



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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 8, 1993

SEP- 8-93 WED 16:10 P.12

U.S. Department of Justice
Civil Division

Washington, D.C. 20530

attachment 1

SEP 3 1993

BY FACSMILE

John L. Oberdorfer
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037

Re: Charles E. Smith Management, Inc. v. Aspin, et al. (E.D. Va.), Civil No. 93-84-A

Dear John:

As promised, enclosed are the defendants' responses to Interrogatory Nos. 1 and 4. Copies of the relevant leases are being sent to you under separate cover from the Department of Defense.

After further reflection, we are not inclined to change either the briefing schedule or the hearing date for our motion to dismiss, now scheduled for September 17, 1993. These dates do not preclude you from filing a summary judgment motion and noticing such motion for another date. If you have any questions, please give me a call at 202/514-3395.

Very truly yours,

ANNE L. WEISMANN
Assistant Branch Director
Civil Division

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 8, 1993, a true copy of the foregoing Plaintiff's Motion for Establishment of a Briefing Schedule, accompanying Memorandum, Proposed Order and Notice of Motion were sent by messenger to:

Anne L. Weismann, Esq.
United States Department of Justice
Civil Division, Room 1034
901 E Street, N.W.
Washington, D.C. 20004
Telephone: (202) 514-3395

Benjamin G. Chew

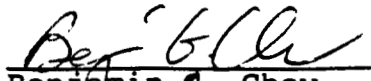
IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Please refer to this number when responding 930921-7 Civil Action No. 93-844-A

NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 1st Day of October 1993, at 10:00 a.m., or as soon thereafter as counsel may be heard, plaintiff Charles E. Smith Management, Inc., will bring on for hearing its Motion for Leave to File Second Amended Complaint, filed herewith.

Respectfully submitted,



Benjamin C. Chew
Virginia Bar No. 29113

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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

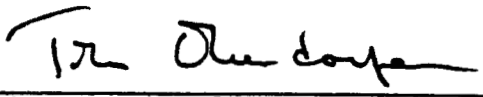
CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a), plaintiff moves for leave to file its Second Amended Complaint to add Plaza Associates, L.P., as a co-plaintiff. For the reasons set forth in the accompanying memorandum, plaintiff asks that the Court grant this motion.

Respectfully submitted,

Benjamin C. Chew
Virginia Bar No. 29113



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(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

This case involves a challenge to executive action taken pursuant to the Base Closure Act. The case was filed by Charles E. Smith Management, Inc., which manages properties leased by the General Services Administration and occupied by the Naval Systems Command. These offices are the subject of the challenged executive action.

On August 31, 1993, the Government defendants filed a motion to dismiss the amended complaint.[1/] Among its several arguments is that plaintiff will suffer no injury because it is

"merely the managing agent for the Crystal City office space occupied by the Naval Systems Commands . . . ." (Motion to Dismiss, p. 14). While the harm that Charles E. Smith Management, Inc., would suffer is fully addressed in plaintiff's accompanying opposition, plaintiff moves to add Plaza Associates, L.P., an owner of affected properties, to eliminate this issue.

Under Rule 15(a), leave to amend should be freely given when justice so requires. Forman v. Davis, 371 U.S. 178, 182 (1962); Pierside Terminal Operators, Inc. v. Floridian, 423 F. Supp. 962, 964 (E.D. Va. 1976). Here, the addition of Plaza Associates, L.P., will not affect the schedule for disposition of this case, and will help ensure that the alleged defect in the Charles E. Smith Management, Inc.'s standing does not impair plaintiff's ability to present and have this case decided on the merits.

For these reasons, plaintiff respectfully requests that the Court grant this motion.

Counsel has requested defendants' consent to the filing of this Second Amended Complaint. Counsel for defendants has advised that defendants' oppose this motion. A proposed order is attached.

1/ The complaint originally was filed on June 28, 1993, when plaintiff sought to restrain the Base Closure Commission from transmitting its report and recommendations regarding the Crystal City offices to the President. Subsequently, it was amended to add the Secretary of Defense as a defendant since he is charged with implementing the President's order to close the Crystal City offices.

Respectfully submitted,

Benjamin G. Chew
Virginia Bar No. 29113

John L. Oberdorfer
Alan A. Tuttle
James A. King
Edward J. Newberry

PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, and **PLAZA ASSOCIATES, L.P.** 2345 Crystal Drive Arlington, Virginia 22202, Plaintiffs, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs Charles E. Smith Management, Inc., and Plaza Associates, L.P., by and through counsel, submit their Second Amended Complaint and for their cause of action state as follows:

Introductory Statement

1. This case challenges the authority under the Base Closure and Realignment Act of 1990 (the "Base Closure Act" or "Act") for action by the Executive Branch to realign office buildings that the U.S. Department of the Navy's Systems Commands ("Naval Systems Commands" or "Systems Commands") have occupied for two decades in the Crystal City area of Arlington, Virginia. Those office buildings are owned privately and leased by the U.S. General Services Administration ("GSA"). During the last five years, the Department of the Navy has explored moving the Naval Systems Commands to government-owned space. Until mid-1992, the Navy took the position that its authority to relocate from the buildings at Crystal City was governed by the Public Buildings Act of 1959, and the Federal Property and Administrative Services Act of 1949. In reliance on this legal position, the Navy and the GSA requested and secured congressional authorization and appropriations to construct a new, government-owned building in Northern Virginia for the Naval Systems Commands, and solicited and accepted offers for the actual construction of the building.

Just a year ago, however, the Navy's legal position and actions abruptly changed. First, the Navy decided not to pursue the construction of new offices in Northern Virginia. Second, the Navy requested and the Secretary of Defense recommended that the Naval Systems Commands' facilities be placed on the list of military installations to be closed and realigned under the 1993

process of the Base Closure Act, and that the Commands be moved to government-owned facilities in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

Plaintiffs seek a ruling that the relocation of the Naval Systems Commands from offices leased by GSA to government-owned offices is an invalid purpose under the Base Closure Act, and that the decision to do so by the Defense Base Closure and Realignment Commission, as approved by the President, exceeds the authority granted by that Act. For this reason, the Court should enjoin implementation of the decision by the Secretary of Defense.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. Venue is proper under 28 U.S.C. § 1391(e).

The Parties

3. Plaintiff Charles E. Smith Management, Inc., is a corporation, organized under the laws of the District of Columbia, whose principal place of business is 2345 Crystal Drive, Arlington, Virginia, 22202. It is the managing agent for various real estate limited partnerships that own certain office buildings which are the subject of the Defense Base Closure and Realignment Commission's (the "Commission") July 1, 1993, report to the President, and the President's July 2, 1993, report to the Congress, under the Base Closure and Realignment Act of 1990,

Pub. L. No. 101-510, §§ 2901-2910, 104 Stat. 1808 (1990), as amended. As a result of the actions complained of herein, the office buildings managed by Plaintiff in Arlington, Virginia, will no longer serve as the locations of the Naval Systems Commands.

4. Plaintiff Plaza Associates, L.P., is a limited partnership, organized under the laws of Virginia. whose principal place of business is 2345 Crystal Drive, Arlington, Virginia, 22202. It owns buildings known as Crystal Plaza 5 and Crystal Plaza 6, which it leases to the General Services Administration. Plaintiff Charles E. Smith Management, Inc. serves as its managing agent for those leases.

The Crystal Plaza 5 and Crystal Plaza 6 buildings are occupied by, among other Department of the Navy functions, the Naval Sea Systems Command and the Naval Supply Systems Command. These buildings are the subject of the Commission's July 1, 1993, report to the President, and the President's approval of the report and recommendations under the Base Closure Act. As a result of the actions complained of herein: (i) the office buildings owned by Plaintiff will no longer serve as a location for the Naval Sea Systems Command and the Naval Supply Systems Command; (ii) the General Services Administration may exercise its lease cancellation clause in advance of the lease expiration dates of September 29, 1999, and November 30, 1998, for Crystal Plaza 5 and Crystal Plaza 6, respectively; and (iii) when the Naval Sea Systems and Naval Supply Systems Commands are moved

pursuant to the challenged Executive action, the property will diminish in value because, as a consequence of that action, commercial tenants will exercise concessions that they have demanded and received which release them from their leases (upon thirty days notice) if the commands move from Crystal City.

5. Defendant Les Aspin is named as a defendant in his official capacity as Secretary of Defense. As the head of the U.S. Department of Defense, the Secretary is charged under the Base Closure Act with recommending military installations to be closed or realigned, id. at § 2903(c), 104 Stat. at 1811, and with implementing closures and realignments that the Commission has recommended and the President has approved, id. at § 2905, 104 Stat. at 1813-15.

6. Defendant Defense Base Closure and Realignment Commission is an independent commission established under section 2902 of the Base Closure Act. Id. at § 2902, 104 Stat. at 1808. Its principal place of business is 1700 North Moore Street, Suite 1425, Arlington, Virginia 22209. Pursuant to the Base Closure Act, the Commission reviewed the Secretary of Defense's recommended closures and realignments of military installations, made findings and conclusions based on that review, and, on July 1, 1993, formulated and reported its own recommendations of closures and realignments to the President. On July 2, 1993, the President approved the Commission's report, and its recommendations, and transmitted the report to the Commission and to Congress.

Statement of the Facts

The Navy's Occupancy of GSA-Leased Buildings in Crystal City

7. For more than twenty years, Plaintiff Charles E. Smith Management, Inc., has leased directly to GSA office buildings in the area known as "Crystal City" in Arlington, Virginia. During all this time, the following Naval Systems Commands have occupied these office buildings: Naval Sea Systems Command; Naval Air Systems Command; Naval Supply Systems Command; Space and Naval Warfare Systems Command; Naval Facilities Engineering Command; Naval Recruiting Command; Navy Field Support Activity; International Programs Office; Naval Criminal Investigative Service; Navy Regional Contracting Center; Strategic Systems Program Office; and the Bureau of Personnel. The buildings owned by Plaintiff Plaza Associates Limited Partnership are occupied by the Naval Sea Systems Command and the Naval Supply Systems Command.

8. The Crystal City office buildings that GSA leases from Plaintiffs and that the Naval Systems Commands occupy constitute "general purpose space" under the Federal Property and Administrative Services Act ("FPASA"), 40 U.S.C. § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101.

9. The FPASA, 40 U.S.C § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101 govern the acquisition, management, assignment, and utilization of "general purpose space."

10. GSA has exclusive jurisdiction over "general purpose space." FPASA, 40 U.S.C. § 490; Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950); 41 C.F.R. part 101. See National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 2804, 104 Stat. 1784-86 (1990) (codified at 10 U.S.C. § 2674).

The Base Closure and Realignment Act of 1990.

11. Since 1977, 10 U.S.C. § 2687 has governed generally all major base closure and realignment actions. Section 2687 sets forth a procedure to which the Secretary of Defense must adhere in closing or realigning any military installation at which 300 civilian personnel are authorized to be employed.

12. On November 5, 1990, the Base Closure and Realignment Act of 1990 was enacted as one part of the National Defense Authorization Act for Fiscal Year 1991. Pub. L. No. 101-510, §§ 2901 - 2910, 104 Stat. 1808 (1990). The Base Closure Act specifies that it will apply to any action that section 2687 would otherwise cover. Id. at § 2909, 104 Stat. at 1818-19.

13. The Base Closure Act establishes an exclusive process for recommending and implementing base closures and realignments. Id. In this regard, it prescribes that from the date of enactment (November 5, 1990) until December 31, 1995, the Act:

> shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

Id. at § 2909(a), 104 Stat. at 1818. Except for closures and realignments authorized under the Base Closure Act, and certain

other exceptions not applicable to the actions complained of in this Amended Complaint, the Base Closure Act prohibits the use of any funds available to the Department of Defense from November 5, 1990, to December 31, 1995:

> (1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure of realignment; or
>
> (2) to carry out any closure or realignment of a military installation inside the United States.

14. The Base Closure Act applies solely to the closure or realignment of a "military installation." Id. at § 2901, 104 Stat. at 1808; § 2904, 104 Stat. at 1812-13. The Base Closure Act defines a "military installation" as:

> a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

Id. at § 2910(4), 104 Stat. at 1819, as amended by National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, § 2821(h), 105 Stat. 1546 (1991).

15. The Base Closure Act adopted the definition of "military installation" that had been in 10 U.S.C. § 2687, and then added a clarifying amendment with the insertion of the term "including any leased facility."

16. The Act does not define the term "closure" or "close." The Act defines "realignment," however, as including:

> 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.

Id. at § 2910(5), 104 Stat. at 1819.

17. The Base Closure Act authorizes three biennial processes, beginning in 1991, for formulating recommendations of military installations to be closed or realigned. Id. at § 2903(c), 104 Stat. at 1811. The process is initiated by the Secretary of Defense, who may recommend to the Commission closures and realignments based on final selection criteria and the force-structure plan, both of which are prescribed under the Act. Id. at § 2903(a) & (b), 104 Stat. at 1810-11. The Commission then holds public hearings on the recommendations, reviews and analyzes them, makes findings and conclusions on the basis of its review and analysis, and then issues its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. If the President approves the recommendations, he submits a report to the Congress, and the Commission, certifying his approval. Id. at § 2903(e), 104 Stat. at 1812. Congress then has forty-five (45) legislative days to pass a joint resolution disapproving the recommendations as a whole. The Act ensures that Congress may not reject certain recommendations and approve others. Unless Congress passes a timely joint resolution, the recommendations are binding on the Department of Defense. Id. at § 2904(b), 104 Stat. at 1813.

18. The Secretary of Defense is charged with implementing the recommendations within six (6) years from the date the President submits his report to Congress certifying his approval. Id. at § 2904, 104 Stat. at 1812-13. The Act prescribes what actions the Secretary may take in closing or realigning a military installation. Id. at § 2905, 104 Stat. at 1813-15.

19. The Base Closure Act provides a limited statutory exception to the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 - 4370b. That exception applies only to the implementation of lawful closure and realignment recommendations made under the Act. The Base Closure Act states that during the process of implementing such recommendations, the Secretary of Defense and the Secretary of a military department do not have to consider:

> (i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;
>
> (ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or
>
> (iii) military installations alternative to those recommended or selected.

Id. at § 2905(b), 104 Stat. at 1815.

Section 2803 of the National Defense Authorization Act for Fiscal Year 1991.

20. The Base Closure Act is a part of the National Defense Authorization Act for Fiscal Year 1991. Another provision of that act (section 2803) separately addressed the Department of

Defense's moving out of GSA-leased space. Section 2803 schedules the Department of Defense's reduction of its occupancy of leased general purpose space, including space GSA leases for use by the Department of Defense. The years covered by section 2803 are years during which the Base Closure Act and its exclusive biennial process for closing and realigning military installations were in effect.

The Navy's Efforts Outside of the Base Closure Act to Relocate Into Government-Owned Offices

21. Just before and well after enactment of the Base Closure Act in 1990, the Navy attempted to move its Systems Commands from the Crystal City office buildings into a government-owned building that GSA would construct in Arlington, Virginia. The Navy and the GSA made this effort under the Public Buildings Act of 1959 ("PBA"), 40 U.S.C. §§ 601 et seq., in conjunction with the FPASA, 40 U.S.C. § 490. The steps that the Navy and GSA took to implement this action included:

a. On March 29, 1990, the Office of Management and Budget forwarded a prospectus prepared by GSA to the Congress, as required under section 7 of the PBA, 40 U.S.C. § 606, seeking authorization to construct a building in Northern Virginia to house the Naval Systems Commands, and asking for the appropriation of funds necessary for the building's design, site acquisition, and construction.

b. Pursuant to 40 U.S.C. § 606, in June 1990 and October 1990 the House Committee on Public Works and the Senate Committee on Public Works, respectively, adopted resolutions

authorizing the construction of a new building in Northern Virginia for the Naval Systems Commands.

c. On November 5, 1990, the same date that the Base Closure Act became law, the fiscal year 1991 Treasury, Postal Service and General Government Appropriations Act was enacted, providing $273 million for the construction of a building in Northern Virginia for the Naval Systems Commands. Pub. L. No. 101-509, 104 Stat. 1407 (1990).

d. In November 1990, the Navy issued a draft environmental impact statement under NEPA discussing the environmental impacts of and all reasonable alternatives to the proposed consolidation of the Naval Systems Commands.

e. In April 1991, GSA solicited offers to sell land in Northern Virginia on which a building to house the Naval Systems Commands would be constructed.

f. In February 1992, the Navy issued a supplemental environmental impact statement under NEPA concerning the proposed consolidation.

22. However, in July 1992, the Secretary of the Navy announced that the Navy would not proceed with the planned consolidation.

23. The Navy took all the actions described in Paragraph 20 of this Amended Complaint to move out of GSA-leased space in Crystal City pursuant to the PBA and the FPASA, notwithstanding that the Base Closure Act, which contains the phrase "including any leased facility" in its definition of "military installation," became effective on November 5, 1990.

24. Neither the Secretary of Defense nor the Commission placed the Crystal City office buildings on their respective lists of recommended closures and realignments in 1991.

The 1993 Base Closure Process.

25. On December 15, 1992, the Secretary of Defense published in the Federal Register the final selection criteria required under section 2903(b) of the Act. 57 Fed. Reg. 59,334 (1992) The Secretary established the following eight selection criteria, in descending order of importance:

Military Value

(1) Current and future mission requirements and the impact of operational readiness of the Department of Defense's total force.

(2) The availability and condition of land, facilities, and associated airspace at both the existing and potential receiving locations.

(3) The ability to accommodation contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

(4) The cost and manpower implications.

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 closure or realignment, for the savings to exceed costs.

Local Economic and Environmental Impact

(6) The economic impact on local communities.

(7) The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

(8) The environmental impact.

26. As authorized under section 2903(c) of the Act, id. at § 2903(c), 104 Stat. at 1811, on March 12, 1993, the Secretary of Defense transmitted to the Commission his recommendations of military installations to be closed and realigned. 58 Fed. Reg. 14,001 (1993).

27. One of the Secretary's recommendations to the Commission was to move the Naval Systems Commands from buildings leased by GSA in Crystal City. Id. at 14,094. This movement would displace approximately 11,000 Navy civilian and military personnel from Crystal City and close these offices as the home for those commands.

28. Plaintiffs lease to GSA approximately 1.2 million square feet of space in office buildings in Crystal City for use by the Navy Systems Commands that were the subject of the Secretary's recommendations.

29. Private entities that perform work for the Naval Systems Commands lease in excess of an additional one million square feet of Crystal City office space from Plaintiffs.

30. On June 7, 1993, Plaintiffs presented to the Commission a memorandum addressing the lack of authority under the Base Closure Act to recommend or implement a closure of GSA-leased space, including the Crystal City office buildings. Plaintiffs again questioned the Commission's jurisdiction over the Crystal City buildings in a letter dated June 15, 1993. At a hearing on June 18, 1993, the Commission rejected Plaintiffs'

31. The Act requires the Commission to conduct public hearings on the Secretary of Defense's recommendations, review and analyze the Secretary's recommendations, make findings and conclusions on the basis if its review and analysis, and then issue its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. In making its recommendations, the Commission is authorized to change any of the Secretary of Defense's recommendations if it finds that the Secretary deviated substantially from the final selection criteria and the force-structure plan. Id. at § 2903(d)(2)(B), 104 Stat. at 1811-12.

32. On June 27, 1993, the Commission announced at a public hearing that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City.

33. On July 1, 1993, the Commission transmitted to the President its report in which it recommended the closure of thirty-one (31) bases inside the United States. With respect to the Naval Systems Commands located in Crystal City, the Commission (i) concluded that the Secretary did not deviate substantially from the force-structure plan and final selection criteria in recommending the movement of the Naval Systems Commands from the Crystal City office buildings, and (ii) recommended that the Systems Commands be moved from Crystal City to sites in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

34. On July 2, 1993, the President approved the Commission's recommendations and transmitted to Congress a report with his certification of approval. Id. at § 2903(e), 104 Stat. at 1812. That decision is final and effective, even though Congress has forty-five (45) days from the date of the President's approval to pass a joint resolution disapproving the President's entire report.

COUNT I

35. Plaintiffs reallege, as if fully set forth herein, Paragraphs 1 through 34, inclusive, of this Amended Complaint.

36. The Base Closure Act limits the Commission's authority to recommending the closure or the realignment of a "military installation."

37. The Crystal City office buildings that Plaintiffs lease to GSA for use by the Naval Systems Commands are not "military installations" under the Base Closure Act. The Act applies only to installations under the jurisdiction of the Department of Defense. These buildings are under the jurisdiction of GSA. (See Paragraphs 8 through 10, supra.)

38. Plaintiffs have exhausted its administrative remedies. (See Paragraph 30, supra.)

39. On July 1, 1993, the Commission adopted the Secretary of Defense's recommendation and recommended to the President the movement of certain Naval Systems Commands and other functions now located in buildings leased by GSA in Crystal City. On July 2, 1993, the President transmitted the Commission's report, along with his approval, to Congress and the Commission.

39. The Commission's decision, as approved by the President, to move the Naval Systems Commands from GSA-leased buildings in Crystal City exceeds the jurisdiction and authority provided by the Base Closure Act, and is, therefore, contrary to law.

PRAYER FOR RELIEF

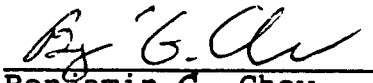
WHEREFORE, for the reasons stated above, Plaintiffs Charles E. Smith Management, Inc., and Plaza Associates, L.P., respectfully request that judgment be entered in their favor and against the Secretary of Defense, and the Commission as follows:

A. That the Court declare that the Crystal City office buildings are not "military installations" subject to the jurisdiction of the Base Closure Act, and, therefore, are not a valid and lawful subject of the Secretary of Defense's recommendations, the Commission's recommendations and report, and President's approval of the Commission's recommendations and report;

B. That the Court enjoin Defendants from taking any action under the Base Closure Act to implement the Commission's recommendations with respect to the Crystal City office buildings;

C. That the Court grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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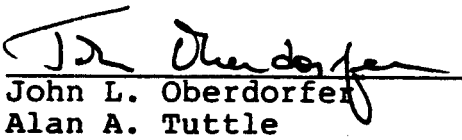

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Counsel for Plaintiffs
Charles E. Smith Management, Inc.,
and Plaza Associates, L.P.

Dated: September 17, 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Leave to File Second Amended Complaint, Memorandum in Support of Motion for Leave to File Second Amended Complaint, and Second Amended Complaint for Declaratory and Injunctive Relief in Civil Action No. 93-844-A, were served this 17th day of September 1993, to:

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1700 North Moore Street, Suite 1425
Arlington, Virginia 22209 (By Messenger)

John Oberdorfer

John Oberdorfer

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

ORDER

Upon consideration of plaintiff's motion for leave to file its Second Amended Complaint to add Plaza Associates, L.P., as a co-plaintiff,

IT IS HEREBY ORDERED that said motion is granted, and plaintiff's Second Amended Complaint is deemed filed this _____ day of October 1993.

_____
United States District Judge

Document Separator

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Please refer to this number when responding 930921-7 Civil Action No. 93-844-A

MOTION FOR SUMMARY JUDGMENT

In accordance with Federal Rule of Civil Procedure 56, plaintiff Charles E. Smith Management, Inc., hereby moves for summary judgment in its favor on the grounds that there is no genuine issues as to any material fact and, therefore, plaintiff is entitled to judgment as a matter of law.

In support of its Motion of Summary Judgment, plaintiff submits the following:

1. A Statement of Undisputed Material Facts and the following exhibits:

a. Affidavit of Kenneth L. McVearry, Group Senior Vice President (Commercial Leasing) of Plaintiff Charles E. Smith Management, Inc.;

b. Affidavit of Michael T. Shehadi, Group Senior Vice President of Plaintiff Charles E. Smith Management, Inc., and agent for Plaza Associates, L.P.; and

c. Affidavit of Edward J. Newberry, Esq.

2. A Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendants' Motion to Dismiss.

Respectfully submitted,

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Virginia Bar No. 29113

John L. Oberdorfer
Alan A. Tuttle
James A. King
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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

In support of its Motion for Summary Judgment, plaintiff Charles E. Smith Management, Inc., ("Smith Management") contends that there is no genuine issue as to the following material facts:

1. Plaintiff Charles E. Smith Management, Inc., manages office buildings owned by various partnerships and leased to the General Services Administration for use by the Naval Systems Commands. McVearry Affidavit. In this capacity, it is an agent

of the partnership-owners and earns a percentage (at least five percent) of the revenues from the leases. Id. These buildings are located in the "Crystal City" area of Arlington, Virginia. Id. They are: Crystal Mall 2, Crystal Mall 3, Crystal Mall 4, Crystal Mall 5, Crystal Mall 6, Crystal Square 2, Crystal Square 3, Crystal Square 4, Crystal Gateway 1, Crystal Gateway 2, ~~Crystal Gateway~~ 3, Crystal Gateway 4, Crystal Gateway North, Crystal Park 1, Crystal Park 3, Crystal Park 5, and 1919 Eads Street.

2. Plaza Associates, L.P., is a partnership which owns Crystal Plaza 5 and Crystal Plaza 6 office buildings located in the "Crystal City" area of Arlington, Virginia. The partnership leases these buildings to the General Services Administration. Shehadi Affidavit. These buildings are presently occupied by the Naval Sea Systems Command, Naval Supply Systems Command, and other Navy tenants. Id.

3. Prior to the recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City, efforts outside of the Base Closure Act were undertaken to relocate the Naval Systems Commands. Specifically:

(a) On March 29, 1990, Congress received from the Office of Management and Budget a prospectus requesting authorization to build a three million square-foot building in northern Virginia to house the NSC. Shehadi Affidavit. Pursuant to this request, in November of 1990, Congress authorized and appropriated funds for construction of the office building. Id.

(b) The General Services Administration solicited offers for the land to build the facility in northern Virginia. Shehadi Affidavit. The General Services Administration selected and contracted to purchase land offered by Plaintiff Charles E. Smith Management, Inc. Id The General Services Administration also hired an architect and solicited a construction firm for the building. Id.

4. On or about July 31, 1991, the Navy, without resorting to the Base Closure Act, relocated more than 1,000 Navy employees from one GSA-leased facility to another when a GSA lease expired. McVearry Affidavit.

Below threshold

5. As authorized under section 2903(c) of the Base Closure and Realignment Act, Pub. L. No. 101-510, § 2903(c), 104 Stat. 1811 (1990), on March 12, 1993, Secretary of Defense Aspin transmitted to the Base Closure Commission his recommendations of military installations to be closed and realigned. 58 Fed. Reg. 14,001 (1993).

6. As part of those recommendations, the Secretary recommended that the Naval Systems Commands move from the buildings in Crystal City that are leased directly by GSA from plaintiffs to sites in Maryland, Pennsylvania, Tennessee, and the National Capital Region. Id. at 14,094.

7. On June 7, 1993, plaintiff presented to the Commission a memorandum addressing the lack of authority under the Base Closure Act to recommend or implement a closure or realignment of GSA-leased space, including the Crystal City office buildings. Ex. 1 to Newberry Affidavit.

8. At a hearing on June 18, 1993, the Commission rejected plaintiff's position that the Crystal City buildings are not subject to the Base Closure Act. Newberry Affidavit.

9. On June 27, 1993, the Commission announced at a public hearing that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City. Newberry Affidavit.

10. On July 1, 1993, the Commission transmitted to the President its report in which it recommended the relocation of the Naval Systems Commands from the buildings in Crystal City leased directly by GSA (including those owned and managed by Plaza Associates and Smith Management) to sites in Maryland, Pennsylvania, Tennessee, and elsewhere in the National Capital Region. Ex. 1 to Government's Motion to Dismiss.

11. On July 2, 1993, the President approved the Commission's recommendations and transmitted to the Congress a report with his certification of approval. Government's Motion to Dismiss, p. 10.

12. The forty-five day period during which Congress may pass a joint resolution disapproving the President's report expires October 1, 1993. The Senate Armed Services Committed reported unfavorably a joint resolution disapproving the President's report. S. Rep No. 103-118, 103d Cong., 2d Sess. (1993). The Senate is schedule to vote on that joint resolution on September 20, 1983. 139 Cong. Rec. S11,772-73 (1993).

13. Since the Secretary of Defense's recommendation in March 1993 that the Naval Systems Commands be moved from Crystal City, commercial tenants have demanded from Plaintiff Charles E. Smith Management, Inc., release clauses which are triggered by the departure of the Commands. The cancellation provisions diminish the value of the property and earnings of Smith Management. McVearry Affidavit.

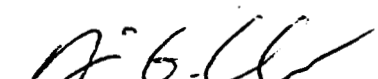
14. Since the decision, Plaintiff Charles E. Smith Management, Inc.'s, ability to attract and retain retail tenants has been significantly impaired. One tenant is delaying signing a lease, and other tenants are seeking to change their lease terms. McVearry Affidavit.

15. GSA's leases for four office buildings managed by Smith Management and occupied by the Commands contain cancellation clauses that allow GSA to cancel the leases prior to their expiration. Those buildings are: Gateway 3, Gateway 4, Plaza 5, and Plaza 6. If GSA does so, it costs Smith Management, Inc., substantial terms of money and causes it to incur $1.24 million to restore its facilities for re-letting on the private market. McVearry Affidavit.

16. With respect to Plaza Associates, L.P., GSA's lease for Crystal Plaza 5 and Crystal Plaza 6 have clauses allowing GSA to terminate the leases prior to their expiration dates. The decision to move the Naval Systems Command out of Crystal Plaza 5 and 6, together with these cancellation clauses, diminishes the value of this property owned by Plaza Associates. If those

clauses are exercised, Plaza Associates will lose substantial rent revenues and have to incur restoration costs before the properties could be relet. Shehadi Aff.

Respectfully submitted,



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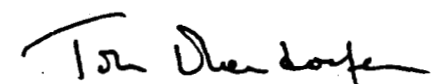

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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

ORDER

This cause was heard on motion of the plaintiff for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This Court has considered the pleadings, affidavits, and exhibits of record, and the parties have filed memoranda in support of and in opposition to the motion. After argument by counsel, this Court has determined that there is no genuine issue of material fact and, therefore,

IT IS ORDERED, ADJUDGED, AND DECREED that defendants' motion to dismiss is denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motion of the plaintiff for summary judgment is hereby granted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Crystal City office buildings identified in the Affidavit of Kenneth L. McVearry that were the subject matter of the Defense Base Closure and Realignment Commission's recommendations to the President, which he approved and submitted to the Congress, are not "military installations" subject to the Base Closure and Realignment Act, Pub. L. No. 101-510, §§ 2901-2911, 104 Stat. 1808 (1990).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Secretary of Defense is hereby enjoined permanently from taking any action to implement the Commission's recommendation concerning the above-identified Crystal City office buildings.

ENTERED this _____ day of October 1993.

_____
United States District Judge

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PLAINTIFF'S MEMORANDUM IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT AND
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Please refer to this number
when responding 930921-7

Civil Action No. 93-844-A

CHARLES E. SMITH MANAGEMENT, INC.,

Plaintiff,

v.

LES ASPIN
In His Official Capacity As
Secretary of Defense

and

THE DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION

Defendants.

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Dated: September 17, 1993

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Authorities marked with an asterisk (*) indicate determinative authorities upon which plaintiff relies in this memorandum.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION,** Defendants.	Civil Action No. 93-844-A

PLAINTIFF'S MEMORANDUM IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT AND
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Pursuant to Local Rule 11 and Federal Rule of Civil Procedure 56, plaintiff Charles E. Smith Management, Inc. respectfully submits this memorandum of law in support of its Motion for Summary Judgment and in opposition to defendants' Motion to Dismiss.

INTRODUCTION

This case seeks to enjoin implementation of executive action in excess of statutory authority. The precise issue is whether offices leased to the General Services Administration in the Crystal City area of Arlington, Virginia, which have for more

than twenty years been the home of the Naval Systems Commands, are military installations subject to an order of closure issued pursuant to the Base Closure and Realignment Act of 1990. Pub L. No. 101-510, §§2901-2911, 104 Stat. 1808 (1990) (current version at 10 U.S.C. § 2687 note) (hereinafter the "Base Closure Act").

The issue is important. It affects the interests of not only the involved property owners and managers, but also of the entire Crystal City community. The ordered closing would end an era during which the Naval Systems Commands have been the economic foundation of the Crystal City community.

Defendants seek to preclude judicial review by arguing that plaintiff does not have standing, its interests are not within the zone protected by the statute, and that the action is not reviewable at all. But, as property owners and managers[1/], plaintiffs will suffer a direct economic injury if the challenged closing proceeds. While the interests of the community, under the Base Closure Act and its implementing regulations, are to be protected, the "zone of interest" test is not strictly applicable where the issue is whether the executive action is ultra vires. This Court always has the power to confine the Act to the parameters legislated by Congress. "Executive action under legislatively delegated authority . . .is always subject to check

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1/ By motion filed this date, plaintiff has asked for leave to file its Second Amended Complaint to add Plaza Associates, L.P., which owns several buildings occupied by the Naval Systems Commands, as an additional plaintiff. For ease of reference, this memorandum uses the term "plaintiffs" rather than the singular "plaintiff."

by the terms of the legislation that authorized it; and, if that authority is exceeded, it is open to judicial review." INS v. Chadha, 462 U.S. 919, 953 n.16 (1983).

The Base Closure Act is the exclusive authority for the closure and realignment of "military installations." The statute defines that term as follows:

> base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility . . .

Base Closure Act at § 2910(4). (emphasis added). Congress, pursuant to the Property Clause of the Constitution and 40 U.S.C. § 285, has vested exclusive jurisdiction over the facilities in question in the General Services Administration. Indeed, two provisions enacted as parts of the same Defense Authorization Act that contains the 1990 Base Closure Act, made clear Congress' recognition of the separate and mutually exclusive jurisdiction of the GSA and DOD, as well as its intention to reduce use of GSA-leased space in the National Capital Region under authority other than the Base Closure Act. Nonetheless, the Base Closure Commission recommended and the President has approved the closure of these GSA-leased buildings as offices for the Naval Systems Commands, even though they are not "under the jurisdiction of the Department of Defense."

The Government's Motion to Dismiss seeks to avoid the force of the jurisdictional language by arguing that what actually is involved is a realignment of certain Defense Department activities. But the Act's focus is the physical infrastructure,

not the personnel of the Department of Defense. Neither the Act's legislative history, rules of statutory construction, nor practicality support the Government's argument that the words "other activity" make GSA-leased space a military installation under the Act.

The Government's motion entirely misperceives the issue. It wrongly portrays (Motion to Dismiss, p. 1) plaintiffs as arguing for GSA authority "over the substantive activities . . . of the Secretary of Defense that impact on vital national security and foreign policy concerns." In actuality, if adopted, defendants' argument would deprive the Secretary of Defense of that authority and place it under the exclusive jurisdiction of a multi-step decision-making process involving the Base Closure Commission, the President, the Congress, as well as the Secretary of Defense.

STATEMENT OF THE CASE

A. The Office Buildings That Are The Subject Matter of This Case.

For more than twenty years plaintiffs have leased directly to the U.S. General Services Administration ("GSA") office buildings in the area known as "Crystal City" in Arlington, Virginia. During all this time, various Naval Systems Commands[2/]

2/ Those Naval Systems Commands include: Naval Sea Systems Command; Naval Air Systems Command; Naval Supply Systems Command; Space and Naval Warfare Systems Command; Naval Facilities Engineering Command; Naval Recruiting Command; Navy Field Support Activity; International Programs Office; Naval Criminal Investigative Service; Navy Regional Contracting Center; Strategic Systems Program Office; and

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of the Department of the Navy have occupied these buildings pursuant to a space assignment from GSA. Four of plaintiffs' leases with GSA contain clauses that give the GSA the option to terminate unilaterally the leases prior to their expiration.

Private entities and contractors that perform work for the Naval Systems Commands lease in excess of an additional one million square feet of Crystal City office space from plaintiffs. Many of those private leases contain specific clauses that grant the tenant the option to cancel the lease in the event a particular Naval Systems Command relocates out of Crystal City.

Beginning in 1990, the Navy sought to consolidate the Commands in to-be-constructed buildings in Arlington. The Navy obtained Congressional authorization and appropriations for the new facility and solicited offers for land and construction, but in July 1992 abruptly withdrew the solicitations.

B. The Inclusion of the Crystal City Buildings in the 1993 Base Closure Process.

On March 13, 1993, acting under section 2903(c) of the Base Closure Act, the Secretary of Defense transmitted to the Base Closure Commission his recommendations of military installations that should be closed and realigned. 59 Fed. Reg. 14,001 (1993). One of the Secretary's recommendations was to move the Naval Systems Commands from buildings leased by GSA in Crystal City to sites in Maryland, Pennsylvania, Tennessee, and elsewhere

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the Bureau of Personnel.

in the National Capital Region. Id. at 14,094. This movement would displace approximately 11,000 Navy civilian and military personnel from Crystal City and close these offices as the home for those Commands.

As required under the Base Closure Act, the Commission reviewed and analyzed the Secretary's recommendations and held public hearings on them. During the course of its deliberations, plaintiffs presented to the Commission a memorandum addressing its lack of authority under the Base Closure Act to recommend or implement a closure of GSA-leased space, including the Crystal City office buildings. Plaintiffs shortly thereafter again raised the issue of the Commission's jurisdiction over the Crystal City buildings in another letter. At a hearing on June 18, 1993, the Commission rejected plaintiffs' position. Then, on June 27, 1993, the Commission announced publicly that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City.

On July 1, 1993, the Commission transmitted to the President its report in which it recommended that the Naval Systems Commands be moved from Crystal City to specified sites in Maryland, Pennsylvania, Tennessee and other sites in the National Capital Region. See Defense Base Closure and Realignment Commission, 1993 Report to the President, 1-58-60 (July 1, 1993). On July 2, 1993, the President approved the Commission's recommendations and transmitted to Congress a report with his

certification of approval.

C. The Proceedings Before this Court.

On June 30, 1993, Charles E. Smith Management, Inc. filed a Complaint for Declaratory Judgment and Permanent Injunctive Relief against the Commission and its members seeking, among other things, a temporary restraining order enjoining the Commission from transmitting to the President its recommendation concerning the Crystal City buildings. On the same day, this Court denied the request for the restraining order.

On July 20, 1993, plaintiff filed its First Amended Complaint for Declaratory Judgment and Injunctive Relief against the Secretary of Defense, and against the Commission. On August 31, 1993, defendants filed their Motion to Dismiss. On September 10, 1993, U.S. Magistrate Judge W. Curtis Sewell set the argument on the Motion to Dismiss and on plaintiffs' Motion for Summary Judgment for October 1, 1993.

ARGUMENT

I. THE CASE IS JUSTICIABLE AND PLAINTIFFS MAY MAINTAIN IT.

A. An Ultra Vires Exercise of Executive Power Is Always Reviewable by This Court.

This Court has the power and the duty to determine whether executive action pursuant to the Act has been taken in excess of statutory authority. This narrow type of judicial review is both fundamental and well-settled. "Executive action under legislatively delegated authority . . . is always subject to check by the terms of the legislation that authorized it; and if

that authority is exceeded it is open to judicial review". INS v. Chadha, 462 U.S. 919, 953 n. 16 (1983). See also National Treasury Employees Union v. Nixon, 492 F. 2d 587, 604 (D.C. Cir. 1974) ("The judicial branch of the Federal Government has the constitutional duty of requiring the executive branch to remain within the limits stated by the legislative branch.") See generally Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

This limited type of review has been endorsed in the context of the 1990 Base Closure Act. The Specter v. Garrett cases held that a claim against, inter alia, the Base Closure Commission contesting the legality of a recommended base closing could be subject to judicial review. See Specter v. Garrett, 971 F.2d 936 (3d Cir. 1992) ("Specter I"), vacated, 113 S. Ct. 455 (1993), aff'd on remand, 995 F.2d 404 (3d Cir. 1993) ("Specter II"). These cases are, indeed, the most relevant extant authority on the present issues.

Specter I and II involved a claim that those implementing the Act had acted contrary to "nondiscretionary" mandates by failing to hold legislatively mandated public hearings.[3/] The court found that because the Act provided for certain nondiscretionary requirements, "judicial review exists to

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3/ As in this case, the action the Specter plaintiffs sought to enjoin was the implementation by the Secretary of Defense of a closure order.

determine whether that process has been followed." Specter II at 409 (citing Youngstown and Chadha).[4/]

The case at hand is a far clearer candidate for judicial review than the Specter cases. While in Specter the plaintiffs sought review of whether certain required procedures were followed, plaintiffs here seek the even more fundamental and vital review of whether those acting pursuant to the Act were legislatively authorized to take any action at all with respect to the facilities in question.

The "limited character of the review"[5/] plaintiffs seek in this case is best seen by what plaintiffs are not asking this Court to review. The plaintiffs do not seek to second-guess the recommendations of the Secretary; they do not claim that the Commission abused its discretion in weighing factors while compiling its list of bases to be closed; and they do not seek to second-guess the President's decision to forward the list of recommendations to Congress.[6/] In determining whether to grant

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4/ The Specter II court did not find Franklin v. Massachusetts, 112 S. Ct. 2767 (1992), to the contrary, noting that that decision expressly sanctioned judicial review of executive action for consistency with the Constitution, and further that the case was silent about review of executive action for consistency with authorizing legislation. 995 F.2d at 408. Because the Third Circuit found a "constitutional aspect" -- based on separation of powers -- to this type of judicial review, it concluded that Franklin even provided "affirmative support for judicial review". Id.

5/ Specter II, 995 F. 2d at 407 n. 3.

6/ Because plaintiffs make no claim whatsoever that the President abused any discretion invested in him, the

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the relief requested, this Court must determine only whether the inclusion of these GSA-leased facilities on the list of military installations to be closed is beyond the authority of the Act.

In support of its sweeping position that the actions of the Secretary and of the Commission under the Base Closure Act are not reviewable on any basis (Motion to Dismiss, p. 15), the Government recites various points of national security, military autonomy, and Congressional intent as to the need for an efficient base closing process. This recitation of principles and concerns, however, is both an overreaction and an insufficient barrier to the limited review sought by the plaintiffs. The Government's claims seem particularly misplaced considering that the seminal case supporting this narrow but fundamental judicial review involved far more pressing issues of national security. In Youngstown, President Truman had actually

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Government's citations to Franklin v. Massachusetts, 112 S. Ct. 2767 (1992), are inapposite. The fact that the President played a role in the process chain by which the Crystal City buildings were listed and are now set for closure as the home for the Naval Systems Commands does not mean that the ultimate executive action is immune from review as to its legality. Cohen v. Rice, 992 F.2d 376 (1st Cir. 1993), relies entirely on Franklin and, therefore, provides no additional support for the Government's position.

The fact that Congress played an interim role also is no bar to judicial review. See Franklin at 2790 (Scalia, J. concurring). In addition, the Government's citation to Armstrong v. Bush, 924 F.2d 282 (D.C. Cir. 1991), is unpersuasive. There, the D.C. Circuit refused to find grounds for judicial review of the President's decision to dispose of certain documents. Again, plaintiffs here do not seek review of the President's decision to forward the Commission's list to Congress.

declared a national state of emergency as a predicate to his seizure of the steel mills to further the war effort in Korea. Despite the dramatic circumstances, this executive action was held to be subject to the narrow judicial inquiry as to whether such actions exceeded legislative and constitutional authority. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).[7/]

Further, neither the language nor the structure of the Base Closure Act supports the Government's position that judicial review is unavailable under the Act. Cf. Block v. Community Nutrition Inst., 467 U.S. 340 (1984)[8/]. In fact, the Act specifically addresses the issue of judicial review and says nothing to overcome the rule that the Act is "presumptively reviewable." Clarke v. Securities Indus. Ass'n, 479 U.S. 388, 399 (1987). The Act specifically limits the scope and time frame for judicial review under the National Environmental Policy Act, but does not limit or preclude any other judicial review. Hence, although Congress in drafting this section clearly focused on the question of reviewability, it did not provide any statutory

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7/ The notion (Motion to Dismiss, p. 27 n.16) that an intricate scheme between the executive and legislative branches poses an unreviewable political question has been firmly rejected. See, e.g., INS v. Chadha, 462 U.S. 919 (1983) (review of legislative veto scheme proper).

8/ Block dealt less with reviewability (for which defendants' motion cites it (pp. 23-24)) than it did with the standing of certain classes of plaintiffs to enforce the lawful administration of the statute in question. The Block Court specifically held that consumers would not be relied upon to "challenge unlawful agency action" because other actors (the milk handlers) could be expected to do so. See id. at 351-352.

language supporting the Government's position that decisions under the Act are not reviewable. Base Closure Act at § 2905(c)(3). See also Specter I, 971 F.2d at 947-950.[9/]

Finally, the doctrine of sovereign immunity is no obstacle to judicial review. Sovereign immunity is not a bar to claims that executive action exceeds Constitutionally mandated separation of powers principles. Specter II, 995 F.2d at 410. See also Franklin v. Massachusetts, 112 S. Ct. 2767, 2776 (1992); Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 689 (1949). In addition, the waiver of sovereign immunity embodied in section 702 of the Administrative Procedure Act, 5 U.S.C. § 702, as to suits for injunctive relief claiming illegality of executive action is merely an embodiment of common law and applies even in cases in which the Administrative Procedure Act may not otherwise apply. Specter II, 995 F.2d at 410.

B. Plaintiffs Have Standing to Maintain This Claim.

The closure of the Crystal City offices as the home of the Commands pursuant to the Act will result in the loss of at least tens of thousands of dollars to plaintiffs. The loss of the

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9/ The Third Circuit in Specter I considered at length and rejected each of the Government's arguments for the preclusion of judicial review. Moreover, the type of challenge here was not before the Specter court, and it is not at all clear that the Congress could preclude the type of judicial review sought here. As discussed supra, courts can -- and must -- review whether executive action has exceeded statutory or constitutional authority. See Youngstown, 343 U.S. 579. The case at hand is even a stronger case than Specter for the availability of judicial review.

expectation to renew leases for the Commands with the GSA, the risk that GSA may terminate certain leases in advance of their expiration dates, and the loss of commercial tenants whose continued presence in Crystal City depends on the Commands' presence, all are direct and real injuries caused by the challenged action. Plaintiffs, therefore, have a direct stake in the outcome of this proceeding.[10/]

1. Plaintiffs Will Suffer Injury in Fact.

Because the illegal closure of the Commands pursuant to the Act will cause these injuries in fact to the plaintiffs, and because these injuries would be directly redressed by the relief sought, this Court is within its constitutional powers to hear this case. Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 37-38 (1976); see also Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2135-37 (1992).

The purpose of this test in determining standing is to ensure that the plaintiffs have a "personal stake" in the outcome of this preceding. Simon, 426 U.S. at 38. Stated simply, a

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10/ The Government's contention (Motion to Dismiss, p. 14) that the Charles E. Smith Management, Inc. does not have standing because "it is merely the managing agent . . ." is readily answered. First, though the Management Company does not own real property, its revenues depend on rents paid for the space the Commands occupy and for commercial space. McVearry Affidavit. It thus will suffer a pecuniary injury if the closure of the Commands is not enjoined. Second, filed simultaneously with this Motion for Summary Judgment is a Motion for Leave to File Second Amended Complaint to add as a plaintiff the Plaza Associates L.P. which owns buildings, leased to the GSA and occupied by the Naval Systems Commands.

plaintiff need only show injury that is "likely to be addressed" by the relief sought. Id.

As explained in detail in the accompanying McVearry and Shehadi affidavits, the ultra vires realignment of the Commands has already had immediate negative effects on plaintiffs. For example, the pending realignment has diminished the value of plaintiffs' leases with private tenants. Because of the impending realignment, plaintiffs have been forced to grant early cancellation options. The impending realignment has also detrimentally impacted the plaintiffs' ability to attract and retain current retail tenants. One potential buyer, for example, who had indicated an intention to renew a lease, withdrew that offer upon learning of the impending realignment. In addition, four of the buildings leased to GSA and occupied by the Commands contain pre-termination cancellation clauses (although bargained for, cancellation was far more unlikely prior to issuance of the challenged order). Further, in order to re-lease the space that will be abandoned by the Commands, plaintiffs will have to spend millions of dollars to prepare the space for commercial rental.[11/]

11/ Harm such as diminished economic expectations -- that is, the decreased likelihood of releasing property or leasing but with concessions to tenants like a release when the Navy leaves -- is adequate injury for standing. Association of Data Processing Servs. v. Camp, 397 U.S. 152 (1970).

2. Although the Test is Largely Inapplicable in a Suit Such as This, Plaintiffs Are Within the "Zone of Interests" Encompassed by the Act.

The ability of the plaintiffs to maintain this action is satisfactorily demonstrated by the both the injury posed and by the fact that plaintiffs challenge the executive action as ultra vires. The prudential "zone of interests" test "is not a test of universal application." Clarke v. Securities Indus. Ass'n., 479 U.S. at 400 n. 16. Indeed, it seems a particularly awkward test in a case, such as this one, challenging executive action as ultra vires; the challenge itself is based on the fact that the executive action went beyond its statutorily-mandated limits to reach someone or something not intended to be affected. Yet even if this Court were to consider a traditional "zone of interests" test, this only would reaffirm that the plaintiffs are proper parties to maintain this action.

Because the "zone of interests" test is precisely meant to identify "those whose interests are directly affected by a broad or narrow interpretation of the law in question," plaintiffs, who are seeking to enforce the proper boundaries of the Act, fall within the "zone of interests." See Clarke, 479 U.S. at 399 (citing Association of Data Processing Servs. v. Camp, 397 U.S. 150 (1970)) (question is whether "the interest sought to be protected is arguably within the zone of interests to be protected or regulated").[12/]

12/ Note that, to be precise, a plaintiff need only be arguably "within the zone of interests."

The "zone of interests" test "is not meant to be especially demanding." Clarke, 479 U.S. at 399. The test is, in fact, to be interpreted in light of Congress' long-standing intention "to make agency action presumptively reviewable." Id. A plaintiff need not be deemed a "subject of the contested regulatory action"; review is to be undertaken unless it is found that the plaintiff's interests are "so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." Id.

The base closure process was devised with "sensitivity" to the impact that closures would have on the communities in question, including the employees, residents, business associates, and others who work and live closely with the facilities in question. See Specter I, 971 F.2d at 943. In fact, the base closing criteria established by the defendant Secretary for the 1990 Act specifically included "the economic impact on communities." 56 Fed. Reg. 6374 (Feb. 15, 1991); see also Specter I, id. Plaintiffs are prominent businesses in the community of Crystal City, owning and managing many office buildings and employing many people. The interest in protecting such members of the community is reflected by the fact that the Commission held hearings and heard the views and concerns of persons and entities such as the plaintiffs. See Base Closure

Act at § 2903(d).[13/] Contrary to the Government's assertion (Motion to Dismiss, p. 16), plaintiffs are examples of those whose interests were meant to be protected by the jurisdictional limits of the Act.[14/]

The Government is undoubtedly correct when it states, as the thrust of its standing argument, that the primary purpose of the Act was to close and realign military bases. Yet it is both this primary purpose and the implicit considerations and sensitivities of the statutory scheme which make up the "zone of interests" to be considered in evaluating the threshold issue of

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13/ The Government cites National Federation of Federal Employees v. United States, 727 F. Supp. 17 (D.D.C. 1989) (hereinafter "NFFE"), as authority for its argument that plaintiffs are not within the zone of interest of the Act. Reliance on NFFE, however, is misplaced, since that case applied the Base Closing Act prior to its 1990 amendments. Unlike the 1988 Act, the 1990 amended version has clear indications that the plaintiffs are within the Act's zone of interest. Under the 1990 amendments, for example, the Base Closing Commission is required to hold public hearings in the communities on recommended base closings. No such hearings or outreach to the communities were required under the 1988 Act.

14/ The Government states, despite the above evidence, that there is not "anything in the Act or its legislative history that reflects a congressional intent to protect the economic interests plaintiff may be asserting." (Motion to Dismiss, p. 16). This "congressional intent" point, however, is taken too far. The Supreme Court has made clear that courts "need no indication of congressional purpose to benefit the would-be plaintiff in order to find standing." Clarke, at 399 citing Investment Co. Inst. v. Camp, 401 U.S. 617 (1971) (Private investment companies challenged agency regulations permitting mutual fund management by banks; Court rejected the argument that there was no standing because of absence of evidence that Congress intended to protect entities such as plaintiff when it limited the activities of banks.)

standing. There simply is nothing inconsistent with both acknowledging the primary purpose of the Act and finding adequate standing for the plaintiffs.[15/]

C. APA Review, While Not Needed, Is Available Here.

The Government argues that review under the Administrative Procedure Act ("APA") is unavailable because there is no "final" agency action and there is an adequate remedy at law. As shown, plaintiffs' claim of ultra vires agency action can be maintained under common law. Nevertheless, APA review is also proper here.

1. The Culmination of the Process by Which the Commands Are Now Set for Closure Constitutes Final Executive Action.

Although the Government acknowledges that "final agency action for which there is no other adequate remedy in a court" is subject to judicial review, see 5 U.S.C. § 704, it maintains that "the acts of the Secretary of Defense and of the Commission in preparing the recommendations are not final agency action and are not subject to review." (Motion to Dismiss, p. 20). However, plaintiffs do not seek review of the "preparing" of the recommendations. The executive action for which plaintiffs seek review, contrary to the Government's discussion, is the inclusion of the Commands in the base closing process and the impending

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15/ The Government also includes as part of its standing argument a section arguing that the plaintiff's claims may not be redressed vis-a-vis the Commission. While relief may not be directed at the Commission, it did make the recommendation to include the Crystal City offices on the base closure list and did so after receiving and reviewing plaintiffs' arguments that these facilities are not covered. It, therefore, is a proper party to this case.

realignment of the Commands by the Secretary pursuant to the authority of the Act.

The schedule for closure is now complete.[16/] This finished process is "final agency action" under the APA. Specter I, 971 F.2d at 945; Specter II, 995 F.2d at 408. In any event these executive actions have culminated in a mandatory order to the Secretary of Defense to close the Crystal City facility. Base Closure Act at § 2903. This executive action is beyond the scope of authority delegated by Congress and is reviewable by this Court. See pp. 7-12, supra.

2. Plaintiffs Have No Alternative Remedy at Law.

Alternatively, defendants argue that there is no APA review because plaintiffs have an alternative remedy in law, namely, an action for breach of contract against the GSA if the leases in question are prematurely terminated. This argument reflects a fundamental mischaracterization of the plaintiffs' contentions. In fact, plaintiffs do not anticipate any unlawful termination of their leases with the GSA. The injury, as shown above, arises

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16/ The Commission submitted its report to the President on July 1, 1993; the next day the President approved the report and recommendations and sent it to Congress. No affirmative action by Congress is required for it to become effective, though it has forty-five legislative days to pass a joint resolution of disapproval. By counsel's calculation, that period expires October 1. Newberry Affidavit. However, on July 30, 1993, the Senate Armed Services Committee reported adversely S.J. Res. 114, which proposed disapproving the Commission's recommendations. S. Rep. No. 103-118, 103d Cong., 2d Sess. The Senate is scheduled to vote on S.J. Res. 44 in advance of October 1. 139 Cong. Rec. S11,772-73 (1993).

even without such termination. Because new leases have been diminished in value; because plaintiffs are losing other private tenants; and because the prospects of GSA's exercise of cancellation clauses have increased while the prospects of renewing the existing Government leases upon their natural termination have undoubtedly diminished, the illegal realignment of the Commands has caused and will continue to cause injury far beyond any breach of contract.

II. THE CRYSTAL CITY OFFICES ARE SUBJECT TO THE JURISDICTION OF THE GENERAL SERVICES ADMINISTRATION, NOT THE DEPARTMENT OF DEFENSE.

The Base Closure Act of 1992 applies solely to the closure or realignment of a "military installation." It is the exclusive authority for such action. The Act defines a "military installation" as:

> a base, camp, post, station, yard, center, homeport facility for any ship, or other activity <u>under the jurisdiction of the Department of Defense</u>, including any leased facility....

Base Closure Act at § 2910(4) (emphasis supplied). By this definition, the Act limits its scope specifically to bases and other real property "under the jurisdiction of the Department of Defense."

The distinction between property "under the jurisdiction of the Department of Defense" and that under the jurisdiction of GSA is critical. Closure of the former is the subject of the Base Closure Act, but the buildings in Crystal City are under the exclusive jurisdiction of the GSA, not the DOD. The statutory

framework governing the management of the buildings, the text of the Base Closure Act itself, the DOD's prior and present actions, even other contemporaneous expressions of Congress, all demonstrate unequivocally that the property is not a "military installation" subject to the Act's extraordinary process. In Congress' view, GSA-leased buildings are separate and apart from military installations, and are to be treated accordingly.

A. GSA Has Exclusive Jurisdiction Over the Buildings Occupied by DOD in Crystal City.

A federal agency's authority to use and control public property necessarily depends upon proper exercise of a constitutional grant of power. See United States v. Allegheny County, 322 U.S. 174, 183 (1944). That authority flows generally from Congress through its exercise of the "Property Clause" of the United States Constitution, Art. IV, § 3, cl. 2, which provides:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . .

Congress' power under the Property Clause extends to all real and personal property held by the United States. Ashwander v. Tennessee Valley Auth., 297 U.S. 288, reh'g denied, 297 U.S. 728 (1936). Its authority in this area is limitless, and neither the courts nor the executive agencies can proceed contrary to a statute enacted pursuant to the Property Clause. United States

v. California, 332 U.S. 19, 27 (1947). See Kleppe v. New Mexico, 426 U.S. 529, 540 (1976).[17/]

Pursuant to the Property Clause, Congress has delegated to GSA exclusive jurisdiction over buildings, such as those in Crystal City, that it leases from plaintiffs. Since 1950, GSA has performed virtually all functions on behalf of the United States with respect to leasing office buildings in urban areas, and assigning and reassigning space in those buildings to federal agencies. Reorganization Plan No. 18 transferred this authority from the several federal agencies to GSA. 40 U.S.C. § 490 note. The plan directed GSA to perform these functions for the federal government[18/] to promote economical leasing, better utilization of building space, and more efficient operation of Government-controlled office buildings.

17/ Individual agencies do not hold property in their name. All property belonging to the United States is held in the sovereign name of the United States "in trust for all the people." United States v. Trinidad Coal & Coking Co., 137 U.S. 160, 170 (1890).

18/ There are a few exceptions, but none apply here. For example, certain agencies can lease space directly if that space is outside of an urban area. 41 C.F.R. § 101-18.102. Or they can directly lease "special purpose space" when delegated that authority from GSA. "Special purpose space" is space that fits unique requirements of a particular agency. 41 C.F.R. § 101-18.104-1. GSA's near-exclusive leasing authority also does not extend to space in foreign countries; space located on the grounds of a military facilities; and space in the White House, the Capitol and other similar buildings. 41 C.F.R. § 101-17.003-2. None of these exceptions apply to the present case, since GSA has exercised its leasing authority in connection with the Crystal City buildings in an urban area.

Congress has specified that GSA retains "exclusive jurisdiction and control" over office buildings that it leases, notwithstanding assignment to another federal agency.

> All . . . public buildings outside of the District of Columbia and outside of military reservations which have been purchased or erected . . . out of any appropriation under the control of the Administrator of General Services, together with the site or sites thereof, are expressly declared to be under the exclusive jurisdiction and control and in the custody of the Administrator of General Services,

40 U.S.C. § 285 (emphasis supplied). This expressly delegates to GSA Congress' plenary authority under the Property Clause with respect to federal buildings that GSA acquires and maintains. See United States v. Cassiagnol, 420 F.2d 868, 876 (4th Cir.) cert. denied, 397 U.S. 1044 (1970); Votolato v. Freeman, 8 B.R. 766, 768 (D.N.H. 1981). See also Barrett v. Kunzig, 331 F.Supp. 266 (D.Tenn. 1971), cert. denied, 409 U.S. 914 (1972) (40 U.S.C. § 318, which authorizes GSA to establish the Federal Protective Service, represents a proper delegation of congressional authority under the Property Clause).

GSA, in turn, has consistently interpreted 40 U.S.C. § 285 as applying to all public buildings outside of the District of Columbia -- whether leased or owned -- that it has acquired or for which it is responsible. See generally 41 C.F.R. §§ 101-17 et seq. & 101-20 et seq. GSA's regulations, promulgated in part pursuant to section 285, make clear that GSA's jurisdiction is exclusive over a building it has leased from a private owner, regardless whether it assigned space in the building to another

agency. Id. at §§ 101-20.000, 20.002, & 20.002-2. The agency assigned the space (here, DOD) is considered an "occupant agency" and is not ultimately accountable for the property in which the agency's space is located. Id. at §§ 101-20.002-1 & 20.002-2. As the very definition of "occupant agency" makes perfectly clear, GSA retains jurisdiction over buildings -- such as those in Crystal City -- that it has acquired by lease and in which it has assigned space to an occupant agency such as DOD:

> "Occupant Agency" means an organization which is assigned space in a facility under GSA's custody and control through the formal procedures outlined in part 101-17 of the Federal Property Management Regulations.

41 C.F.R. § 20.003(u) (emphasis supplied).

The major exception to GSA's broad authority is that it does not extend to property on military installations. Section 2 of Reorganization Plan No. 18 excludes GSA from carrying out its responsibilities with respect to:

> Space in buildings which are located on the grounds of any fort, camp, post, arsenal, Navy yard, naval training station, air-field, proving ground, military supply depot, or school, or any similar facility, of the Department of Defense. . . .

However, GSA does unquestionably lease the Crystal City buildings. Thus, they cannot be military facilities, at least within the meaning of the Reorganization Plan. Given the similar language of the Base Closure Act, they should not be viewed as military installations under that Act either. But there are stronger arguments, as we now show.

B. The Crystal City Buildings Are Not Under the Jurisdiction of the Department of Defense.

As demonstrated above, the Crystal City offices are under the exclusive jurisdiction of the GSA. These offices cannot also be "under the jurisdiction of the Department of Defense" within the meaning of the Base Closure Act, unless the Act encompasses DOD's functional personnel structures as well as its physical infrastructures. The Government recognizes this and, indeed, argues that the Act encompasses "activities of the Navy." (Motion to Dismiss, p. 29). But this extraordinary expansion of the term "military installation" in the Base Closure Act proves too much, since the Act is the "exclusive authority" for closing or realigning such installations. Base Closure Act at § 2909(a). Surely, Congress did not subject all military decisions concerning personnel structure to the rigors of Defense Department recommendations, followed by Commission review and recommendation, Presidential decision, and the possibility of Congressional veto. More sensibly, Congress limited the reach of the Act to the physical infrastructure "under the jurisdiction of the Department of Defense."[19/]

19/ This case does not represent the first time that the Base Closure Commission has overstepped its jurisdiction. In the 1991 process, the Commission recommended a realignment of the U.S. Army Corps of Engineers involving the closure of certain of the Corps' facilities. Congress disagreed that these facilities were "under the jurisdiction" of DOD and in response, enacted a retroactive amendment to the Act's definition of "military installation" overturning the recommendation. See National Defense Authorization Act,

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"Jurisdiction" thus has the same meaning in both 40 U.S.C. § 285 and the Base Closure Act.[20/] Nothing in the Base Closure Act evinces that the term "jurisdiction" as used in the statute has a meaning different from that under section 285. See Finney v. Roddy, 617 F. Supp. 997, 1001-02 (E.D. Va. 1985) (the meaning of the same term used in different statutes should not vary from statute to statute). Furthermore, nothing in the Act evinces any intent on the part of Congress to modify GSA's jurisdiction over the buildings by virtue of section 285. As GSA's exclusive jurisdiction remains notwithstanding the enactment of the Base Closure Act, the properties are not "military installations" and, accordingly, are not subject to the Act.

1. The Base Closure Act Applies Only to Facilities and Other Real Property Under the Jurisdiction of the Department of Defense.

The Base Closure Act addresses the closure or realignment of certain physical enclaves defined as "military

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1991, Pub. L. No. 102-190, § 2821(h), 105 Stat. 1596 (1991).

20/ Since the two statutes relevant to the plaintiffs' claim in this matter, 40 U.S.C § 285 and the Base Closure Act, address the same subject matter -- federal facilities and real property -- they must be read in pari materia with one another. See Anderson v. FDIC, 918 F.2d 1139, 1143 (4th Cir. 1990)(harmonious construction of a Bankruptcy Code provision and the Federal Tort Claims Act required to determine the proper scope of federal government's immunity). Furthermore, because both statutes use an identical term -- "jurisdiction" -- within the context of an agency's relationship with federal property, they should be read as meaning the same thing with respect to that term. See Jordan v. Lyng, 659 F. Supp. 1403, 1412 (E.D. Va. 1987) (interpreting the meaning of the term "institution of higher education" as the same for purposes of the Food Stamp Act and the Higher Education Act).

installations." Those installations constitute the Department of Defense's physical infrastructure; they are the properties over which DOD has jurisdiction and at which it performs much of its principal functions.

"Military installations" are unique in the federal inventory of real property holdings, for they are necessarily intertwined with the mission of the Department of Defense and its current force structure. Although the Base Closure Act requires both the Secretary of Defense and the Commission to consider national defense policy and whether the current composition of military installations is reflective of that policy, the statute's principal focus is on closing and realigning real and improved property. The Act is replete with references to real property and related improvements as comprising military installations. For instance, section 2905(a) authorizes the Secretary of Defense in closing or realigning any military installation to transfer functions <u>from</u> one base <u>to</u> another. Base Closure Act at § 2905(a). The following subsection, section 2905(b), authorizes the GSA to delegate to the Secretary of Defense certain disposal authorities for "excess and surplus real property and facilities <u>located at a military installation to be closed or realigned</u>." <u>Id</u>. at § 2905(b)(emphasis added).

2. The Term "Other Activity" Does Not Encompass GSA-Leased Facilities.

Despite the Act's plain focus on real property, the Government's motion maintains that a military installation is not restricted to real estate and related improvements, but includes

any function and functional responsibility under the authority of the Department of Defense. (Motion to Dismiss, pp. 29-30). According to the Government's argument, because the Naval Commands are, either individually or collectively, an "other activity" as those words are used in the Act's definition of "military installation," then the Commands necessarily constitute a "military installation." As a result, any relocation of the Commands is covered by the Base Closure Act.

This argument is semantic legerdemain, and absurd when applied to the real world.[21/] The words "other activity" within the context of the whole definition of "military installation" were not intended to signal anything other than a catchall of other physical properties not specifically enumerated. The Base Closure Act provides that the term "military installation" means:

> [A] base, camp, post, station, yard, center, homeport facility for any ship, or other other activity under the jurisdiction of the Department of Defense, including any leased facility.

In accordance with the accepted canon of statutory construction ejusdem generis, when a general statutory term follows specific words in a statutory enumeration, "the general words are construed to embrace only objects similar in nature to those objects enumerated by the specific words." 2A Sutherland Stat.

21/ As shown, pp. 38-40, infra, until 1993 DOD treated the Crystal City offices as not covered by the Base Closure Act. Its current interpretation of convenience is not entitled to deference. INS v. Cardoza-Fonseca, 480 U.S. 421, 446 n.30 (1987).

Const. § 47.17 (5th ed. 1992). See Hughey v. United States, 495 U.S. 411, 419 (1990). See also Schreiber v. Burlington Northern, Inc., 472 U.S. 1, 7-8 (1985). Federal Maritime Comm'n v. Seatrain Lines, Inc., 411 U.S. 726, 734 (1973); Weyerhouser Steamship Co. v. United States, 372 U.S. 597, 600-01 (1962).

Application of this common-sense principle demonstrates that the words "other activity" are only a generic, catchall reference to other enclaves similar to those specifically identified. It would violate the canon of ejusdem generis to construe them to add something different in kind.[22/] If, as the Government urges, "other activity" were interpreted as encompassing anything under the cognizance of DOD -- including commands, headquarters, organizational elements and functions, as well as physical facilities and property -- then the specific enumerations would be rendered superfluous by the more generic term.[23/] Under such a construction, the Base Closure Commission would review and recommend to the President all of DOD's "activities." Congress never intended the Base Closure Act to reach that far.

22/ For example, a "depot" is not part of the list even though the Commission made several recommendations the subject matter of which were DOD's depots. See Defense Base Closure and Realignment Commission, 1993 Report to the President at 1-6-8, 1-39-43 (July 1, 1993).

23/ Indeed, "activity," within the meaning of the Base Closure Act, is certainly not a command or other tenant on a military installation. This is evident from the definition of the term "realignment" which uses the term "function," not "activity," to describe that which is moved off a base being realigned. See Base Closure Act at § 2910(5).

The legislative history further shows that "other activity" is simply a generic reference to real property. "Military installation" first appeared in 1977 as part of the original enactment of 10 U.S.C. § 2687, Congress' initial attempt to regulate the closure or realignment of certain military installations.[24/] As enacted, section 2687 defined a "military installation" as:

> [A]ny camp, post, station, base, yard, or other facility under the authority of the Department of Defense . . . .[25/]

In 1982, Congress amended the definition by deleting "other facility" and inserting in lieu thereof the words "other activity."[26/] The amendment was a technical and clerical change, part of the Military Construction Codification Act of 1982, Pub. L. No. 97-214, § 10, 96 Stat. 175 (1982) (codified at 10 U.S.C. § 2801 et seq.) ("Construction Act"), which codified in a new chapter of Title 10 various permanent provisions of law relating to military construction. See H.R. Rep. No. 97-612, 97th Cong. 2d Sess. 34 (1982). It was designed to ensure that the

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24/ Section 2687 was the first formal piece of base closure legislation, and remains codified in Title 10. The Base Closure Act applies to any closure or realignment action to which section 2687 would otherwise apply. Base Closure Act at § 2909(c).

25/ Military Construction Authorization Act, 1978, Pub. L. No. 95-82, § 612, 91 Stat. 379 (1977).

26/ The definition was also amended by striking "under the authority" and replacing that phrase with "under the jurisdiction." Pub. L. No. 97-214, § 10, 96 Stat. 175 (1982). This amendment was also described as a clerical, non-substantive change. See H.R. Rep. No. 97-612, 97th Cong., 2d Sess. 34 (1982).

definition of "military installation" appearing in section 2687 conformed with the definition in the Construction Act.

The definition of "military installation" in the Construction Act clearly referred to DOD's real property holdings. This is evident from the Act's overall structure. Section 2801 defined "military construction" as "any construction, development, conversion, or extension of any kind carried out with respect to a military installation." 10 U.S.C. § 2801(a). That section also provided that a "military construction project" is all military construction work "necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility." Id. at § 2801(b). A "facility," which the Construction Act separately defined, means a building, structure, or other improvement to real property. Id. at § 2801(c)(1). Finally, the section defined a "military installation" as:

> a camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department . . . .

Id. at § 2801(c)(2).

This statutory scheme shows that the words "other activity" did not expand the meaning of "military installation" beyond physical facilities and other real property under DOD's jurisdiction. A "military installation" is a place where DOD carries out a military construction project; in other words, it is a place where DOD builds something. To define a "construction project" on a military installation, the Construction Act

separately stated what a "facility" is. Because the term "facility" was co-opted for this narrower purpose, the act used another term -- "activity" -- as a catchall in the definition of military installation. The change was substantive in terms of defining a "facility" for purposes of military construction, but it did not change the ordinary meaning of military installation as the physical facilities and other real property over which DOD has jurisdiction.

3. The Term "Any Leased Facility" Does Not Encompass GSA-Leased Facilities.

The Government also maintains that the term "leased facility" brings the Crystal City buildings under the jurisdiction of DOD and the Base Closure Act. To support its position, the Government stresses that "to accept [P]laintiff's argument would read out of existence that part of the Base Closure Act that expressly authorizes realignment of Defense activities in leased space." (Motion to Dismiss, p. 2).

However, the language "including any leased facility" upon which the Government relies refers simply to those facilities and other real property that DOD leases without the direct involvement of GSA. This is evident from the phrase's placement immediately after the phrase "other activity under the jurisdiction of [DOD]." A leased facility under DOD's jurisdiction is one that DOD is charged with administering and carrying on its real property inventory.

More specifically, DOD maintains an extensive leasing program pursuant to the express exceptions to GSA's leasing

authority set forth in Reorganization Plan No. 18 and GSA's regulations. Those exceptions include: (i) space in buildings on military bases; (ii) space outside of an urban area; and (iii) space wholly or predominantly utilized for the special purposes of DOD.[27/] When the first instance applies, DOD has jurisdiction over the property because of the property's location on a military installation. When either of the latter two apply, GSA has delegated specific leasing authority to DOD, see 41 C.F.R. § 101-18.104, and as a consequence of that delegation, DOD retains jurisdiction over the leased property. Id.; see id. at § 101-3.201(b) (DOD is the agency responsible for reporting to Congress all buildings that it leases).[28/]

The Government's argument that plaintiffs' interpretation of the statute would read out of existence the words "any leased facililty" is, therefore, wrong. Congress obviously recognized that DOD does, in fact, lease buildings and other property on its own. Such property is and has always been under the jurisdiction of DOD and, as result, is a military installation for purposes of the Base Closure Act.[29/]

27/ Reorganization Plan No. 18, § 1, 40 U.S.C. § 490 note; 41 C.F.R. §§ 101-17.003-2, 101-18.104. The other exceptions are for space in buildings in foreign countries, space in certain buildings in Washington, D.C., and space in Post Office buildings.

28/ When DOD leases the property itself using its own appropriations and without the direct involvement of GSA, 40 U.S.C. § 285 and its delegation of exclusive jurisdiction to GSA are inapplicable.

29/ The legislative history discussing the "any leased
Continued

III. GSA'S EXCLUSIVE JURISDICTION IS CONFIRMED BY (1) CONGRESS' CONTEMPORANEOUS ENACTMENTS; (2) DOD'S PRIOR ACTIONS; AND (3) DOD'S PROPERTY MANAGEMENT PRACTICES.

A. Congress' Contemporaneous Enactments Show That GSA-Leased Buildings Are Not Military Installations.

Contemporaneous Congressional enactments in the statute of which the Base Closure Act was a part further demonstrate that the Base Closure Act does not cover GSA-leased buildings. The Base Closure Act was passed as Title XXIX of the National Defense Authorization Act for Fiscal Year 1991. Pub. L. No. 101-510, 104 Stat. 1485 (1990) (the "Authorization Act"). In two separate provisions of that Authorization Act, Congress manifested that property leased by GSA and occupied by DOD is not covered under the Base Closure Act, and that in order for DOD to possess jurisdiction over such property, specific statutory authority transferring jurisdiction is necessary. Those two provisions, read with the Base Closure Act as a single statute,30/ make plain that Congress never intended to effect the closure or realignment of buildings -- at least in the National Capital Region -- leased by GSA through the base closing process.31/

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facility" language indicates that Congress added the words to the definition as a clarifying amendment, and not to change the definition's basic meaning. H.R. Rep. No. 665, 101st Cong., 2d Sess. 386 (1990).

30/ Section 2905 of the Base Closure Act waives the application of particular statutes, but neither of the provisions discussed here were waived.

31/ As the Government correctly posits, it is a cardinal principle of statutory construction that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative, or

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1. Section 2803 of the Authorization Act.

Section 2803 of the Authorization Act (Attachment 1 hereto) prescribes a three-year schedule for DOD to reduce its leased "administrative space" in the National Capital Region by twenty percent over a three-year period, unless the Secretary of Defense submits to Congress a comprehensive plan addressing DOD's long-term space needs in the region. The section defines "administrative space" generally as office and related space, and the language of the provision, as well as its history, show that it includes space occupied by DOD in buildings leased by GSA.[32/] It necessarily includes GSA-leased space because, as of

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superfluous, void or insignificant." (Motion to Dismiss, p. 31) (quoting from Sutherland Stat. Const. § 46.06 (5th ed. 1992)). Because a statute is passed as a whole, each part or section must be construed in connection with every other part or section in order to produce a harmonious whole. Sutherland, supra, at § 46.05. See King v. St. Vincent's Hosp., 112 S. Ct. 570, 574 (1991) (in reaching its conclusion as to the meaning of a statutory provision, the Court stated that "we do nothing more than follow the cardinal rule that a statute is to be read as a whole").

32/ The section reads, in pertinent part:

> [T]he Department of Defense (including all departments, agencies, and other instrumentalities thereof) may not enter into or amend any lease or other agreement (including leases entered into with any other Federal agency) for administrative space in the National Capital Region that would result in the Department leasing administrative space in excess of the maximum area specified for that fiscal year in subparagraph (B), unless the Secretary of Defense, in consultation with the Administrator of General Services, submits to the Congress, no later than April 15, 1991, a comprehensive plan addressing the long-term leased space needs of the

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1988, approximately 98% of DOD's leased "administrative space" in the National Capital Region is leased by GSA.[33/]

Although section 2803 provides a schedule for DOD to reduce its leased administrative space during fiscal years 1991 though 1993, which are years during which the Base Closure Act's exclusive biennial schedule for formulating recommended closures and realignments is in effect, the provision fails to mention the base closing process.[34/] As section 2803, however, is part of the same statute that contains the Base Closure Act, and directs action that would otherwise trigger the exclusive requirements of

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> Department of Defense in the National Capital Region. Such a plan will be consistent with the force structure plan submitted under section 2903 [of the Base Closure Act].

Pub. L. No. 101-510, § 2803(a), 104 Stat. at 1783.

Section 2803 provides a generic definition of the term "administrative space." According to the House Report accompanying the bill that became the Authorization Act, the term was derived from various internal DOD regulations addressing administrative space, including DOD. H.R. Rep. No. 101-665, 101st Cong., 2d Sess. at 377 (1990). As defined in DOD Instruction 5305.4 (Feb. 15, 1977), "administrative space" includes GSA-leased space.

33/ According to the report, DOD occupies 6.7 million square feet of GSA-leased space in the NCR; on the other hand, DOD leases only 139,000 square feet and those leases are pursuant to a delegation of authority from GSA. See A Report to Congress on DOD Administrative Space Planning For the National Capital Region 155 (1988) (Attachment 2 hereto).

34/ Indeed, the plan contemplated under section 2803 must be consistent only with the force structure plan prescribed under the Base Closure Act. The section does not provide that the plan must also be consistent with the base closure criteria, which the Secretary must consider in developing recommended closures and realignments.

that Act.[35] Congress must have concluded that administrative space in the National Capital Region, primarily GSA-leased space, is not a military installation.[36] Any other reading would place two provisions of the same Authorization Act -- section 2803 and the sections comprising the Base Closure Act -- in conflict, rendering the former inoperative and void.

2. Section 2804 of the Authorization Act.

Section 2804 of the Authorization Act (Attachment 3 hereto) also demonstrates that DOD does not have "jurisdiction" over property which it occupies unless that jurisdiction is traceable to an express grant of congressional authority. Section 2804 transferred "[j]urisdiction, custody, and control" of the Pentagon Reservation, which includes the Pentagon buildings, related improvements, and the underlying land, from GSA to the Secretary of Defense. Prior to the enactment of section 2804, only GSA had "jurisdiction" over the Pentagon pursuant to 40 U.S.C. § 285. See United States v. Cassiagnol, 420 F.2d 868 (4th

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35/ DOD personnel actions to reduce its leased administrative space by over one million square feet (i.e., 20% of 6.7 million square feet of GSA-leased space that DOD occupies in the National Capital Region) would trigger application of the Base Closure Act. In fact, Congress envisioned fairly large-scale moves from leased administrative space, which would necessarily implicate the personnel thresholds of 10 U.S.C. § 2687. See H. Conf. Rep. No. 101-923, 101st Cong., 2d Sess. 693-94 (1990).

36/ In fact, the Conference Report juxtaposes "administrative space" with military installations stating that in reducing its leased administrative space, DOD may be able to move functions into "space on military installations [that] may become vacant as the force structure is reduced." H. Conf. Rep. No. 101-923, 101st Cong., 2d Sess. 693 (1990).

Cir.) cert. denied, 397 U.S. 1044 (1970) (applying section 285 to GSA's authority over the Pentagon). Thus, to effect a transfer of "jurisdiction" of this property from GSA to DOD, Congress enacted separate legislation.

The import of the Government's argument, however, is that although before 1990 DOD never had jurisdiction over the Pentagon -- the most visible symbol of the Department of Defense -- it has always had and continues to have jurisdiction over the office buildings in Crystal City. This argument is plainly erroneous. GSA's exclusive jurisdiction over the buildings arises out of the same statutory authority giving GSA jurisdiction over the Pentagon: 40 U.S.C. § 285. Absent an express delegation of authority from Congress, or a delegation of leasing authority from GSA to DOD,[37/] the buildings are, by definition, under the jurisdiction of GSA.

B. DOD's Previous Actions With Respect to the Crystal City Facilities Manifest DOD's Prior Statutory Interpretation That the GSA-Leased Facilities Are Not Covered by the Act.

The Government's argument that the Crystal City facilities are subject to the base closing process totally departs from its pre-1993 view that these facilities are not subject to the Act.

Since enactment in November 1990, the Base Closure Act has

37/ Such a delegation could not result in accordance with the existing statutory and regulatory scheme. Since the buildings are located within a designated urban area and do not constitute so-called "special purpose space," GSA retains authority over the buildings pursuant to Reorganization Plan No. 18, 40 U.S.C. § 490 note, and the various regulations GSA has promulgated thereunder.

prescribed the exclusive authority for closing or realigning military installations subject to the statute's terms. Base Closure Act at §2909(a). But heretofore DOD has not interpreted the Act as covering the relocation of the Naval Systems Commands from the buildings that GSA leases in Crystal City. The Navy has pursued the relocation not under the Base Closure Act, but under the Federal Property and Administrative Services Act of 1949 ("FPASA"), 40 U.S.C. §§ 471 et seq., in conjunction with the Public Buildings Act of 1959 ("PBA"), 40 U.S.C. §§ 601 et seq.

Beginning in 1990, the Navy sought to consolidate its Systems Commands into a single facility to be constructed in Arlington. The Navy's plan was to have GSA construct a new facility and then the Navy and GSA would move the Commands from the leased space that they currently occupy to the new facility pursuant to GSA's authority to assign and reassign general purpose space.

On March 29, 1990, the Office of Management and Budget forwarded a prospectus prepared by GSA to the Congress (as required under section 7 of the PBA, supra at § 606), requesting approval to build a three million square-foot building in Northern Virginia to house the Naval Systems Commands, and $821 million for the building's design, site acquisition, and construction.

In accordance with 40 U.S.C. 606, in June 1990 and October 1990 the House Committee on Public Works and the Senate Committee on Public Works, respectively, adopted resolutions authorizing

the construction of a new building in Northern Virginia for the systems commands. On November 5, 1990, the same date that the Base Closure Act was enacted, the fiscal year 1991 Treasury, Postal Service and General Government Appropriations Act approved $273 million for the construction of that new building. Pub. L. No. 101-509, 104 Stat. 1407 (1990).

During this same time, the Navy and GSA took other steps to relocate the Commands to a facility to be built in Arlington. In April 1991, GSA solicited offers for land in Northern Virginia to build a facility for the Commands. Subsequently, the Navy and GSA issued a solicitation for the construction of the building. However, in July 1992, the Secretary of Navy withdrew the solicitation. In early 1993, the Navy, for the first time, placed the Crystal City facilities on the list of military installations to be closed pursuant to the Base Closure Act.

Thus, not until 1993 did the Navy and DOD even suggest that the Crystal City offices should be closed as the home for the Commands pursuant to the Base Closure Act. The Government now has changed its view. But coming more than halfway into the five-year life of the Base Closure Act, that view is not entitled to any judicial deference. See INS v. Cardoza-Fonseca, 480 U.S. 421, 446 n.30 (1987).

C. DOD Property Management Practices Recognize That DOD Does Not Have Jurisdiction Over GSA-Leased Facilities.

DOD directives and regulations recognize GSA's exclusive jurisdiction over leased buildings. DOD Directive 4165.6 (September 1, 1987) (Attachment 4 hereto) describes the internal policies for the acquisition, management, and disposal of the Defense Department's real property holdings. Among other things, this directive requires the military departments to maintain inventories of real property under their respective "control" -- or jurisdiction.38/

The Navy carries out its responsibilities under that Directive by placing all real property that it controls, including that which it has leased directly from a private concern, on a "Facilities Assets Data Base". Shore Facilities Planning Manual This data base serves as the Navy's real property

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38/ See Shore Facilities Planning Manual, Naval Facilities Engineering Command Instruction 11010.44D, at A-4 (1981), (Attachment 5 hereto) which defines a military installation as "[t]he aggregate of real property facilities assigned to a shore activity." OPNAVINST 11010.1J (1979) (Attachment 6 hereto), the internal Navy regulation governing the planning of facilities located on installations, defines a "facility" as:

> [a] separate, individual building, structure, or other form of real property, including land, which is subject to separate reporting under the Department of Defense inventory.

See also Army Regulation 405-45, ¶ 1-6(k) (April 15, 1982) (defining a "military installation" as "[l]and and the improvements thereon under the control of the [Army]" (emphasis supplied)) (Attachment 7 hereto).

inventory and, in essence, as an inventory of the property over which it maintains jurisdiction. Id. The data base, however, specifically excludes GSA-leased buildings, in recognition that those buildings are held by GSA rather than the Navy. See id. at A-4.

Even more compelling, DOD internal regulations define "administrative space" to include space provided by GSA in leased buildings. See DOD Instruction 5305.4 (Feb. 15, 1977); DOD Instruction 5305.5 (May 23, 1966). DOD Instruction 5305.4 (Attachment 8 hereto) inventories all DOD administrative space in the National Capital Region organized by which agency -- DOD or GSA -- has control over the property. It explicitly identifies buildings in Crystal City leased by plaintiffs to GSA, and occupied by the Navy, as administrative space under the exclusive control of GSA.

CONCLUSION

For the foregoing reasons, this Court should rule that executive action ordering closure of GSA-leased offices used by the Naval Systems Commands exceeds the authority granted by the Base Closure Act, and permanently enjoin the defendant Secretary of Defense from taking any action to implement that order. Accordingly, it should deny the defendants' Motion to Dismiss and grant plaintiffs' Motion for Summary Judgment.

Respectfully submitted,

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Dated: September 17, 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment and Opposition to Defendants' Motion to Dismiss were served this 17th day of September, 1993 on:

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John L. Oberdorfer

Document Separator

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION,** Defendants.	Please refer to this number when responding 930921-7 Civil Action No. 93-844-A

AFFIDAVIT OF MICHAEL T. SHEHADI

Michael T. Shehadi, being duly sworn, deposes and says:

1. I am Group Senior Vice President of Charles E. Smith Management Inc. ("Smith") and agent for Plaza Associates L.P. I respectfully submit this affidavit in support of the plaintiff's motion for summary judgment and in opposition to defendant's motion to dismiss.

2. The closure of the Naval Systems Commands ("NSC") in Crystal City will have a substantial impact on northern Virginia and on Arlington County in particular. Some 19,500 individuals are employed in Arlington as a direct result of the Navy's presence in Crystal City, including 11,397 Navy employees and 7,013 Navy

contractor employees. This represents approximately 15.7 percent of Arlington County office-using employment today. Further, the Navy and Navy contractors occupy approximately 18.6 percent of Arlington County's total inventory of office space.

3. Since the Navy has resided in Crystal City for so many years, I am knowledgeable about the history of its locational plans and decisions. Prior to March 1993, the Navy sought to consolidate the Naval Systems Commands into a single newly-constructed building to be located in Crystal City. The Navy undertook this consolidation action under authority provided in the Federal Property and Administrative Services Act of 1949, not the Base Closure Act.

On March 29, 1990, the U.S. Office of Management and Budget forwarded to Congress a prospectus requesting approval to build a three million square-foot building in northern Virginia to house the NSC. In June and October 1990, the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works, respectively, adopted resolutions authorizing construction of a new building in northern Virginia for the NSC.

The FY 1991 Treasury, Postal Service, General Government Appropriations Act was enacted on November 5, 1990 and included an appropriation of $273 million for construction of the new building. At the same time, a draft Environmental Impact Statement ("DEIS") entitled Draft Environmental Impact Statement, U.S. Naval Systems Commands Consolidation was released.

In April 1991, the General Services Administration (GSA)

solicited offers for land in northern Virginia to build a facility for the commands. That year, AT&T made an offer of land in Crystal City to house one million square feet of the NSC. GSA selected this land and awarded a contract for its purchase. In February 1992, GSA issued a supplemental environmental impact statement for the project, indicating the AT&T site was satisfactory.

GSA took numerous additional steps toward the consolidated NSC facility, including in December 1991 or January 1992, hiring an architect to design the facility, meeting with community groups, conducting environmental tests, and issuing a solicitation for construction of the facility. This solicitation was withdrawn in July 1992, and the consolidation effort was ended.

4. Plaza Associates, L.P. ("partnership") is a limited partnership organized under the laws of the Commonwealth of Virginia which owns, among other buildings, 2211 Jefferson Davis Highway, Arlington, Virginia 22202 (Crystal Plaza 5), and 2221 Jefferson Davis Highway, Arlington, Virginia 22202 (Crystal Plaza 6), buildings of approximately 135,005 and 151,558 square feet, respectively, located in Crystal City, Virginia. The partnership leases Crystal Plaza 5 and 6 to the GSA. Crystal Plaza 5 is occupied by the Naval Sea Systems Command (56,434 square feet) and other Navy tenants. GSA's lease for Crystal Plaza 5 runs until September 29, 1999. That lease has a cancellation clause which GSA can exercise as early as March 1, 1997. GSA's lease

for Crystal Plaza 6 runs until November 30, 1998. That lease has a cancellation clause which GSA can exercise as early as December 1, 1996. Crystal Plaza 6 is occupied by the Naval Sea Systems Command (23,355 square feet), the Naval Supply Systems Command (1,000 square feet) and other government users.

The decision to realign and relocate these leased facilities and the statutory mandate in the Base Closure Act to begin implementation of Base Closure Commission recommendations within 2 years means that GSA will lose the NSC tenants occupying these buildings. As a result of this loss, GSA may exercise the cancellation clause in advance of lease termination. That would deprive the partnership of substantial revenue that it would have received absent the decision to relocate these facilities. At a minimum, the possibility that these clauses will be used raises a substantial level of uncertainty into partnership operations.

The closure of Crystal Plaza 5 and 6 as the offices for the commands will directly harm the partnership. Together these facilities represent more than 80,000 square feet. Lost revenues will be a minimum of $1.4 million because upon NSC vacancy of Crystal Plaza 5 and 6, an unavoidable period of downtime will occur while the building is restored to condition for re-rental and while new tenants are sought. Based on previous experience, this period of downtime will range between 9 months and 1 year. The rental rate for NSC tenants in Crystal 5 is $22.84 per square foot. The rental rate for HSC tenants in Crystal plaza 6 is $23.18. The average rental rate for the NSC tenants in Crystal

Plaza 5 and 6 is calculated as $22.94. The minimum revenue loss can be calculated as follows: $22.94 per square foot x 80,789 square feet x .75 year = $1.4 million.

5. The recommended closure of Crystal Plaza 5 and 6 will immediately and unavoidably cause the partnership to incur direct costs of at least $1.5 million to ready the space for commercial rental.

Further Affiant sayeth naught.

Michael T. Shehadi

Michael T. Shehadi

Subscribed and Sworn
Before me on
this 16th day of September, 1993

Nola C. Williams

Notary Public

My commission expires October 31, 1997

Document Separator

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION,** Defendants.	Civil Action No. 93-844-A

AFFIDAVIT OF KENNETH L. MCVEARRY

Kenneth L. McVearry, being duly sworn, deposes and says:

1. I am Group Senior Vice President (Commercial Leasing) of Charles E. Smith Management Inc. ("Smith Management"), and respectfully submit this affidavit in support of the plaintiff's motion for summary judgment and in opposition to defendant's motion to dismiss.

2. Smith Management is agent for various partnerships which own office buildings leased by the General Services Administration ("GSA") and occupied by various components of the Naval Systems Commands ("NSC"). Smith Management also manages these office

buildings.

Smith Management earns revenues of at least 5 percent of the lease cost for each office building. Approximately 1.2 million square feet of GSA-leased office space managed by Smith Management will be closed if the Defense Base Closure and Realignment Commission's recommendations and the President's approval of those recommendations are implemented.

Smith Management also serves as agent to various partnerships which own numerous buildings and facilities leased to private parties in Crystal City. These facilities are also affected by the decision.

3. Buildings managed by Smith Management which are leased in whole or in part to GSA and occupied by the Navy and which would be vacated pursuant to the challenged order are: Crystal Mall 2, Crystal Mall 3, Crystal Mall 4, Crystal Plaza 5, Crystal Plaza 6, Crystal Square 2, Crystal Square 3, Crystal Square 4, Crystal Gateway 1, Crystal Gateway 2, Crystal Gateway 3, Crystal Gateway 4, Crystal Gateway North, Crystal Park 1, Crystal Park 3, Crystal Park 5, 1919 Eads Street.

4. The decision to realign and relocate the NSC, currently located in GSA-leased space in Crystal City, has had a direct and detrimental impact on current lease negotiations between Smith Management and tenants of Smith facilities in Crystal City.

One tenant, currently located in 7,291 square feet of leased space at 2231 Crystal Drive (Three Crystal Park), is involved in

lease negotiations with Smith. It has insisted on the inclusion of a cancellation provision in its new 5-year lease, which begins November 1, 1993, allowing the tenant to escape the lease with six months prior notice if the Naval Sea Systems Command moves more than five miles from its current location in Crystal City. This request was in direct response to the Secretary of Defense's recommendation on March 12, 1993, to realign the Naval Systems Commands, which now has been approved and is to be implemented. Attached at Appendix A is a copy of this tenant's lease extension agreement.

Another tenant, currently located in 9,333 square feet of space at 2231 Crystal Drive (Three Crystal Park) renewed its lease on April 1, 1993, and because of the Secretary's March recommendation, insisted during lease negotiations of inclusion in the lease of an annual cancellation option if the Navy were to relocate.

These cancellation provisions diminish the value of the property, and therefore the earnings of Smith Management. Inclusion of such provisions also injures the company by injecting a substantial level of uncertainty about the length of its existing tenants.

5. The decision to close this Crystal City office space as the home of the Naval Systems Commands has also had a detrimental impact on the ability of Smith Management to attract and retain current retail tenants. Further, it has curtailed the plans by

several retail tenants to expand their operations.

For example, a tenant located in retail space in the Crystal City Underground Mall, is now delaying signing its lease renewal and has indicated a desire to enter into a shorter-term lease, if it enters into any lease at all.

Two other retail firms were negotiating leases for new, remodeled stores in Crystal City and have now indicated those plans have been shelved. It is our belief that the decision to close the Crystal City offices of the Navy was a substantial factor in those decisions.

Other retail tenants that originally had indicated a desire to renew their leases early are now expressing reluctance or demanding to renegotiate the terms of their leases.

Also, two financial institutions located in Crystal City retail space have expressed serious concern over the impending closure of the offices for use by the Naval Systems Commands, and have stated they in fact may not renew their leases.

6. Four GSA leases for office space occupied by the NSC contain cancellation clauses that allow GSA to cancel the leases after a certain date. Attached at Appendicies B - E are copies of the cancellation provisions in these leases. These leases are:

Lease No.	Building	Cancellation Clause Date	Lease Expiration
GS-11B-00074	Gateway Three	on or after 12/5/94	12/04/96

GS-11B-20689	Gateway Four	on or after 11/1/94	10/31/98
GS-11B-10268	Plaza 6	on or after 12/1/96	11/30/98
GS-11B-20816	Plaza 5	on or after 3/1/97	2/28/99

The decision to realign and relocate the facilities covered by these leases and the statutory mandate in the Base Closure Act to begin implementation of Base Closure Commission recommendations within 2 years mean that GSA will lose the tenants occupying these buildings. As a result of this loss, GSA may exercise the cancellation clauses. That would, of course, deprive Smith Management substantial revenue that it would have received absent the decision to relocate these facilities. At a minimum, the possibility that these clauses will be used raises a substantial level of uncertainty into the operations of our company.

Upon vacancy by the Navy of the office buildings, an unavoidable period of downtime will occur while the buildings are restored to condition for re-rental and while new tenants are sought. Based on previous experience, this period of downtime will range between 9 months and 1 year. Assuming 9 months and an average rental rate of $23 per square foot, the unavoidable direct cost to Smith is at least $1.24 million (1.2 million square feet x $23 per square foot average rental rate x .06 management fee x .75 year) and could be as high as $1.65 million (1.2 million square feet x $23 per square foot average rental

rate x .06 management fee x 1 year).

7. In at least one instance, following enactment of the Base Closure Act in November 1990, far in excess of 1,000 Navy employees were moved from one GSA-leased facility whose lease had expired to another GSA-leased facility under a new lease. The Navy did not use the process codified in the Base Closure Act to effect this move.

Upon expiration of the GSA lease for space in the Van Buren Building (now known as Presidential Towers) on or about July 31, 1991, between 1,700 and 2,100 employees of the Navy's Space and Naval Warfare Systems Command (SPAWARS) were moved into approximately 295,117 net useable space in the Crystal Park 5 building, a Smith Management managed building located in Crystal City. The lease for Crystal Park 5 was effective August 1, 1991 and expires July 31, 1998. The number of employees involved in this move is estimated by using an allotment of between 135 and 165 square foot per employee which is standard for this type of office space.

Further Affiant sayeth naught.

Subscribed and Sworn
Before me on
this 17th day of September, 1993

Notary Public
Arlington County Virginia
Commission Expires 7/31/94

Document Separator

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. LES ASPIN In His Official Capacity As SECRETARY OF DEFENSE and THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, Defendants.	Civil Action No. 93-844-A

AFFIDAVIT OF EDWARD J. NEWBERRY

Edward J. Newberry, being duly sworn, deposes and states as follows:

1. I am one of the counsel in this case for plaintiffs. I have been counsel for the Smith Management Company during the Commission's deliberations leading to the President's decision to order the closure of the Crystal City offices as the home for the Naval Systems Commands.

2. Attached to this affidavit is a letter written on behalf of Smith Management from Thomas Hale Boggs, Jr., a partner in this firm, to James Courter, Chairman of the Base Closing Commission. The letter is dated June 7, 1993, and addresses the

lack of authority under the Base Closure Act for the Commission to recommend or implement a closure or realignment of GSA-leased space.

3. I attended a hearing of the Commission on June 18, 1993, during which the Commission rejected the position of the Smith Management Company that the Crystal City buildings are not subject to the Base Closure Act.

4. I also attended a Commission session on June 27, 1993, during which the Commission announced that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City.

5. Further, affiant sayeth not.

Edward J. Newberry

Subscribed To and Sworn To
Before Me This 17th day of September, 1993

Bonnie Lynn O'Malley
Notary Public

My Commission Expires August 31, 1994

PATTON, BOGGS & BLOW
2550 M STREET, N.W.
WASHINGTON, D.C. 20037
(202) 457-6000

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TELECOPIER: 457-6315

WRITER'S DIRECT DIAL

(202) 457-6040

June 7, 1993

The Honorable James A. Courter
Chairman
Base Closure and Realignment
Commission
1625 K Street, N.W.
Washington, D.C. 20006

Re: Realignment of Naval Systems Commands, Arlington, Virginia

Dear Chairman Courter:

I appreciated the opportunity to meet with you last week, and wanted to follow up on several of the points which were made during our meeting.

As you know, Arthur Anderson & Company is developing an analysis which demonstrates that the Navy is unlikely to achieve any cost savings, and may incur substantial costs, from the proposed realignment of Navy facilities in Crystal City. At the same time, the Crystal City property owners are developing Navy ownership alternatives that could provide substantial savings to the Navy. These issues deserve careful consideration, and we will continue to work with your staff on these ideas.

We also believe the Navy recommendations raise serious questions about whether the Base Closure and Realignment Commission (the "Commission") has jurisdiction over the proposed Naval Systems Commands realignment. Ed Newberry, of my firm, has spoken briefly with Mary Ann Hook of your staff about our concerns, and I wanted to take this opportunity to explain them more fully for your consideration.

BACKGROUND

On March 12, 1993, the Secretary of Defense recommended to the Commission that various Naval Systems Commands move from General Services Administration ("GSA")-leased space in Arlington to government-owned space in various locations throughout the country. GSA-leased space is general purpose, or generic office space that GSA leases under the Federal Property and Administrative Services Act ("FPASA") for use by other federal

agencies. Implicit in the Secretary's recommendation is the legal conclusion that GSA-leased space occupied by a DOD component is a "military installation" for purposes of the Defense Base Closure and Realignment Act of 1990 (the "Base Closure Act" or the "Act"). A closer examination, however, raises serious questions about this legal conclusion because GSA-leased space is not a military installation as it is not "under the jurisdiction of the Department of Defense." Consequently, the Naval Systems Commands would not be a military installation and a proper subject for realignment under the Base Closure Act.

The Navy -- and presumably DOD -- reached this conclusion just a short time ago. From 1990 through 1992, well after enactment of the Base Closure Act, the Navy attempted to relocate the systems commands from their current location to an alternate site in northern Virginia. In the various environmental assessment documents that the Navy and GSA released for public review discussing the planned relocation, the Navy made it clear that the move would be accomplished under the FPASA -- the statute that governs generally the assignment and reassignment of general purpose space among federal agencies. But for reasons not relevant here, the Navy did not do so. Instead, it now has chosen to pursue an alternate course: close the facilities in Arlington pursuant to the Base Closure Act, and relocate the commands to other locations. For the reasons described below, we question whether the Act authorizes this action.[1/]

DISCUSSION

Section 2910 of the Base Closure Act defines a "military installation" as either an identified class of federal enclaves or any other property under the "jurisdiction of the Department of Defense." This definition necessarily limits the Base Closure Act to federal facilities under DOD's jurisdiction. In addition, although a "leased facility" may constitute a "military installation," it does not do so unless it is under the jurisdiction of DOD.

DOD has "jurisdiction" under the Base Closure Act only when it serves as the landholding agency for a particular enclave and

---

1/ Under the recent decision of the U.S. Court of Appeals for the Third Circuit, issues pertaining to the extent of the Commission's authority under the Act are subject to judicial review. Specter v. Garrett, 1993 U.S. App. LEXIS 11488 (May 18, 1993).

is charged with the property's administration. That entails maintaining accountability for the property and keeping it in its custody and control. DOD, however, does not have jurisdiction over every piece of federal property that it occupies. For example, when the Army uses National Forest lands to conduct training, like it does at the DeSoto National Forest in Mississippi, the lands do not thereby become a military installation under the Act. The property remains under the jurisdiction of the Department of Agriculture because it, rather than DOD, is charged with the property's accountability, custody, and control. Any other interpretation would lead to the absurd result that the Base Closure Act could be used as a vehicle to sell National Forest, as well as other public, lands.

The same reasoning applies to the property that the Naval Systems Commands occupy through GSA. GSA does not divest itself of responsibility for this property when DOD uses it. To the contrary, the Federal Property and Administrative Services Act ("FPASA"), 40 U.S.C. § 490, and its implementing regulations, 41 C.F.R. § 101 et seq., charge GSA with the exclusive authority to lease and manage general purpose space in designated urban areas, such as Arlington, Virginia. Any agency that has a requirement for general purpose space, like the Navy with respect to its systems commands, must obtain the space from GSA. In accordance with the FPASA, GSA will lease the space from private lessors, purchase an existing facility, or build a new one to satisfy the requirement. GSA's regulations make clear that the space remains under the jurisdiction of GSA, not the occupying agency. See 41 C.F.R. § 101-20.003(u). The regulations further specify that GSA is responsible for maintaining the property, keeping it on GSA's inventory of real property holdings, and listing the property in annual real property reports to Congress.[2/]

Neither the Base Closure Act nor its history indicates that Congress intended this statute to repeal the provisions of the

---

2/ DOD's internal regulations also recognize that GSA has jurisdiction over GSA-leased space. For example, the Navy's data base of real property holdings excludes GSA-leased space. Shore Facilities Planning Manual, Naval Facilities Engineering Command Instruction 11010.44D, at II-7 (1981) (Tab 1). In addition, the Navy's Real Estate Procedural Manual states explicitly that GSA-leased space is under the control of GSA, not the Navy. Real Estate Procedural Manual, Naval Facilities Engineering Command P-73, at 13-14 (1987) (Tab 2).

FPASA authorizing GSA to lease, assign, and reassign general purpose space for DOD. Congress expressly limited the scope of the Act to closure and realignment actions involving activities over which DOD has jurisdiction. Thus, GSA's principal role in the area of government-leased space remained unaffected by the enactment of the Base Closure Act.

The statutory language "including any leased facility" in the definition of military installation does not alter this conclusion. Under accepted principles of statutory construction, this language simply modifies "under the jurisdiction of the Department of Defense." Any other construction would require the conclusion that these words effected significant changes in the FPASA, but there is no indication of such broad sweeping intent in the legislative history. Rather, the correct reading of the statutes is that "any leased facility" covers only those facilities DOD directly leases. This includes DOD leases of "special purpose" space and general purpose space located outside of designated urban areas, as well as space under DOD's jurisdiction that it leases to private entities, such as government-owned, contractor-operated ("GOCO") facilities. It, however, does not cover general purpose space in urban areas which is under GSA's jurisdiction in which DOD is but an occupant.

We are also looking at one other legal issue. The analysis by Arthur Anderson shows that a very substantial portion of the savings claimed by the Navy would result from reductions in personnel. This raises the question whether the proposed realignment is actually a reduction in force and, therefore, excluded from the definition of "realignment" under the Base Closure Act.

I appreciate your consideration of these issues. We stand ready to work with you or your staff should you have any questions or need additional information. Please call me or my partner, John Oberdorfer, if you or your staff wish to discuss these issues further.

Sincerely yours,

Thomas Hale Boggs, Jr.

Enclosures
cc: Mary Ann Hook, Esq.

NAVFAC INST 10014D

SHORE FACILITIES PLANNING MANUAL

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA. 22332

b. NAVFAC P-72 (Category Code Directory for Navy Facilities Assets)

(1). The CATEGORY CODE DIRECTORY (CCD) is an automated file containing the Department of the Navy facility category codes, category code names and units of measure. The file also contains the Investment Category and Maintenance Cost Account Numbers for each category code. The CCD file is maintained at FACSO. Maintenance and operation of the CCD is as follows:

(a). Recommendations for CCD modifications are forwarded to NAVFACENGCOMHQ (Code 2013) for review. After approval, changes and additions are processed by NAVFACENGCOMHQ via CRT to the CCD file.

(b). NAVFAC P-72 is ~~computer-generated~~ developed from the CCD file. Tape extracts of the file are used by the other systems described herein.

c. NFADB (Navy Facility Assets Data Base)

(1). The NAVY FACILITY ASSETS DATA BASE is an automated file of data on each existing facility owned by or leased to the Navy and Marine Corps. Included in the NFADB are Class I (land) and Class II (buildings, structures, utilities) facilities. Data is provided on location, type of acquisition, type of construction, cost, size, utilization and condition. The SFPS uses the NFADB as the source for existing assets data. The NFADB file is maintained at FACSO. Maintenance and operation of the NFADB are described in detail in the NFADB Manual, NAVFAC P-78, and are summarized as follows:

(a). The EFD inputs facility utilization and condition data via the CRT, for those data elements addressed by SFPS. All other data is submitted by the NFADB reporting activities to the EFD as changes occur. These changes are also processed via CRT to FACSO.

(b). To confirm NFADB transactions, computer-generated PROPERTY RECORDS (PR's), OUTGRANT RECORDS (OR's) and DISPOSAL RECORDS (DR's) are returned by mail to reporting activities, with copies of these provided to the EFD for Navy activities and the Headquarters Marine Corps for Marine Corps activities.

(2). The following annual reports are generated from the NFADB:

(a). NAVFAC P-77, Inventory of Military Real Property, Navy

(b). NAVFAC P-164, Detailed Inventory of Naval Shore Facilities

(c). NAVFAC P-319, Statistical Tables of Real Property, Navy

d. MILCON RL (Military Construction Requirements List)

(1). The data contained in the MILCON RL is initiated at the activity level by means of the OPNAV Form 11000/4, "Project for Correction of Facility Deficiency".

(2). These projects are developed to satisfy deficiencies identified by the SFPS that cannot be solved by other means. The MILCON RL also uses the MAGIC and the CCD to describe the projects shown. Upon completion of a project, those facilities acquired are entered into the NFADB.

REAL ESTATE PROCEDURAL MANUAL

NAVFAC P-73

MAY 31 1983
NAVY OGC
LIBRARY

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA. 22332

20. MARKET SURVEYS.

Market surveys shall be made for all lease acquisitions of space and shall include:

a. Information on the availability of space as indicated in circulars or newspaper advertisements and consultations with realtors, brokers, owners and others as appropriate.

b. Inspections of all offered and other available locations which meet minimum requirements regarding quantity, quality, availability, and probable cost.

c. Documentation of survey findings for each location inspected.

21. DIRECT LEASING OF GENERAL PURPOSE SPACE.

a. Limitations. General purpose space located in urban centers which are listed in Subpart 101-18.102 of reference (c) is under the control of the General Services Administration and as indicated in paragraph 4.b, such space is normally obtained by GSA space assignment. General purpose space outside of urban centers can be leased directly by the Navy. Procedures set forth in paragraph 22 should be followed. In addition, general purpose space may be acquired by direct leasing if either of the following conditions exist:

(1) The space may be leased for no rental, or a nominal consideration of $1.00 per annum; or

(2) When authority has been requested by an executive agency and a specific delegation of authority has been granted by the Administrator of General Services.

b. Leasing Procedures.

(1) No Rental or Nominal Rental of $1.00. Where general purpose space in urban centers can be obtained at no rental or a nominal rental of $1.00 per annum, direct leasing procedures shall be utilized as set forth in paragraph 22 of this Chapter.

(2) Specific Delegation of Authority from Administrator of General Services. Situations occur where it is considered more advantageous to the Government for the Navy to directly lease general purpose space in an urban center than to obtain such space by GSA space assignment. In that case all facts and circumstances including the quantity and location of the proposed space, ownership thereof, estimated cost of direct leasing and for SLOC under a GSA space assignment along with complete justification for the proposed leasing action will be submitted to NAVFACENGCOM via the major claimant and the Chief of Naval Operations or the Commandant of the Marine Corps as appropriate. Upon obtaining all requisite additional approvals NAVFACENGCOM will submit a request to the Administrator of General Services for the indicated specific delegation of authority. No leasing action shall be undertaken until specific authorization is obtained. Upon receipt of specific authority, direct leasing action, as indicated in paragraph 22 shall be initiated subject to the specific delegation of authority.

22. DIRECT LEASING OF SPECIAL PURPOSE SPACE AND OTHER REQUIRED REAL PROPERTY.

a. Determination of Requirement. The requirement for temporary use of real property is determined by activities and commands based on an approved military mission. The determination to pursue leasing action should include consideration of DOD criteria, Navy policy, limitations and prohibition as set forth in paragraphs 5, 6, 7, 8, 9 and 10 hereof. The cost of obtaining an appraisal and title evidence, in addition to annual rental must be funded by the activity or major claimant. Upon determining that leasing is the appropriate method of satisfying the requirement and necessary funds are available, the appropriate EFD shall be requested to take the indicated action to acquire the proposed lease.

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STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1-16.601

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE: FEB 28 1990

LEASE NO.: GS-11B-00074 "NEG"

THIS LEASE, made and entered into this date by and between

Gateway Associates Limited Partnership
c/o Charles E. Smith Management, Inc.

whose address is 2345 Crystal Drive
Arlington, VA 22202

and whose interest in the property hereinafter described is that of owner

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

22,656 net usable square feet of office space being: 8,059 net usable square feet being a portion of the eleventh floor and 14,597 net usable square feet being a portion of the twelveth floor in the building known as Crystal Gateway Three located at 1215 Jefferson Davis Highway, Arlington, Virginia 22202.

to be used for purposes as designated by the Government.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on

December 5, 1989 through December 4, 1996, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $ See Rider 1

at the rate of $ See Rider 1 per See Rider 1 in arrears. Rent for a lesser period shall be prorated. Rent checks shall be made payable to:

Gateway Associates Limited Partnership, c/o Charles E. Smith Management, Inc.
2345 Crystal Drive, Arlington, Virginia 22202

4. The Government may terminate this lease ~~at any time~~ in whole or in part after December 5, 1994 by giving at least See Rider 1 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

INITIALS: Lessor | Govt.

Lessor Initials

~~5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals~~

provided notice be given in writing to the Lessor at least ..... days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term. ~~Such notice shall be computed commencing with the day after the date of mailing.~~

RIDER NUMBER 1
OF LEASE CONTRACT NUMBER
GS-11B-00074

1. Lease Rental Agreement
Paragraph 3 of SF-2:

The Lessor shall give the Government a three (3) month rental abatement beginning December 5, 1989, and ending March 4, 1990. Beginning March 5, 1990, the Government shall pay the Lessor annual rent of $617,602.56 at the rate of $51,466.88 per month in arrears. Rent for a lesser period shall be prorated.

2. Government Termination Rights
Paragraph 4 of SF-2:

in whole or in part, in increments consisting of the suites identified in Attachment to Rider 1, pages 3 & 4.

INITIALS

Lessor	Gov

The Government may terminate this lease after December 5, 1994, by giving at least 180 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

3. The Lessor Shall Provide the Following:

The Lessor shall furnish to the Government, as part of the rental consideration, the following:

A. All services and maintenance necessary for operations as required by this lease and by the Solicitation of Offers(SFO) 89-055.

B. In accordance with SFO 89-055, Paragraph 33, entitled "Painting", all areas identified on the attached floor plan shall be newly painted. The Lessor shall paint the identified surfaces within 120 days of lease award.

Attachment, Rider 1, 1 and 2

INITIALS

Lessor	Govt.

C. In accordance with SFO 89-055, Paragraph 45, entitled "Carpet", all floor areas identified on the attached floor plan, shall be newly carpeted. A minimum of three (3) color samples shall be submitted to the GSA designated Field Office within forty-five (45) days of award of this lease. The Lessor shall carpet identified floor areas within 210 days of award.

INITIALS

Lessor	Govt.

Attachment to Rider 1, pages 1 and 2

D. In accordance with SFO 89-055, Paragraph 38, entitled "Doors: Identification", all door knobs identified in writing by award as posing a danger to the blind, shall be equipped with a plastic abrasive coating. All warning indicators shall be installed within thirty (30) days of award of this lease.

Lessor _____ Government _____

RIDER NUMBER 1
OF LEASE CONTRACT NUMBER
(CONTINUED)
GS-11B-00074

4. Parking

The Lessor will make at least 43 parking spaces available to the Government tenants housed under this lease agreement at no additional cost to the Government; however, at the Government employee's expense.

INITIAL
Lessor G

5. "Existing" clause:

Certain items or conditions in this solicitation are proposed to be accepted as "Existing". The intent of this qualification is that the Government finds such items or conditions to be at least minimally acceptable in this succeeding lease.

Nonetheless, such items or conditions are to be in "good repair and tenantable condition" at the time of the lease commencement or by any other specified date(s). Further, the Lessor is to maintain (or replace, if necessary) such items or conditions so that they remain in "good repair and tenantable condition" throughout the term of this lease. If replacement is or becomes necessary, such replacement must be no less than equal, in quality and function to the existing.

6. Government's Option for Additional Space:

In the event that a minimum of 5,900 contiguous net usable square feet becomes available in Crystal Gateway Three located at 1215 Jefferson Davis Highway, Arlington, Virginia, the Lessor will notify the Government in writing. The Lessor shall also provide, at the same time, a 1/8th inch blue line drawing of the space offered to the Government. The Government will be given sixty (60) days from receipt of the Lessor's notification and drawings to determine if it is in the Government's best interests to exercise this option. The space offered under this option will be subject to net usable measurement by the Government.

If the Government chooses to exercise this option for additional space within the designated period of time, the term of said space will be co-terminous with this Lease Contract GS-11B-00074. All conditions, concessions, and rental agreements shall be subsequently agreed to by the parties.

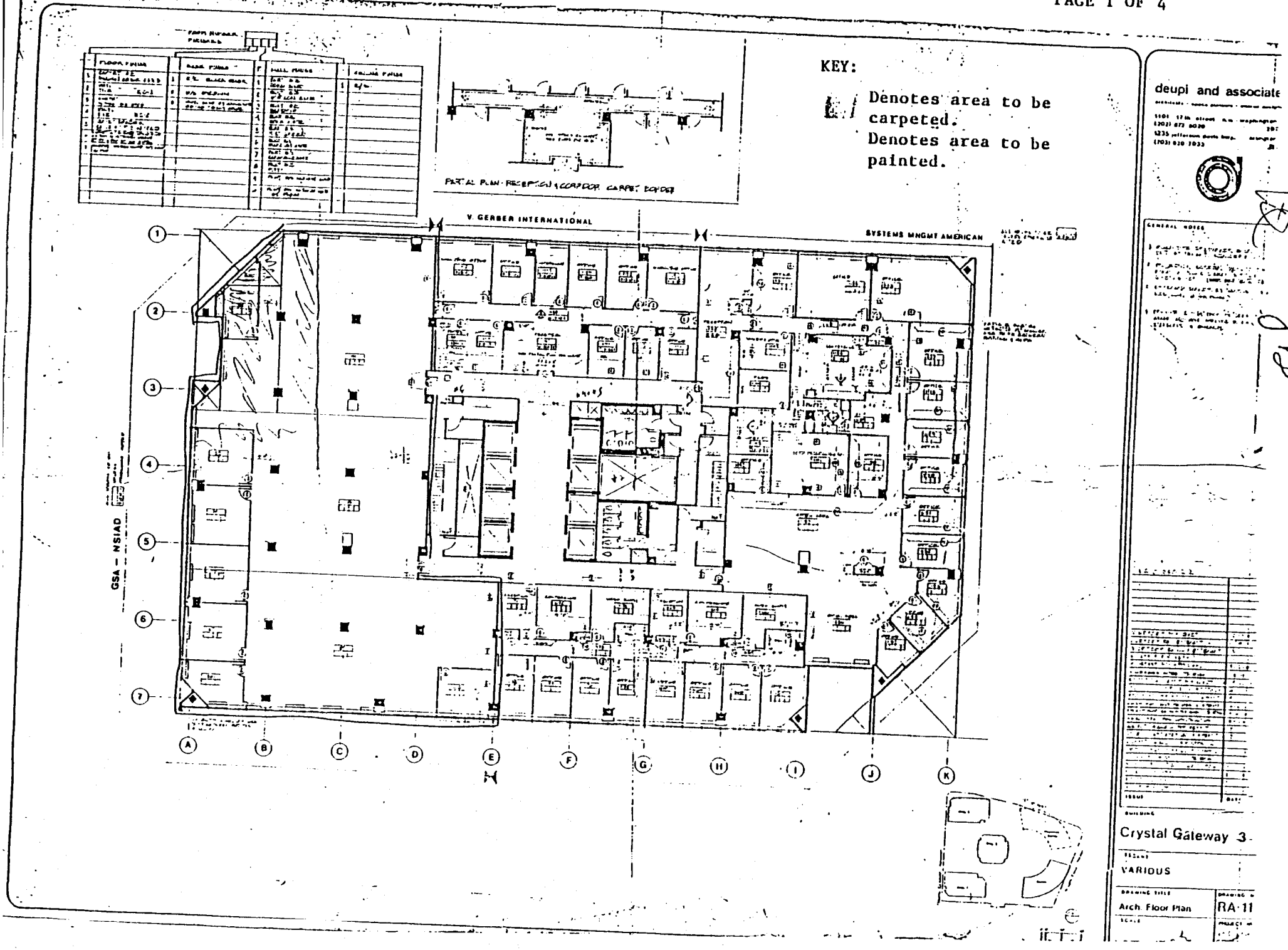
Additionally, upon agreement on the conditions, concessions, and rental agreements, a Supplemental Lease Agreement will be issued to record and amend this Lease Contract GS-11B-00074.

Lessor _____ Government _____

7. Overtime Rate

The Lessor and the Government will agree to an overtime services rate within 90 days of lease award. When the services rate is agreed upon, a Supplemental Lease Agreement will be issued to record and amend this Lease Contract GS-11B-00074. However, until an overtime services rate is agreed upon, the Government's designated Field Office will notify the Lessor when overtime operation of the building systems are necessary. After the overtime services are rendered, the Lessor will submit actual bills and receipts to the GSA designated Field Office as proof of the overtime expenses incurred at the subject building. The Government will be given the time and opportunity to review, discuss, and negotiate these expenses with the Lessor prior to payment.

Lessor _____ Government _____

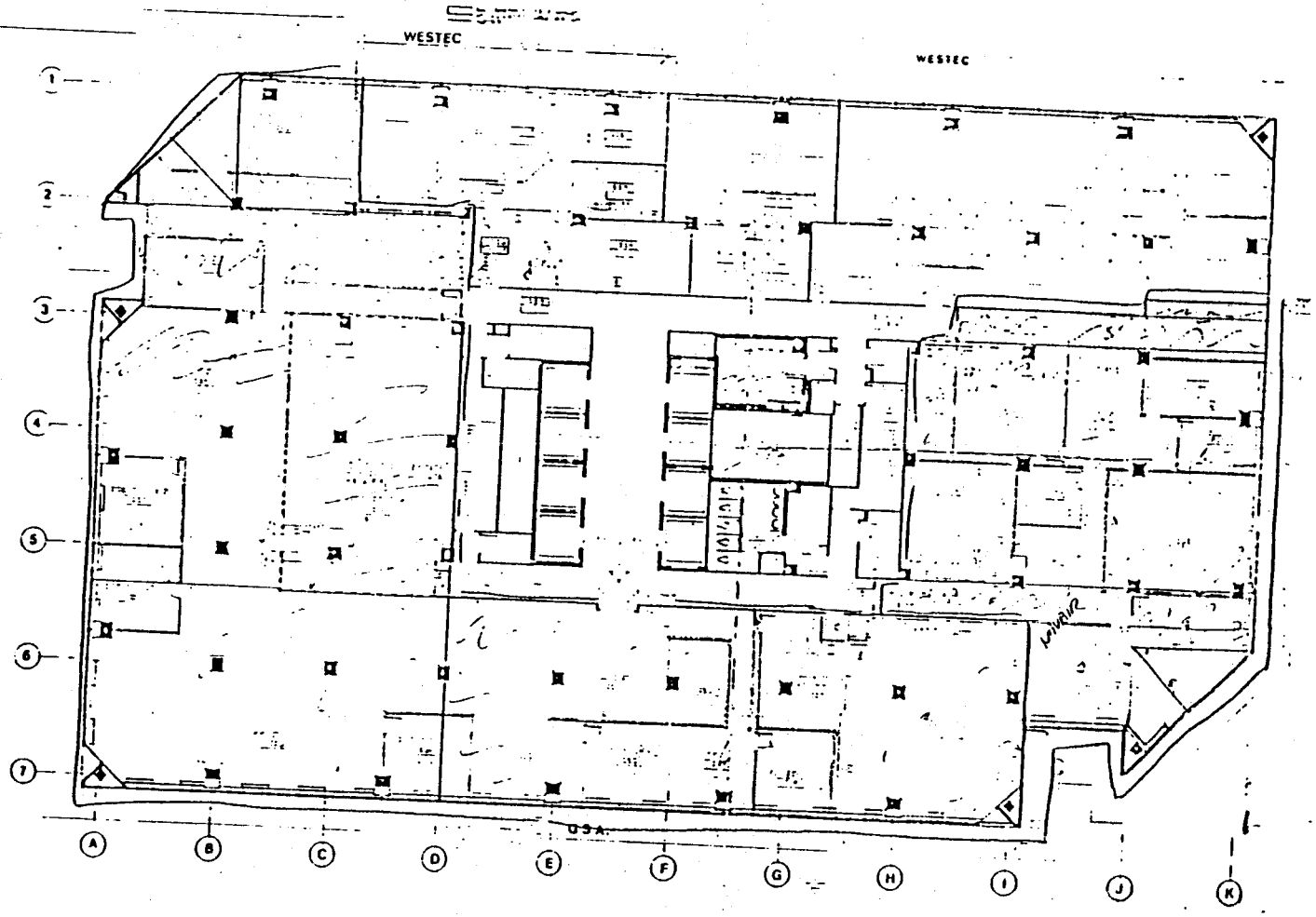

KEY:
Denotes area to be carpeted.
Denotes area to be painted.
PARTIAL PLAN - RECEPTION & CORRIDOR CARPET DEPOT
V. GERBER INTERNATIONAL
SYSTEMS MNGMT AMERICAN
GSA - NSIAD
deupi and associate
Crystal Gateway 3
VARIOUS
Arch. Floor Plan
RA-11

FLOOR	NO	BASE	NO	WALL	NO	CEILING

KEY:

Denotes area to be carpeted.

Denotes area to be painted.



deupi and associates

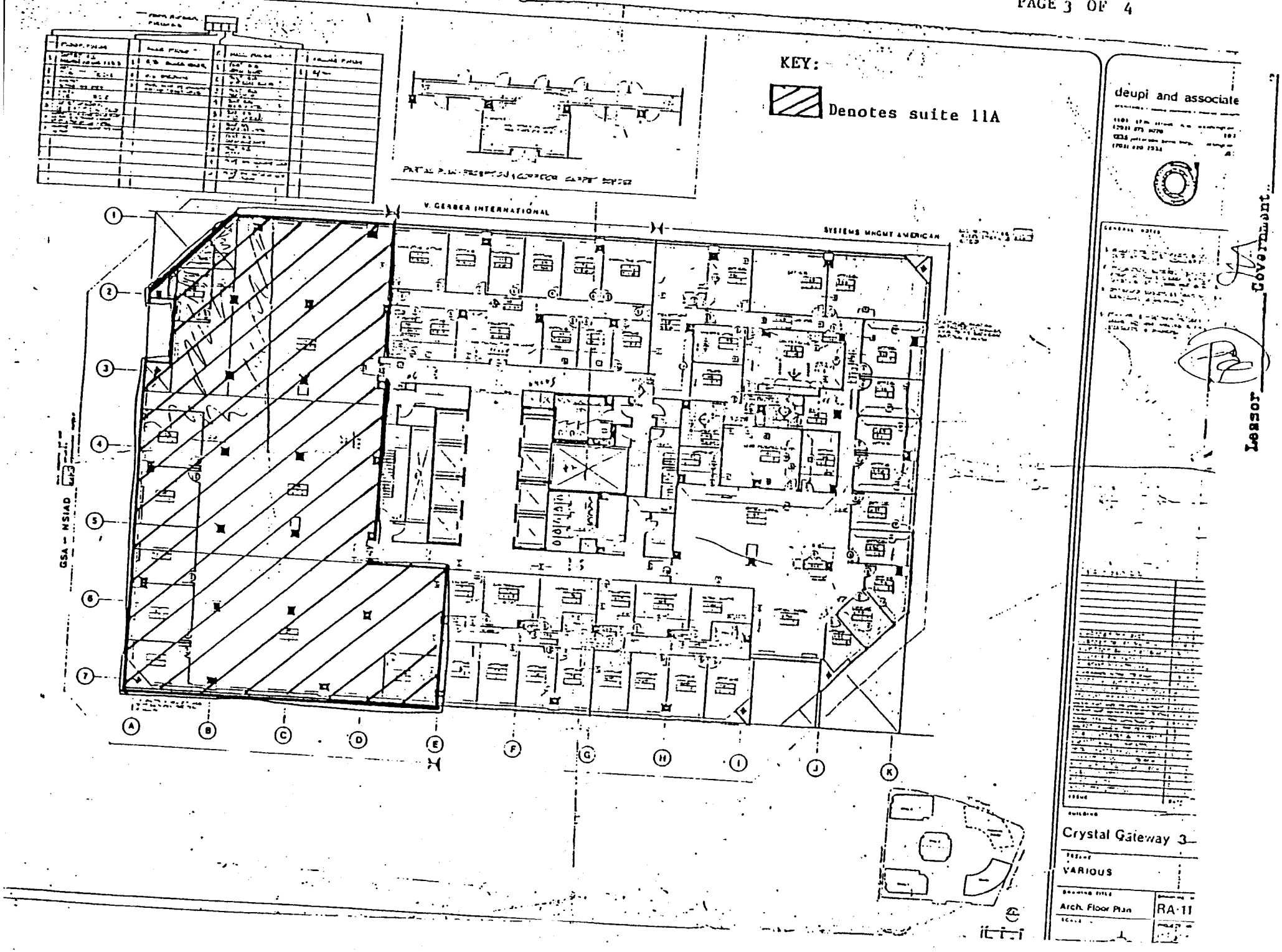
Crystal Gateway 3

VARIOUS

Arch. Floor Plan

RA-12

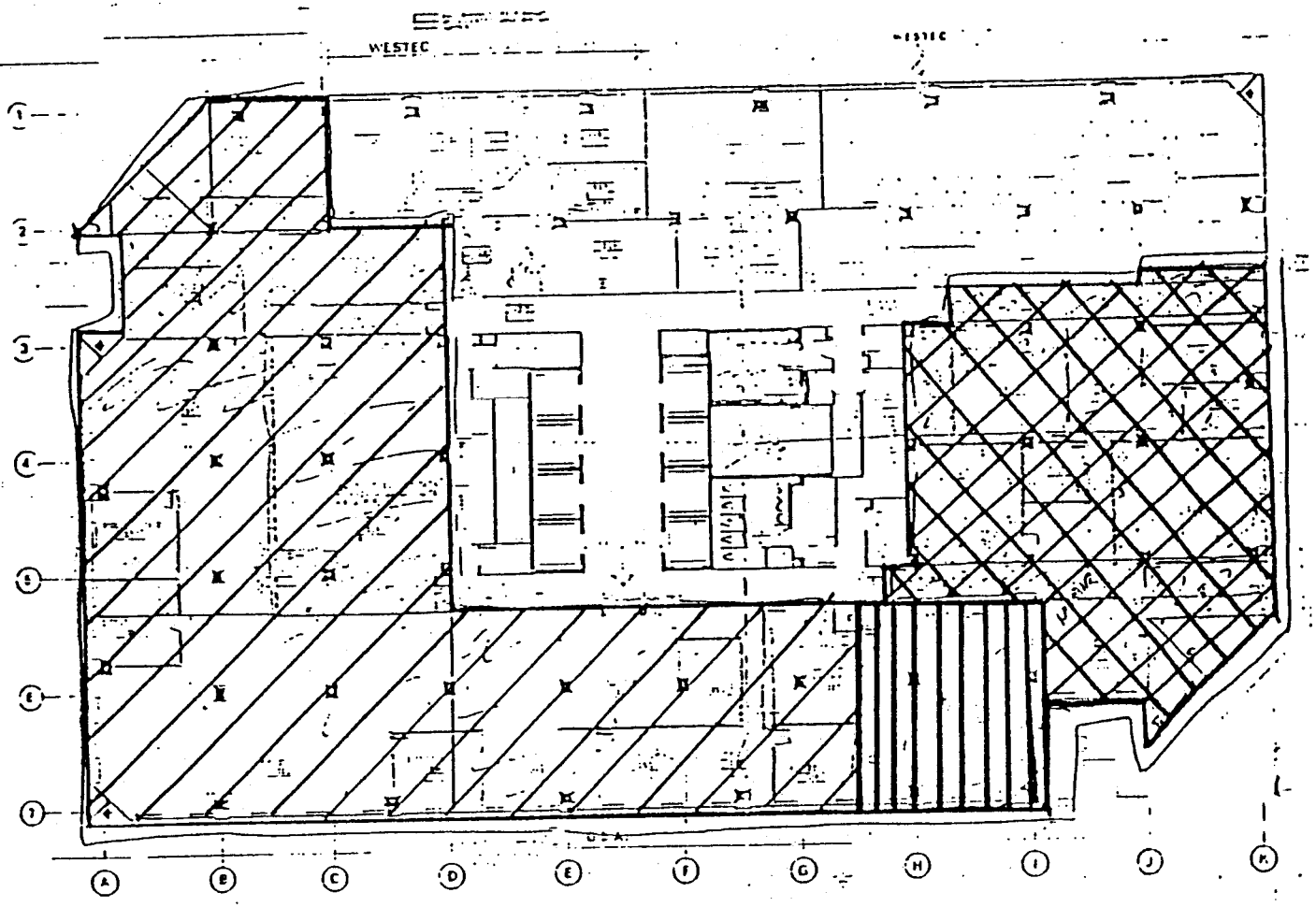
Lessor Government


KEY:
Denotes suite 11A
V. GERBER INTERNATIONAL
SYSTEMS MNGMT AMERICAN
GSA - NSIAD
deupi and associate
Lessor
Government
Crystal Gateway 3
VARIOUS
Arch. Floor Plan
RA-11

THIS PLAN IS NOT TO SCALE

KEY:

- Denotes suite 12A
- Denotes suite 12B
- Denotes suite 12C



deupi and associates

Crystal Gateway 3

Arch. Floor Plan

RA-12

Government

Agency

GENERAL SERVICES ADMINISTRATION
PUBLIC BUILDING SERVICE

SUPPLEMENTAL LEASE AGREEMENT

NO. - SEP 2 1 199

TO LEASE NO GSD - GS-11B-00074

ADDRESS OF PREMISES
Crystal Gateway Three
1215 Jefferson Davis Highway
Arlington, VA 22202

THIS AGREEMENT, made and entered into this date by and between

Gateway Associates Limited Partnership
c/o Charles E. Smith Management, Inc.
whose address is 2345 Crystal Drive
Arlington, Virginia 22202

hereinafter called the Lessor, and the UNITED STATES OF AMERICA hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease,

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective _____, as follows:

Issued to reflect an increase of 7,875 net usable square feet of space at the Crystal Gateway III Building, as identified on the attached floor plan, in accordance with paragraph 6 of Rider Number 1. The following paragraphs are hereby amended as follows:

Paragraph 1 of the basic lease:

30,531 net usable square feet of office space being: 7,875 net usable square feet being a portion of the tenth floor, 8,059 net usable square feet being a portion of the eleventh floor, and 14,597 net usable square feet being a portion of the twelfth floor in the building known as Crystal Gateway Three located at 1215 Jefferson Davis Highway, Arlington, Virginia 22202.

The alterations for the tenth floor space will be at additional expense subject to negotiation by the parties, not to exceed $150,8[illegible]2.00. At the option of the Government, all or part of the alterations cost may be ammortized over the term of the rental at the interest rate of 10%. In the event the Government exercises its right to terminate the lease

All other terms and conditions of the lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date:

LESSOR
Gateway Associates Limited Partnership

BY Robert H. Smith (Signature) — General Partner (Title)

IN PRESENCE OF
(Signature) — (Address)

UNITED STATES OF AMERICA

BY (Signature) — Contracting Officer (Official Title)

GSA DC 68D2178

GSA FORM JUL 87 276

prior to the expiration date, the unamortized portion of the cost of the alterations would be payable to the Lessor in a lump sum.

Upon substantial completion the of alterations and Government acceptance, subject to punch list items, rent shall commence for the additional space and shall be coterminous with the prime lease. Rent for the tenth floor space will be $214,672.50 per annum payable at the rate of $17,889.38 per month in arrears. The effective date for rental payments shall be established by Supplemental Lease Agreement (SLA) upon Government acceptance of the space.

Paragrah 18 of the SFO:

The percentage of Government occupancy for tax purposes is 11.9%.

Paragrah 19 of the SFO:

The base year operating cost for escalation purposes is $136,609.25. The effective date for escalations will remain December 5 of each year.

INITIALS

Lessor	Govt.

Document Separator

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1D16.601

U.S. GOVERNMENT
LEASE FOR REAL PROPERTY

DATE OF LEASE JUN 8 1992

LEASE NO. GS-11B-20689 "Negotiated"

THIS LEASE, made and entered into this date by and between

Third Gateway Associates Limited Partnership
c/o Charles E. Smith Management, Inc.
2345 Crystal Drive
whose address is Arlington, Virginia 22202

and whose interest in the property hereinafter described is that of owner

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

A total of 58,314 net usable square feet (nusf), being the entire 3rd floor, the entire 4th floor, the entire 5th floor, the entire 6th floor and 10,094 square feet on the 7th floor, totaling 58,314 square feet of office space located in Crystal Gateway Four, 1213 Jefferson Davis Highway, Arlington, Virginia 22202.

to be used for such purposes as will be designated by the General Services Administration.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on November 1, 1991 through October 31, 1998, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $ 1,457,850.00

at the rate of $ 121,487.50 per month in arrears.
Rent for a lesser period shall be prorated. Rent checks shall be made payable to: Charles E. Smith, Inc.
2345 Crystal Drive, Arlington, Virginia 22202

4. The Government may terminate this lease at any time after the 3rd year of the lease by giving at least 365 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

~~5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:~~

INITIALS
Lessor | Govt.

~~provided notice be given in writing to the Lessor at least _____ days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term.~~
~~Said notice shall be computed commencing with the day after the date of mailing.~~

EXCEPTION TO SF2 APPROVED BY GSA / IRMS 12D69

6. **The Lessor shall furnish to the Government, as part of the rental consideration, the following:**

A. The Lessor shall provide all services, utilities and maintenance in accordance with SFO No. 91-120, as amended, and its attachments.

B. The Lessor will paint space occupied by the tenant after working hours at his own expense, including moving and returning furniture, within 90 days of lease award.

C. Certain items or conditions in the Lease have been "Accepted as Existing". The intent of this qualification is to give proper recognition to the fact that this lease is a succeeding lease and that the Government has found such items to be at least minimally acceptable with regard to the Government's continued occupancy of the space. However, Lessor is not relieved from compliance with the basic provisions and specifications as contained in this lease for future alterations, construction and/or improvements unless the Contracting Officer determines that the proposed alterations, construction and/or improvements are acceptable; said acceptance will be required to maintain his responsibilities, as identified in the Lease, and any attachments, in the condition as specified at the time of award.

7. **The following are attached and made a part hereof:**

A. SFO No. 91-120 (30 pages)
B. GSA Form 3517 (24 pages)
C. GSA Form 3518 (8 pages)
D. GSA Form 1217 (1 page)
E. Rider I (2 pages)
F. Rider II (1 page)
G. Rider III (2 pages)
H. Amendment to SFO #91-120 dated 11/22/91 (1 page)
I. Floor Plan of 7th floor

8. **The following changes were made to this Lease prior to its execution: Paragraph 4 of this SF-2 has been amended and Paragraph 5 has been deleted in its entirety.**

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR Third Gateway Associates, L.P.

BY _____ (Signature) Robert H. Smith

_____ (Signature) Robert P. Kogod

IN PRESENCE OF:

_____ (Signature)

_____ (Address)

UNITED STATES OF AMERICA

BY _____ (Signature)

Contracting Officer, RED, NCR
General Services Administration
(Official Title)

STANDARD FORM 2
FEBRUARY 1965 EDITION

EXCEPTION TO SF2
APPROVED BY GSA / IRMS 12D89

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES ADMINISTRATION
FPR (41CFR) 1D16.601

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE: NOV 29 1991

LEASE No. GS-11B-10268 "NEG" NOV 29 1991

THIS LEASE, made and entered into this date between Plaza Associates Limited Partnership

whose address is: c/o The Charles E. Smith Copanies
1735 Jefferson Davis Highway
Arlington, VA 22202

and whose interest in the property hereinafter described is that of OWNER, hereinafter called the LESSOR, and the UNITED STATES OF AMERICA, hereinafter called the Government.

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

A TOTAL OF 137,162 NET USABLE SQUARE FEET (NUSF) OF OFFICE AND RELATED SPACE CONSISTING OF FLOORS 2 THROUGH 12 BEING 129,285 NUSF, A PORTION OF THE 1ST FLOOR BEING 5,607 NUSF, AND A PORTION OF THE LOWER LEVEL BEING 2,270 NUSF AS SHOWN ON THE ATTACHED FLOOR PLANS. THE SPACE IS LOCATED AT THE BUILDING KNOWN AS CRYSTAL PLAZA 6, 2221 JEFFERSON DAVIS HIGHWAY ARLINGTON, VA 22202.

to be used for SUCH PURPOSES AS DETERMINED BY THE GOVERNMENT.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on DECEMBER 1, 1991, through NOVEMBER 30, 1996, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $3,154,726.00 at the rate of $262,893.83 per MONTH in arrears. Rent for a lesser period shall be prorated. Rent checks shall be made payable to: CHARLES E. SMITH COMPANIES, ~~1735 JEFFERSON DAVIS HIGHWAY~~ 2345 Crystal Drive, ARLINGTON, VA 22202.

Lessor	Govt

4. The Government may terminate this lease after the 5th year by giving at least 120 day's notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

~~5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:~~

provided notice be given in writing to the ~~Lessor at least~~ _____ days before the end of the original lease term or any renewal term; all other ~~terms and conditions~~ of this lease shall remain the same during any renewal term. Said notice shall be ~~computed commencing with the day after the date of mailing.~~

EXCEPTION TO SF2 APPROVED GSA/RMS 12D89

6. The Lessor shall furnish to the Government as part of the rental consideration, the following:

A. ALL SERVICES, MAINTENANCE, ALTERATIONS, REPAIRS, AND UTILITIES IN ACCORDANCE WITH SFO NO. 91-084 as amended.

7. The following are attached and made a part hereof:

1. SOLICITATION FOR OFFERS NO. 91-084 - 31 PAGES
2. AMENDMENT NO. 1 - 1 PAGE
3. GSA FORM 1217, LESSOR'S ANNUAL COST STATEMENT - 1 PAGE
4. LEASE RIDER NO. 1 - 1 PAGE
5. LEASE RIDER NO. 2 - 1 PAGE
6. LEASE RIDER NO. 3 - 1 PAGE
7. LEASE RIDER NO. 4 - 1 PAGE
8. LEASE RIDER NO. 5 - 2 PAGES
9. LEASE RIDER NO. 6 - POSITIVE CERTIFICATION FOR ASBESTOS/ACTION PLAN - 3 PAGES
10. FLOORPLANS OF LEASED AREA - 13 PAGES
11. GSA FORM 3517, GENERAL CLAUSES (REV 1/91), 24 PAGES
12. GSA FORM 3518, REPRESENTATIONS AND CERTIFICATIONS (REV 1/91), 8 PAGES

8. The following changes were made in this lease prior to its execution:

PARAGRAPH 5 OF THIS STANDARD FORM 2 HAS BEEN DELETED IN ITS ENTIRETY.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed thier names as of the date first above written.

LESSOR - PLAZA ASSOCIATES LIMITED PARTNERSHIP C/O THE CHARLES E. SMITH COMPAINES
BY ITS AGENT, CHARLES E. SMITH MANAGEMENT INC.,

BY _____ BY _____
ROBERT SMITH

IN PRESENCE OF _____ ADDRESS _____

UNITED STATES OF AMERICA

BY _____ CONTRACTING OFFICER, GSA, NCR, OPR, RED
MS. NANCY CARVER

STANDARD FORM 2
FEBRUARY 1965 EDITION

EXCEPTION TO SF2 APPROVED

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1D16.601

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE: Dec. 21, 1992

LEASE NO.: GS-11B-20816 "Negotiated"

THIS LEASE, made and entered into this date by and between

Plaza Associates Limited Partnership
c/o Charles E. Smith Management
2345 Crystal Drive
Arlington, Virginia 22202

whose address is

and whose interest in the property hereinafter described is that of owner

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

The entire first through eleventh floors and 1,276 square feet on G-1 level being a total of 120,677 net usable square feet in Crystal Plaza 5, 2211 Jefferson Davis Highway, Arlington, Virginia 22202.

to be used for such purposes as will be designated by the General Services Administration.

INITIALS
Lessor Govt.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on March 1, 1992 through February ~~28~~ 8, 1999, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $ 2,756,840.95

at the rate of $ 229,736.74 per month in arrears.

Rent for a lesser period shall be prorated. Rent checks shall be made payable to: Charles E. Smith Management, Inc., 2345 Crystal Drive, Arlington, VA 22202

after the 5th year of the lease

4. The Government may terminate this lease at any time by giving at least 120 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

~~5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:~~

INITIALS

provided notice be given in writing to the Lessor at least _____ days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term. ~~Said notice shall be computed commencing with the day after the date of mailing.~~

EXCEPTION TO SF2 APPROVED BY GSA / IRMS 12D88

6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:

A. The Lessor shall provide all services, utilities and maintenance in accordance with SFO No. 91-120, as amended, and its attachments.

B. Certain items or conditions in the Lease have been "Accepted as Existing". The intent of this qualification is to give proper recognition to the fact that this lease is a succeeding lease and that the Government has found such items to be at least minimally acceptable with regard to the Government's continued occupancy of the space. However, Lessor is not relieved from compliance with the basic provisions and specifications as contained in this lease for future alterations, construction and/or improvements unless the Contracting Officer determines that the proposed alterations, construction and/or improvements are acceptable.* ~~said acceptance~~ will be required to maintain his responsibilities, as identified in the Lease, and any attachments, in the condition as specified at the time of award.

INITIALS

Lessor	Govt.

*Additionally, the Lessor

7. The following are attached and made a part hereof:

A. SFO No. 91-188 (33 pages)
B. GSA Form 3517 (23 pages)
C. GSA Form 3518 (8 pages)
D. GSA Form 1217 (1 page)
E. Rider No. 1 (2 pages)
F. Rider No. 2 (2 pages)
G. Rider No. 3 (1 page)
H. Rider No. 4 (1 page)
I. Rider No. 5 (1 page)
J. Amendment to SFO #91-188 dated 7/1/92
K. Operations and Maintenance Program
L. Small Business Plan

8. The following changes were made to this Lease prior to its execution: Paragraph 4 of this SF-2 has been amended and Paragraph 5 has been deleted in its entirety.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

INITIALS

Lessor	Govt.

LESSOR Plaza Associates ~~L.P.~~ Limited Partnership

BY _____ (Signature) Robert H. Smith

_____ (Signature)

IN PRESENCE OF Michelle O'Hara (Signature)

2345 Crystal Drive Arlington VA (Address)

UNITED STATES OF AMERICA

BY _____ (Signature)

Contracting Officer, RED, NCR
General Services Administration (Official Title)

STANDARD FORM 2
FEBRUARY 1965 EDITION

EXCEPTION TO SF2
APPROVED BY GSA / IRMS 12D89

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. LES ASPIN In His Official Capacity As SECRETARY OF DEFENSE and THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, Defendants.	Civil Action No. 93-844-A

Please refer to this number when responding 430921-2

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

I, Charles S. Robb, United States Senator, hereby respectfully move that this court grant leave to file the attached brief amicus curiae in support of the plaintiff's Motion for Summary Judgment filed in the above-captioned matter.

Respectfully submitted,

Charles S. Robb

CHARLES S. ROBB
United States Senator

493 Russell Office Building
Washington, D.C. 20510
(202) 224-4024

September 17, 1993

CERTIFICATE OF SERVICE

The foregoing Motion of United States Senator Charles S. Robb for Leave to file a brief **amicus curiae**, with attachments, was served this 17th day of September, 1993, by first class mail postage prepaid on the following:

Anne L. Weissman, Attorney at Law
United States Department of Justice
Civil Division, Room 1034
901 E Street, N.W.
Washington, D.C. 20004

Richard Parker, Esq.
Assistant United States Attorney
1101 King Street, Suite 502
Alexandria, Virginia 22314

Sheila C. Cheston, Attorney at Law
Defense Base Closure and
Realignment Commission
1700 North Moore Street
Suite 1425
Arlington, Virginia 22209

Benjamin G. Chew, Esq.
John L. Oberdorfer, Esq.
2550 M Street, N.W.
Washington, D.C. 20037

Charles S. Robb

CHARLES S. ROBB
United States Senator

493 Russell Office Building
Washington, D.C. 20510
(202) 224-4024

September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. LES ASPIN In His Official Capacity As SECRETARY OF DEFENSE and THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, Defendants.	Civil Action No. 93-844-A

BRIEF AMICUS CURIAE OF
UNITED STATES SENATOR CHARLES S. ROBB
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, United States Senator Charles S. Robb, in my official capacity, respectfully submit this brief **amicus curiae** in support of Plaintiff's Motion for Summary Judgment in the above-captioned matter. Use of the special base closure process to realign Naval Commands from Crystal City is improper and **ultra vires**. The carefully limited jurisdictional provisions of the Defense Base Closure and Realignment Act, P.L. 101-510 §2901 et seq. ("the Act") do not extend to general office space under the jurisdiction of the General Services Administration such as that occupied by the Navy Commands in Crystal City.

I. THE HISTORY AND NECESSITY OF THE DEFENSE BASE CLOSURE AND REALIGNMENT PROCESS

Prior to 1988, military bases were rarely closed. Such closures as did occur were limited primarily to deteriorated or hazardous physical facilities, or installations unsuitable to the missions of the modern military, such as cavalry stables or dirigible hangars. Even in the case of these few scattered installations, opposition from local residents and Congressional representatives made closure actions difficult. It proved possible for vocal members of Congress to preserve bases in their jurisdictions due to the lack of motivation on the part of other members to close them. Therefore, the local economic interest in preserving the status quo took de facto precedence over the national interest in reducing expenditures for obsolete facilities. Fiscal savings notwithstanding, many installations were blocked from closure through subsequent Congressional action.

In 1988, responding to both increased fiscal pressures and a decrease in world tensions, the Executive branch made a comprehensive attempt to reduce America's military infrastructure, proposing to close in a coordinated manner numerous bases across the United States. This was the first comprehensive attempt to close those installations which still met relevant physical standards and mission criteria, but were considered expendable when compared to other installations with similar missions.

Realizing that the inevitable result of the then-current system was a virtual guarantee of perpetual survival for most military installations, Congress took the extraordinary step of restricting its own power. Public Law 101-510, signed into law by the President on November 5, 1990, created the Defense Base Closure and

Realignment Commission ("Commission"), an independent panel whose decisions were subject to Presidential and Congressional review only in the aggregate. Once a particular military installation is put into the Commission process, the ability of the people through their representatives to affect a decision on an individual installation is extremely limited. This greatly and intentionally reduced the influence of affected localities and their elected representatives over the closure process with the specific goal of reducing the Department of Defense's property inventory.

II. THE JURISDICTION OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION MUST BE PRECISELY AND CAREFULLY CONSTRUED

The Defense Base Closure and Realignment Act is an unusually powerful grant of authority to the Executive by Congress. Congress knew that in creating this process it was limiting citizens' ability to express their preferences and the Legislative Branch's own ability to represent constituent interests. Yet, faced with the dual obligations of representing local constituents while legislating for the good of the nation, Congress carefully designed a process that would, if properly instituted and operated, carefully balance these competing roles.

The Commission's limited jurisdiction was a very deliberate construct of the Congress. Without careful restrictions on its jurisdiction, the Commission becomes a structure of enormous Executive privilege, able to restructure government at random and without the full review that a democratic process requires. The base closing process was thus not intended to be an all-purpose shortcut to the democratic processes and legislative checks to which Executive action is normally subject. This grant of

authority was not undertaken lightly, and the bounds of that authority were carefully enumerated to prevent its misuse.

Congress has no incentive to surrender to the Executive any more power or jurisdiction than required to carry out Congressional mandates. Indeed, the Congressional Record is replete with statements and legislation designed to restrain the Executive and prevent or redress Executive poaching of Congressional prerogatives. This history, juxtaposed with the specific enumerated restrictions on the power of the Commission, demonstrates the absence of Congressional intent that the Act should apply to facilities and activities not enumerated therein.

As its name implies, the Act establishes the procedure for the closure and realignment of defense bases. Congress did not intend for the Commission to wield authority over other branches, agencies, or institutions of government. Specifically, the Commission has jurisdiction only over military installations. A military installation is defined as "a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility." P.L. 101-510 §2910(4). Neither does the Commission enjoy jurisdiction over other issues within the Department of Defense; the Commission could not properly decide the number of fighter wings in the Air Force, nor the structure of the Navy's Commands. This limitation is explicitly recognized in the structure of the Commission's deliberations, wherein potential closures and realignments are considered on a base-by-base basis, not by service, command, or activity. P.L. 101-510, §2903(d). Commands, such as the Navy Commands involved in the present case, cannot be considered on their

military necessity or merits, but solely in their role as tenants of bases under consideration. This deliberate drafting should be respected by the Court.

III. FACILITIES OWNED OR LEASED BY GOVERNMENT AGENCIES OTHER THAN DOD CANNOT BE CONSIDERED "MILITARY INSTALLATIONS"

A close reading of the entire Defense Base Closure and Realignment Act belies the Government's present assertion that GSA-leased facilities are "military installations" under the Act.

For example, §2905(b) of the Act addresses the method by which excess and surplus real property is to be disposed under the Act. According to this provision, the Administrator of the General Services Administration is required to delegate to the Department of Defense the authority to dispose of surplus and excess real property located at a military installation closed or realigned under the Act.[1]

---

[1]§2905(b) provides, in pertinent part:

> (b) MANAGEMENT AND DISPOSAL OF PROPERTY.--(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property and facilities located at a military installation closed or realigned under this part --
>
> (A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);
>
> (B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484);
>
> (C) the authority of the Administrator to grant approvals and make determinations under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g); and
>
> (D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).
>
> ...

Under the Federal Property and Administrative Services Act of 1949, Congress vested the GSA with authority to dispose of excess and surplus property "in order to minimize expenditures for property." 40 U.S.C. §483.[2] By ordering the GSA to delegate its authority to dispose of federal property to the Department of Defense ("DoD"), Congress certainly did not intend to permit DoD to dispose of property that is not within its jurisdiction. Thus, the term "military installation" must be read to include only those properties owned or leased directly by the Defense Department.

Any other reading of the definition could lead to absurd results. For example, if the leased Crystal City space is, arguendo, a military installation, the Act gives DoD the authority to dispose of property under lease to GSA. This could not reasonably be considered Congress' intent.

Extending the argument, "excess property" is defined as "any property under the control of any federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof." 40 U.S.C. §472(e). Under the Government's construction of "military installation" as applied in this case, the

---

(2)(D) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

[2]40 U.S.C. 483 provides, in pertinent part:

...[I]n order to minimize expenditures for property, the Administrator shall prescribe policies and methods to promote the maximum utilization of excess property by executive agencies, and he shall provide for the transfer of excess property among Federal agencies and to the organizations specified in section 756(f) of this title.

Department of Defense would be charged with the responsibility of determining whether GSA, the agency with control over the property, needs the property for the discharge of GSA's responsibilities and, if not, would have to transfer the property "among federal agencies or and to the organizations specified in Section 256(f)" of Title 40. 40 U.S.C. §483. This reversal of roles certainly cannot be what Congress intended.[3] Therefore, Congress clearly did not intend for GSA-leased facilities to be considered "military installations".

As this Court well knows, the exercise of Executive power must always remain in the constitutional and congressionally-delegated limits applied to it. Marbury v. Madison, 5 U.S. 137 (1803); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). As the plaintiffs have persuasively stated, the realignment of Navy Commands from Crystal City under the guise of the Defense Base Closure and Realignment Act is an exercise of Executive power beyond congressionally delegated authority and is fully reviewable by this Court. See Plaintiff's Motion for Summary Judgment. Such review is especially critical here, however, because the Executive action was taken pursuant to a scheme that has such unusual and severe limits on normal democratic checks and balances.

As shown by the plaintiffs and demonstrated herein, that jurisdiction does not

---

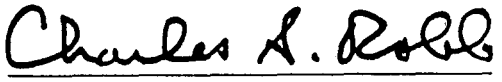
[3]Moreover, if taken to the logical extreme, under the Government's interpretation of "military installation", the Department of Defense would be charged with the responsibility of disposing of excess and surplus real property even if that property were owned by another agency. Indeed, under §2905(b)(2)(D) of the Act (see n. 1 **supra**), the DoD would be permitted, under the Government's erroneous interpretation, to transfer real property belonging to another agency or person to other entities within the Department of Defense. This could not be what Congress intended.

extend to office space contracted by and under the property management authority of the General Services Administration. Such office space does not constitute a "military installation". The amendment to that definition that added "including any leased facility" was not meant to alter the long-settled authority of the GSA to acquire and manage office space. The amendment only brings within the definition of "military installation" those military facilities for which DoD itself contracts. Furthermore, the facilities that are covered by the Act -- "military installation[s]" -- are defined by enumeration: "base[s], camp[s] station[s], yard[s]" etc. Strict construction, as well as the principle of **ejusdem generis,** call for reading the catch-all reference to "other activities" as referring to the physical facilities of the military.

CONCLUSION

This brief is not intended to restate the many points of law discussed at length in the Plaintiff's Motion for Summary Judgment. Instead, this brief is meant to give the Court a perspective as to the larger context of the creation of the Defense Base Closure and Realignment Act and a clearer understanding of the interests -- both institutional and legal -- at stake. It is for the sake of these critical interests that I respectfully urge the Court to carefully construe the scope of the Act, and to find that the inclusion of the Navy Commands in the base closing process is beyond the scope of the Act.

Respectfully submitted



CHARLES S. ROBB
United States Senator

493 Russell Office Building
Washington, D.C. 20510
(202) 224-4024

September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. LES ASPIN In His Official Capacity As SECRETARY OF DEFENSE and THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, Defendants.	Civil Action No. 93-844-A

ORDER

The Motion for Leave to File a brief amicus curiae of United States Senator Charles S. Robb, submitted to this Court on September 17, 1993, is hereby GRANTED.

_____
United States District Judge

Dated: _____

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. LES ASPIN In His Official Capacity As SECRETARY OF DEFENSE and THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, Defendants.	Civil Action No. 93-844-A

MEMORANDUM

The address within the Eastern District of Virginia where notice may be served on Charles S. Robb, United States Senator, is:

8229 Boone Boulevard
Suite 888
Vienna, Virginia 22182

Charles S. Robb

CHARLES S. ROBB
United States Senator

493 Russell Office Building
Washington, D.C. 20510
(202) 224-4024

September 17, 1993

Document Separator

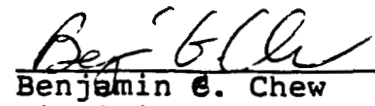
IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Please refer to this number when responding 930921-7 Civil Action No. 93-844-A

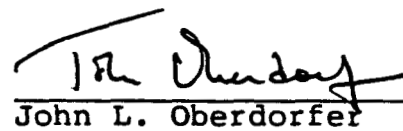
NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 1st Day of October 1993, at 10:00 a.m., or as soon thereafter as counsel may be heard, plaintiff Charles E. Smith Management, Inc., will bring on for hearing its Motion for Leave to File Second Amended Complaint, filed herewith.

Respectfully submitted,



Benjamin C. Chew
Virginia Bar No. 29113



John L. Oberdorfer
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2550 M Street, N.W.
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(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

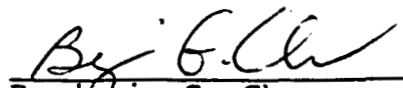
IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a), plaintiff moves for leave to file its Second Amended Complaint to add Plaza Associates, L.P., as a co-plaintiff. For the reasons set forth in the accompanying memorandum, plaintiff asks that the Court grant this motion.

Respectfully submitted,



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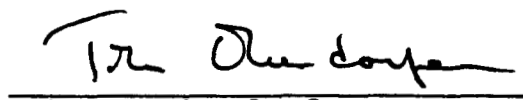

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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

This case involves a challenge to executive action taken pursuant to the Base Closure Act. The case was filed by Charles E. Smith Management, Inc., which manages properties leased by the General Services Administration and occupied by the Naval Systems Command. These offices are the subject of the challenged executive action.

On August 31, 1993, the Government defendants filed a motion to dismiss the amended complaint.[1/] Among its several arguments is that plaintiff will suffer no injury because it is

"merely the managing agent for the Crystal City office space occupied by the Naval Systems Commands . . . ." (Motion to Dismiss, p. 14). While the harm that Charles E. Smith Management, Inc., would suffer is fully addressed in plaintiff's accompanying opposition, plaintiff moves to add Plaza Associates, L.P., an owner of affected properties, to eliminate this issue.

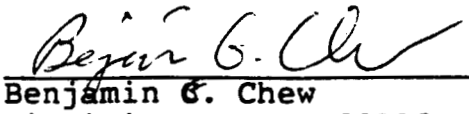
Under Rule 15(a), leave to amend should be freely given when justice so requires. Forman v. Davis, 371 U.S. 178, 182 (1962); Pierside Terminal Operators, Inc. v. Floridian, 423 F. Supp. 962, 964 (E.D. Va. 1976). Here, the addition of Plaza Associates, L.P., will not affect the schedule for disposition of this case, and will help ensure that the alleged defect in the Charles E. Smith Management, Inc.'s standing does not impair plaintiff's ability to present and have this case decided on the merits.

For these reasons, plaintiff respectfully requests that the Court grant this motion.

Counsel has requested defendants' consent to the filing of this Second Amended Complaint. Counsel for defendants has advised that defendants' oppose this motion. A proposed order is attached.

1/ The complaint originally was filed on June 28, 1993, when plaintiff sought to restrain the Base Closure Commission from transmitting its report and recommendations regarding the Crystal City offices to the President. Subsequently, it was amended to add the Secretary of Defense as a defendant since he is charged with implementing the President's order to close the Crystal City offices.

Respectfully submitted,



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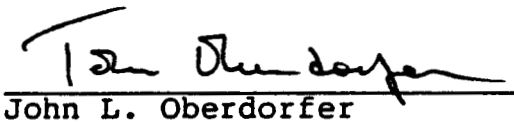

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(202) 457-6000

Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, and **PLAZA ASSOCIATES, L.P.** 2345 Crystal Drive Arlington, Virginia 22202, Plaintiffs, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs Charles E. Smith Management, Inc., and Plaza Associates, L.P., by and through counsel, submit their Second Amended Complaint and for their cause of action state as follows:

Introductory Statement

1. This case challenges the authority under the Base Closure and Realignment Act of 1990 (the "Base Closure Act" or "Act") for action by the Executive Branch to realign office buildings that the U.S. Department of the Navy's Systems Commands ("Naval Systems Commands" or "Systems Commands") have occupied for two decades in the Crystal City area of Arlington, Virginia. Those office buildings are owned privately and leased by the U.S. General Services Administration ("GSA"). During the last five years, the Department of the Navy has explored moving the Naval Systems Commands to government-owned space. Until mid-1992, the Navy took the position that its authority to relocate from the buildings at Crystal City was governed by the Public Buildings Act of 1959, and the Federal Property and Administrative Services Act of 1949. In reliance on this legal position, the Navy and the GSA requested and secured congressional authorization and appropriations to construct a new, government-owned building in Northern Virginia for the Naval Systems Commands, and solicited and accepted offers for the actual construction of the building.

Just a year ago, however, the Navy's legal position and actions abruptly changed. First, the Navy decided not to pursue the construction of new offices in Northern Virginia. Second, the Navy requested and the Secretary of Defense recommended that the Naval Systems Commands' facilities be placed on the list of military installations to be closed and realigned under the 1993

process of the Base Closure Act, and that the Commands be moved to government-owned facilities in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

Plaintiffs seek a ruling that the relocation of the Naval Systems Commands from offices leased by GSA to government-owned offices is an invalid purpose under the Base Closure Act, and that the decision to do so by the Defense Base Closure and Realignment Commission, as approved by the President, exceeds the authority granted by that Act. For this reason, the Court should enjoin implementation of the decision by the Secretary of Defense.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. Venue is proper under 28 U.S.C. § 1391(e).

The Parties

3. Plaintiff Charles E. Smith Management, Inc., is a corporation, organized under the laws of the District of Columbia, whose principal place of business is 2345 Crystal Drive, Arlington, Virginia, 22202. It is the managing agent for various real estate limited partnerships that own certain office buildings which are the subject of the Defense Base Closure and Realignment Commission's (the "Commission") July 1, 1993, report to the President, and the President's July 2, 1993, report to the Congress, under the Base Closure and Realignment Act of 1990,

Pub. L. No. 101-510, §§ 2901-2910, 104 Stat. 1808 (1990), as amended. As a result of the actions complained of herein, the office buildings managed by Plaintiff in Arlington, Virginia, will no longer serve as the locations of the Naval Systems Commands.

4. Plaintiff Plaza Associates, L.P., is a limited partnership, organized under the laws of Virginia. whose principal place of business is 2345 Crystal Drive, Arlington, Virginia, 22202. It owns buildings known as Crystal Plaza 5 and Crystal Plaza 6, which it leases to the General Services Administration. Plaintiff Charles E. Smith Management, Inc. serves as its managing agent for those leases.

The Crystal Plaza 5 and Crystal Plaza 6 buildings are occupied by, among other Department of the Navy functions, the Naval Sea Systems Command and the Naval Supply Systems Command. These buildings are the subject of the Commission's July 1, 1993, report to the President, and the President's approval of the report and recommendations under the Base Closure Act. As a result of the actions complained of herein: (i) the office buildings owned by Plaintiff will no longer serve as a location for the Naval Sea Systems Command and the Naval Supply Systems Command; (ii) the General Services Administration may exercise its lease cancellation clause in advance of the lease expiration dates of September 29, 1999, and November 30, 1998, for Crystal Plaza 5 and Crystal Plaza 6, respectively; and (iii) when the Naval Sea Systems and Naval Supply Systems Commands are moved

pursuant to the challenged Executive action, the property will diminish in value because, as a consequence of that action, commercial tenants will exercise concessions that they have demanded and received which release them from their leases (upon thirty days notice) if the commands move from Crystal City.

5. Defendant Les Aspin is named as a defendant in his official capacity as Secretary of Defense. As the head of the U.S. Department of Defense, the Secretary is charged under the Base Closure Act with recommending military installations to be closed or realigned, id. at § 2903(c), 104 Stat. at 1811, and with implementing closures and realignments that the Commission has recommended and the President has approved, id. at § 2905, 104 Stat. at 1813-15.

6. Defendant Defense Base Closure and Realignment Commission is an independent commission established under section 2902 of the Base Closure Act. Id. at § 2902, 104 Stat. at 1808. Its principal place of business is 1700 North Moore Street, Suite 1425, Arlington, Virginia 22209. Pursuant to the Base Closure Act, the Commission reviewed the Secretary of Defense's recommended closures and realignments of military installations, made findings and conclusions based on that review, and, on July 1, 1993, formulated and reported its own recommendations of closures and realignments to the President. On July 2, 1993, the President approved the Commission's report, and its recommendations, and transmitted the report to the Commission and to Congress.

Statement of the Facts

The Navy's Occupancy of GSA-Leased Buildings in Crystal City

7. For more than twenty years, Plaintiff Charles E. Smith Management, Inc., has leased directly to GSA office buildings in the area known as "Crystal City" in Arlington, Virginia. During all this time, the following Naval Systems Commands have occupied these office buildings: Naval Sea Systems Command; Naval Air Systems Command; Naval Supply Systems Command; Space and Naval Warfare Systems Command; Naval Facilities Engineering Command; Naval Recruiting Command; Navy Field Support Activity; International Programs Office; Naval Criminal Investigative Service; Navy Regional Contracting Center; Strategic Systems Program Office; and the Bureau of Personnel. The buildings owned by Plaintiff Plaza Associates Limited Partnership are occupied by the Naval Sea Systems Command and the Naval Supply Systems Command.

8. The Crystal City office buildings that GSA leases from Plaintiffs and that the Naval Systems Commands occupy constitute "general purpose space" under the Federal Property and Administrative Services Act ("FPASA"), 40 U.S.C. § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101.

9. The FPASA, 40 U.S.C § 490, Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950), and the regulations set forth in 41 C.F.R. part 101 govern the acquisition, management, assignment, and utilization of "general purpose space."

10. GSA has exclusive jurisdiction over "general purpose space." FPASA, 40 U.S.C. § 490; Reorganization Plan No. 18, 15 Fed. Reg. 3177 (1950); 41 C.F.R. part 101. See National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 2804, 104 Stat. 1784-86 (1990) (codified at 10 U.S.C. § 2674).

The Base Closure and Realignment Act of 1990.

11. Since 1977, 10 U.S.C. § 2687 has governed generally all major base closure and realignment actions. Section 2687 sets forth a procedure to which the Secretary of Defense must adhere in closing or realigning any military installation at which 300 civilian personnel are authorized to be employed.

12. On November 5, 1990, the Base Closure and Realignment Act of 1990 was enacted as one part of the National Defense Authorization Act for Fiscal Year 1991. Pub. L. No. 101-510, §§ 2901 - 2910, 104 Stat. 1808 (1990). The Base Closure Act specifies that it will apply to any action that section 2687 would otherwise cover. Id. at § 2909, 104 Stat. at 1818-19.

13. The Base Closure Act establishes an exclusive process for recommending and implementing base closures and realignments. Id. In this regard, it prescribes that from the date of enactment (November 5, 1990) until December 31, 1995, the Act:

> shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

Id. at § 2909(a), 104 Stat. at 1818. Except for closures and realignments authorized under the Base Closure Act, and certain

other exceptions not applicable to the actions complained of in this Amended Complaint, the Base Closure Act prohibits the use of any funds available to the Department of Defense from November 5, 1990, to December 31, 1995:

> (1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure of realignment; or
>
> (2) to carry out any closure or realignment of a military installation inside the United States.

14. The Base Closure Act applies solely to the closure or realignment of a "military installation." Id. at § 2901, 104 Stat. at 1808; § 2904, 104 Stat. at 1812-13. The Base Closure Act defines a "military installation" as:

> a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

Id. at § 2910(4), 104 Stat. at 1819, as amended by National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, § 2821(h), 105 Stat. 1546 (1991).

15. The Base Closure Act adopted the definition of "military installation" that had been in 10 U.S.C. § 2687, and then added a clarifying amendment with the insertion of the term "including any leased facility."

16. The Act does not define the term "closure" or "close." The Act defines "realignment," however, as including:

> 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.

Id. at § 2910(5), 104 Stat. at 1819.

17. The Base Closure Act authorizes three biennial processes, beginning in 1991, for formulating recommendations of military installations to be closed or realigned. Id. at § 2903(c), 104 Stat. at 1811. The process is initiated by the Secretary of Defense, who may recommend to the Commission closures and realignments based on final selection criteria and the force-structure plan, both of which are prescribed under the Act. Id. at § 2903(a) & (b), 104 Stat. at 1810-11. The Commission then holds public hearings on the recommendations, reviews and analyzes them, makes findings and conclusions on the basis of its review and analysis, and then issues its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. If the President approves the recommendations, he submits a report to the Congress, and the Commission, certifying his approval. Id. at § 2903(e), 104 Stat. at 1812. Congress then has forty-five (45) legislative days to pass a joint resolution disapproving the recommendations as a whole. The Act ensures that Congress may not reject certain recommendations and approve others. Unless Congress passes a timely joint resolution, the recommendations are binding on the Department of Defense. Id. at § 2904(b), 104 Stat. at 1813.

18. The Secretary of Defense is charged with implementing the recommendations within six (6) years from the date the President submits his report to Congress certifying his approval. Id. at § 2904, 104 Stat. at 1812-13. The Act prescribes what actions the Secretary may take in closing or realigning a military installation. Id. at § 2905, 104 Stat. at 1813-15.

19. The Base Closure Act provides a limited statutory exception to the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 - 4370b. That exception applies only to the implementation of lawful closure and realignment recommendations made under the Act. The Base Closure Act states that during the process of implementing such recommendations, the Secretary of Defense and the Secretary of a military department do not have to consider:

> (i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;
>
> (ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or
>
> (iii) military installations alternative to those recommended or selected.

Id. at § 2905(b), 104 Stat. at 1815.

Section 2803 of the National Defense Authorization Act for Fiscal Year 1991.

20. The Base Closure Act is a part of the National Defense Authorization Act for Fiscal Year 1991. Another provision of that act (section 2803) separately addressed the Department of

Defense's moving out of GSA-leased space. Section 2803 schedules the Department of Defense's reduction of its occupancy of leased general purpose space, including space GSA leases for use by the Department of Defense. The years covered by section 2803 are years during which the Base Closure Act and its exclusive biennial process for closing and realigning military installations were in effect.

The Navy's Efforts Outside of the Base Closure Act to Relocate Into Government-Owned Offices

21. Just before and well after enactment of the Base Closure Act in 1990, the Navy attempted to move its Systems Commands from the Crystal City office buildings into a government-owned building that GSA would construct in Arlington, Virginia. The Navy and the GSA made this effort under the Public Buildings Act of 1959 ("PBA"), 40 U.S.C. §§ 601 et seq., in conjunction with the FPASA, 40 U.S.C. § 490. The steps that the Navy and GSA took to implement this action included:

a. On March 29, 1990, the Office of Management and Budget forwarded a prospectus prepared by GSA to the Congress, as required under section 7 of the PBA, 40 U.S.C. § 606, seeking authorization to construct a building in Northern Virginia to house the Naval Systems Commands, and asking for the appropriation of funds necessary for the building's design, site acquisition, and construction.

b. Pursuant to 40 U.S.C. § 606, in June 1990 and October 1990 the House Committee on Public Works and the Senate Committee on Public Works, respectively, adopted resolutions

authorizing the construction of a new building in Northern Virginia for the Naval Systems Commands.

c. On November 5, 1990, the same date that the Base Closure Act became law, the fiscal year 1991 Treasury, Postal Service and General Government Appropriations Act was enacted, providing $273 million for the construction of a building in Northern Virginia for the Naval Systems Commands. Pub. L. No. 101-509, 104 Stat. 1407 (1990).

d. In November 1990, the Navy issued a draft environmental impact statement under NEPA discussing the environmental impacts of and all reasonable alternatives to the proposed consolidation of the Naval Systems Commands.

e. In April 1991, GSA solicited offers to sell land in Northern Virginia on which a building to house the Naval Systems Commands would be constructed.

f. In February 1992, the Navy issued a supplemental environmental impact statement under NEPA concerning the proposed consolidation.

22. However, in July 1992, the Secretary of the Navy announced that the Navy would not proceed with the planned consolidation.

23. The Navy took all the actions described in Paragraph 20 of this Amended Complaint to move out of GSA-leased space in Crystal City pursuant to the PBA and the FPASA, notwithstanding that the Base Closure Act, which contains the phrase "including any leased facility" in its definition of "military installation," became effective on November 5, 1990.

24. Neither the Secretary of Defense nor the Commission placed the Crystal City office buildings on their respective lists of recommended closures and realignments in 1991.

The 1993 Base Closure Process.

25. On December 15, 1992, the Secretary of Defense published in the Federal Register the final selection criteria required under section 2903(b) of the Act. 57 Fed. Reg. 59,334 (1992) The Secretary established the following eight selection criteria, in descending order of importance:

Military Value

(1) Current and future mission requirements and the impact of operational readiness of the Department of Defense's total force.

(2) The availability and condition of land, facilities, and associated airspace at both the existing and potential receiving locations.

(3) The ability to accommodation contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

(4) The cost and manpower implications.

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 closure or realignment, for the savings to exceed costs.

Local Economic and Environmental Impact

(6) The economic impact on local communities.

(7) The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

(8) The environmental impact.

26. As authorized under section 2903(c) of the Act, id. at § 2903(c), 104 Stat. at 1811, on March 12, 1993, the Secretary of Defense transmitted to the Commission his recommendations of military installations to be closed and realigned. 58 Fed. Reg. 14,001 (1993).

27. One of the Secretary's recommendations to the Commission was to move the Naval Systems Commands from buildings leased by GSA in Crystal City. Id. at 14,094. This movement would displace approximately 11,000 Navy civilian and military personnel from Crystal City and close these offices as the home for those commands.

28. Plaintiffs lease to GSA approximately 1.2 million square feet of space in office buildings in Crystal City for use by the Navy Systems Commands that were the subject of the Secretary's recommendations.

29. Private entities that perform work for the Naval Systems Commands lease in excess of an additional one million square feet of Crystal City office space from Plaintiffs.

30. On June 7, 1993, Plaintiffs presented to the Commission a memorandum addressing the lack of authority under the Base Closure Act to recommend or implement a closure of GSA-leased space, including the Crystal City office buildings. Plaintiffs again questioned the Commission's jurisdiction over the Crystal City buildings in a letter dated June 15, 1993. At a hearing on June 18, 1993, the Commission rejected Plaintiffs'

31. The Act requires the Commission to conduct public hearings on the Secretary of Defense's recommendations, review and analyze the Secretary's recommendations, make findings and conclusions on the basis if its review and analysis, and then issue its own recommendations to the President by July 1, 1993. Id. at § 2903(d), 104 Stat. at 1811-12. In making its recommendations, the Commission is authorized to change any of the Secretary of Defense's recommendations if it finds that the Secretary deviated substantially from the final selection criteria and the force-structure plan. Id. at § 2903(d)(2)(B), 104 Stat. at 1811-12.

32. On June 27, 1993, the Commission announced at a public hearing that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City.

33. On July 1, 1993, the Commission transmitted to the President its report in which it recommended the closure of thirty-one (31) bases inside the United States. With respect to the Naval Systems Commands located in Crystal City, the Commission (i) concluded that the Secretary did not deviate substantially from the force-structure plan and final selection criteria in recommending the movement of the Naval Systems Commands from the Crystal City office buildings, and (ii) recommended that the Systems Commands be moved from Crystal City to sites in Maryland, Pennsylvania, Tennessee, and the National Capital Region.

34. On July 2, 1993, the President approved the Commission's recommendations and transmitted to Congress a report with his certification of approval. Id. at § 2903(e), 104 Stat. at 1812. That decision is final and effective, even though Congress has forty-five (45) days from the date of the President's approval to pass a joint resolution disapproving the President's entire report.

COUNT I

35. Plaintiffs reallege, as if fully set forth herein, Paragraphs 1 through 34, inclusive, of this Amended Complaint.

36. The Base Closure Act limits the Commission's authority to recommending the closure or the realignment of a "military installation."

37. The Crystal City office buildings that Plaintiffs lease to GSA for use by the Naval Systems Commands are not "military installations" under the Base Closure Act. The Act applies only to installations under the jurisdiction of the Department of Defense. These buildings are under the jurisdiction of GSA. (See Paragraphs 8 through 10, supra.)

38. Plaintiffs have exhausted its administrative remedies. (See Paragraph 30, supra.)

39. On July 1, 1993, the Commission adopted the Secretary of Defense's recommendation and recommended to the President the movement of certain Naval Systems Commands and other functions now located in buildings leased by GSA in Crystal City. On July 2, 1993, the President transmitted the Commission's report, along with his approval, to Congress and the Commission.

39. The Commission's decision, as approved by the President, to move the Naval Systems Commands from GSA-leased buildings in Crystal City exceeds the jurisdiction and authority provided by the Base Closure Act, and is, therefore, contrary to law.

PRAYER FOR RELIEF

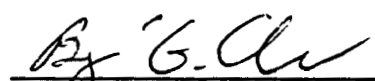
WHEREFORE, for the reasons stated above, Plaintiffs Charles E. Smith Management, Inc., and Plaza Associates, L.P., respectfully request that judgment be entered in their favor and against the Secretary of Defense, and the Commission as follows:

A. That the Court declare that the Crystal City office buildings are not "military installations" subject to the jurisdiction of the Base Closure Act, and, therefore, are not a valid and lawful subject of the Secretary of Defense's recommendations, the Commission's recommendations and report, and President's approval of the Commission's recommendations and report;

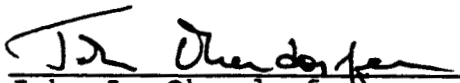
B. That the Court enjoin Defendants from taking any action under the Base Closure Act to implement the Commission's recommendations with respect to the Crystal City office buildings;

C. That the Court grant such other relief as the Court may deem just and proper.

Respectfully submitted,



Benjamin G. Chew
Virginia Bar No. 29113



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Washington, D.C. 20037
(202) 457-6000

Counsel for Plaintiffs
Charles E. Smith Management, Inc.,
and Plaza Associates, L.P.

Dated: September 17, 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Leave to File Second Amended Complaint, Memorandum in Support of Motion for Leave to File Second Amended Complaint, and Second Amended Complaint for Declaratory and Injunctive Relief in Civil Action No. 93-844-A, were served this 17th day of September 1993, to:

Anne L. Weissman, Esq.
United States Department of Justice
Civil Division, Room 1034
901 E Street, N.W.
Washington, D.C. 20004 (By Messenger)

Richard Parker, Esq.
Assistant United States Attorney
1101 King Street, Suite 502
Alexandria, Virginia 22314 (By Mail)

Sheila C. Cheston, Esq.
The Defense Base Closure and
Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209 (By Messenger)

John Oberdorfer

John Oberdorfer

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

ORDER

Upon consideration of plaintiff's motion for leave to file its Second Amended Complaint to add Plaza Associates, L.P., as a co-plaintiff,

IT IS HEREBY ORDERED that said motion is granted, and plaintiff's Second Amended Complaint is deemed filed this _____ day of October 1993.

_____
United States District Judge

Document Separator

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Please refer to this number when responding 930921-7 Civil Action No. 93-844-A

MOTION FOR SUMMARY JUDGMENT

In accordance with Federal Rule of Civil Procedure 56, plaintiff Charles E. Smith Management, Inc., hereby moves for summary judgment in its favor on the grounds that there is no genuine issues as to any material fact and, therefore, plaintiff is entitled to judgment as a matter of law.

In support of its Motion of Summary Judgment, plaintiff submits the following:

1. A Statement of Undisputed Material Facts and the following exhibits:

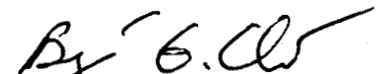
a. Affidavit of Kenneth L. McVearry, Group Senior Vice President (Commercial Leasing) of Plaintiff Charles E. Smith Management, Inc.;

b. Affidavit of Michael T. Shehadi, Group Senior Vice President of Plaintiff Charles E. Smith Management, Inc., and agent for Plaza Associates, L.P.; and

c. Affidavit of Edward J. Newberry, Esq.

2. A Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendants' Motion to Dismiss.

Respectfully submitted,



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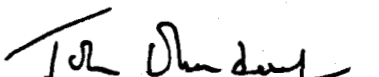
Virginia Bar No. 29113



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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

In support of its Motion for Summary Judgment, plaintiff Charles E. Smith Management, Inc., ("Smith Management") contends that there is no genuine issue as to the following material facts:

1. Plaintiff Charles E. Smith Management, Inc., manages office buildings owned by various partnerships and leased to the General Services Administration for use by the Naval Systems Commands. McVearry Affidavit. In this capacity, it is an agent

of the partnership-owners and earns a percentage (at least five percent) of the revenues from the leases. Id. These buildings are located in the "Crystal City" area of Arlington, Virginia. Id. They are: Crystal Mall 2, Crystal Mall 3, Crystal Mall 4, Crystal Mall 5, Crystal Mall 6, Crystal Square 2, Crystal Square 3, Crystal Square 4, Crystal Gateway 1, Crystal Gateway 2, Crystal Gateway 3, Crystal Gateway 4, Crystal Gateway North, Crystal Park 1, Crystal Park 3, Crystal Park 5, and 1919 Eads Street.

2. Plaza Associates, L.P., is a partnership which owns Crystal Plaza 5 and Crystal Plaza 6 office buildings located in the "Crystal City" area of Arlington, Virginia. The partnership leases these buildings to the General Services Administration. Shehadi Affidavit. These buildings are presently occupied by the Naval Sea Systems Command, Naval Supply Systems Command, and other Navy tenants. Id.

3. Prior to the recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City, efforts outside of the Base Closure Act were undertaken to relocate the Naval Systems Commands. Specifically:

(a) On March 29, 1990, Congress received from the Office of Management and Budget a prospectus requesting authorization to build a three million square-foot building in northern Virginia to house the NSC. Shehadi Affidavit. Pursuant to this request, in November of 1990, Congress authorized and appropriated funds for construction of the office building. Id.

(b) The General Services Administration solicited offers for the land to build the facility in northern Virginia. Shehadi Affidavit. The General Services Administration selected and contracted to purchase land offered by Plaintiff Charles E. Smith Management, Inc. Id The General Services Administration also hired an architect and solicited a construction firm for the building. Id.

4. On or about July 31, 1991, the Navy, without resorting to the Base Closure Act, relocated more than 1,000 Navy employees from one GSA-leased facility to another when a GSA lease expired. McVearry Affidavit.

5. As authorized under section 2903(c) of the Base Closure and Realignment Act, Pub. L. No. 101-510, § 2903(c), 104 Stat. 1811 (1990), on March 12, 1993, Secretary of Defense Aspin transmitted to the Base Closure Commission his recommendations of military installations to be closed and realigned. 58 Fed. Reg. 14,001 (1993).

6. As part of those recommendations, the Secretary recommended that the Naval Systems Commands move from the buildings in Crystal City that are leased directly by GSA from plaintiffs to sites in Maryland, Pennsylvania, Tennessee, and the National Capital Region. Id. at 14,094.

7. On June 7, 1993, plaintiff presented to the Commission a memorandum addressing the lack of authority under the Base Closure Act to recommend or implement a closure or realignment of GSA-leased space, including the Crystal City office buildings. Ex. 1 to Newberry Affidavit.

8. At a hearing on June 18, 1993, the Commission rejected plaintiff's position that the Crystal City buildings are not subject to the Base Closure Act. Newberry Affidavit.

9. On June 27, 1993, the Commission announced at a public hearing that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City. Newberry Affidavit.

10. On July 1, 1993, the Commission transmitted to the President its report in which it recommended the relocation of the Naval Systems Commands from the buildings in Crystal City leased directly by GSA (including those owned and managed by Plaza Associates and Smith Management) to sites in Maryland, Pennsylvania, Tennessee, and elsewhere in the National Capital Region. Ex. 1 to Government's Motion to Dismiss.

11. On July 2, 1993, the President approved the Commission's recommendations and transmitted to the Congress a report with his certification of approval. Government's Motion to Dismiss, p. 10.

12. The forty-five day period during which Congress may pass a joint resolution disapproving the President's report expires October 1, 1993. The Senate Armed Services Committed reported unfavorably a joint resolution disapproving the President's report. S. Rep No. 103-118, 103d Cong., 2d Sess. (1993). The Senate is schedule to vote on that joint resolution on September 20, 1983. 139 Cong. Rec. S11,772-73 (1993).

13. Since the Secretary of Defense's recommendation in March 1993 that the Naval Systems Commands be moved from Crystal City, commercial tenants have demanded from Plaintiff Charles E. Smith Management, Inc., release clauses which are triggered by the departure of the Commands. The cancellation provisions diminish the value of the property and earnings of Smith Management. McVearry Affidavit.

14. Since the decision, Plaintiff Charles E. Smith Management, Inc.'s, ability to attract and retain retail tenants has been significantly impaired. One tenant is delaying signing a lease, and other tenants are seeking to change their lease terms. McVearry Affidavit.

15. GSA's leases for four office buildings managed by Smith Management and occupied by the Commands contain cancellation clauses that allow GSA to cancel the leases prior to their expiration. Those buildings are: Gateway 3, Gateway 4, Plaza 5, and Plaza 6. If GSA does so, it costs Smith Management, Inc., substantial terms of money and causes it to incur $1.24 million to restore its facilities for re-letting on the private market. McVearry Affidavit.

16. With respect to Plaza Associates, L.P., GSA's lease for Crystal Plaza 5 and Crystal Plaza 6 have clauses allowing GSA to terminate the leases prior to their expiration dates. The decision to move the Naval Systems Command out of Crystal Plaza 5 and 6, together with these cancellation clauses, diminishes the value of this property owned by Plaza Associates. If those

clauses are exercised, Plaza Associates will lose substantial rent revenues and have to incur restoration costs before the properties could be relet. Shehadi Aff.

Respectfully submitted,

Benjamin G. Chew
Virginia Bar No. 29113

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Allan A. Tuttle
James A. King
Edward J. Newberry

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Counsel for Plaintiff
Charles E. Smith Management, Inc.

Dated: September 17, 1993

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC. 2345 Crystal Drive Arlington, Virginia 22202, Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** The Pentagon Washington, D.C. 20301-1000, and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION** 1700 North Moore Street, Suite 1425 Arlington, Virginia 22209, Defendants.	Civil Action No. 93-844-A

ORDER

This cause was heard on motion of the plaintiff for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This Court has considered the pleadings, affidavits, and exhibits of record, and the parties have filed memoranda in support of and in opposition to the motion. After argument by counsel, this Court has determined that there is no genuine issue of material fact and, therefore,

IT IS ORDERED, ADJUDGED, AND DECREED that defendants' motion to dismiss is denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motion of the plaintiff for summary judgment is hereby granted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Crystal City office buildings identified in the Affidavit of Kenneth L. McVearry that were the subject matter of the Defense Base Closure and Realignment Commission's recommendations to the President, which he approved and submitted to the Congress, are not "military installations" subject to the Base Closure and Realignment Act, Pub. L. No. 101-510, §§ 2901-2911, 104 Stat. 1808 (1990).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Secretary of Defense is hereby enjoined permanently from taking any action to implement the Commission's recommendation concerning the above-identified Crystal City office buildings.

ENTERED this _____ day of October 1993.

_____
United States District Judge

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Please refer to this number
when responding 930921-7

HORIZATIONS

wo YEARS.—Except as
ontained in titles XXI,
construction projects,
acilities, and contribu-
and authorizations of
er 1, 1992, or the date
for military construc-

on (a) do not apply to
jects, land acquisition,
contributions to the
tions of appropriations
been obligated before
of an Act authorizing
ar 1993, whichever is
sition, family housing
NATO Infrastructure

OVISIONS

MENTS, DISPOSAL, AND
S AND FACILITIES

tationing of units of the
t military installations
short-term assignments
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ing obligations to other
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the several States, the
of Puerto Rico, Guam,
nd any other common-
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the Congress that dual
effective and efficient
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ties and assist in reduc-
onally.
all carry out a study of
implemented and shall
to the Committees on
se of Representatives a
ow dual basing could be
of the scheduling, costs,
an implementation as
personnel used by the
enactment of this Act.

SEC. 2802. LIMITATION ON CONSTRUCTION AT CROTONE, ITALY

(a) IN GENERAL.—None of the funds available to the Department of Defense, including contributions for the North Atlantic Treaty Organization Infrastructure program pursuant to section 2806 of title 10, United States Code, may be obligated or expended (whether obligated before the date of enactment of this Act or not) in connection with relocating functions of the Department of Defense located at Torrejon Air Force Base, Madrid, Spain, on June 15, 1989, to Crotone, Italy, or any other location outside the United States until the Secretary of Defense makes the certification and files the information required in subsection (b)(2).

(b) CONSIDERATION AND CERTIFICATION.—(1) Promptly after the date of enactment of this Act, the President shall notify the other member nations of the North Atlantic Treaty Organization that the United States seeks to have placed on the agenda of the next meeting of the North Atlantic Council of NATO the following questions: President

(A) In light of the changed threat to NATO, is the retention of the 401st Tactical Fighter Wing in the Southern Region of NATO necessary?

(B) In light of the changes in Europe, is continuation of construction of a new airbase at Crotone, Italy, desirable?

(C) Are there existing airbases in NATO, and particularly in the Southern Region of NATO, which could serve as an adequate base for the 401st Tactical Fighter Wing, rendering construction of a new base unnecessary?

(D) Will the United States be authorized to use American aircraft based at Crotone, Italy, for military missions outside of the European theatre?

(2) After the North Atlantic Council of NATO meets, considers the questions listed in paragraph (1), and passes a resolution endorsing continuation of construction of a new airbase at Crotone, Italy, the Secretary of Defense shall certify to the congressional defense committees that such has occurred and shall transmit, along with such certification, a copy of the resolution adopted by the North Atlantic Council and a summary of the debate concerning each of the questions contained in paragraph (1).

SEC. 2803. RESTRICTIONS ON LEASING IN THE NATIONAL CAPITAL REGION

(a) LIMITATION.—(1)(A) Subject to paragraph (2), during the fiscal years specified in subparagraph (B), the Department of Defense (including all departments, agencies, and other instrumentalities thereof) may not enter into or amend any lease or other agreement (including leases entered into with any other Federal agency) for administrative space in the National Capital Region that would result in the Department leasing administrative space in excess of the maximum area specified for that fiscal year in subparagraph (B), unless the Secretary of Defense, in consultation with the Administrator of General Services, submits to the Congress, no later than April 15, 1991, a comprehensive plan addressing the long-term leased space needs of the Department of Defense in the National Capital Region. Such a plan shall be consistent with the force structure plan submitted under section 2903.

(B) The maximum area referred to in subparagraph (A) is as follows:

(i) During fiscal year 1991, the number of square feet being utilized in such Region for administrative space by such Depart-

ment on the date of enactment of this Act, other than such administrative space as is contained in the Pentagon Reservation.

(ii) During fiscal year 1992, 90 percent of the number of square feet specified in clause (i).

(iii) During fiscal year 1993, 80 percent of the number of square feet specified in clause (i).

(2) Any administrative space temporarily leased for exclusive use by personnel of the Department displaced from administrative space in the Pentagon Reservation as a result of the renovation of facilities within such reservation shall not be included in computing the maximum limitations provided for in paragraph (1)(B).

(3) The reduction of leased administrative space resulting from the implementation of this section shall be carried out in consultation with the Administrator of General Services.

(b) PROHIBITION.—After September 30, 1991, the Department of Defense may not use any space under any lease or other agreement in the area known as Buzzard's Point in Washington, D.C., including the facility located at 1900 Half Street, Southwest.

(c) DEFINITIONS.—As used in this section:

(1) The term "administrative space" means property used for the operation of an office, for storage of office equipment or materials, or to support activities carried out in an office, including property with special architectural features, fixed equipment, or utilities (such as laboratories, dark rooms, automatic data processing areas, food service areas, and security vaults).

(2) The term "National Capital Region" means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(3) The term "Pentagon Reservation" has the same meaning given such term by section 2674(f)(1) of title 10, United States Code.

SEC. 2804. OPERATION AND CONTROL OF THE PENTAGON RESERVATION

(a) IN GENERAL.—(1) Chapter 159 of title 10, United States Code, is amended by inserting after section 2673 the following new section:

"§ 2674. Operation and control of the Pentagon Reservation

"(a)(1) Jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation is transferred to the Secretary of Defense.

Reports.

"(2) Before March 1 of each year, the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives a report on the state of the renovation of the Pentagon Reservation and a plan for the renovation work to be conducted in the fiscal year beginning in the year in which the report is transmitted.

"(b) The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody

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A Report to the Congress on

DoD Administrative Space Planning for the National Capital Region

Table XIII-5

Ten-Year Projection of Costs After Implementation
(In Millions)

	Owned		Leased		
	DoD (O&M)	GSA (Rent)	DoD	GSA	Totals
1988[a]	$ 26.0	$ 87.0	$ 1.9	$ 124.1	$ 239.1
1989[b]	53.2	14.6	0.9	139.5	208.2
1991[c]	55.5	15.9	0.4	149.2	221.0
1993[d]	44.3	17.4	0.0	144.7	206.4
1995[e]	50.8	19.1	0.0	127.0	196.9
1997[e]	$ 56.3	$ 20.4	0.0	$ 118.2	$ 194.9

[a] 1 January 1988

[b] Assumes transfer of Pentagon and new leased space in pipeline to meet current needs

[c] Assumes expanded space in Pentagon as part of renovation

[d] Assumes expanded space on military installations and completed Pentagon renovation

[e] Assumes additional Government-owned facilities

Summary of Current Leased Inventory and Cost

As fully described in Chapters V through IX and in Appendix "N", DoD currently occupies 6.8 million square feet of space in 100 scattered locations. The current leased inventory and cost, listed by component, are shown in Table XIII-6.

Table XIII-6

Current Leased Space and Cost

	Leased Space Net Occ. SF (000)		Leased Cost ($000)	
Component	DoD	GSA	DoD	GSA
Army	1,200	2,396,118	$ 15.0	$ 41,085.5
Navy	20,200	2,911,588	424.0	59,850.8
Air Force	7,800	135,787	97.5	2,014.8
OSD/JCS	0.0	481,419	0.0	8,679.9
Def Agenc's	109,448	753,086	1,368.1	12,519.9
	138,648	6,677,998	$ 1,904.6	$ 124,150.9

Summary of 10-Year Projections of Leased Inventory and Cost

If the planning actions proposed by this report are fully implemented, then the Defense components will be assigned to leased space in only 18 buildings for an aggregate of 4.4 million square feet in lieu of the current 6.8 million square feet in 100 buildings. The inventory and cost forecasts are shown in Table XIII-7.

Table XIII-7

Projected Leased Space and Cost (FY 1997)

	Leased Space Net Occ. SF (000)		Leased Cost ($000)	
Component	DoD	GSA	DoD	GSA
Army	0.0	1,712,900	0.0	$ 46,014.7
Navy	0.0	2,224,900	0.0	59,768.8
Air Force	0.0	90,000	0.0	2,417.7
OSD/JCS	0.0	85,500	0.0	2,296.8
Def Agenc's	0.0	286,700	0.0	7,702.0
	0.0	4,400,000	$ 0.0	$ 118,200.0

Review of Planning Issues

Construction and permanent financing costs, the owner's leasing management costs, and profit margin for a leased facility are passed through from the owners to the tenant in the form of rent. Additionally, the cost to DoD for leased space is increased still further by the administrative overhead paid to GSA. Whether financed through lump-sum direct appropriations, time financing with government bonds, or through some other lease to purchase arrangement, acquisition of government-owned facilities as proposed in this report is significantly less costly than leasing.

Also, construction permits proper planning of building design so that the structure meets the security, computer, and utility demands of the Department. Speculatively constructed buildings, intended by the developer to be placed in the leasing market, are designed to meet minimum code standards and, more frequently than not, are suitable only for general office space. As presented in Chapter IV of this report, that type of building does not meet the Department's space needs and is significantly more expensive to retrofit to meet departmental requirements, should it even be technically possible to do so.

As demonstrated throughout this report, and especially in Appendix "B", the Department's administrative workforce has been surprisingly stable in the NCR, even though the demand for leased space continues to grow. There has been an approximate average of 70,000 personnel in GSA-controlled space and 60,000 in DoD-controlled space over the past 20 years. The variance of employment has been nominal. Although leasing has obvious benefits for organizations that are smaller, more flexible, or have short-term requirements, an increase in leased inventory is a much more expensive way to meet long-term needs than is ownership.

Review of Cost Savings Potential

The direct and indirect cost of acquiring, altering, securing, and managing leased space has been described in Chapters I, III, and IV of this report. The cost comparison between leasing and construction is equally important, especially given the number and size of the construction program recommended by this plan. If all construction projects proposed in this report were built during the next decade, the aggregate cost would be $1.3 billion. That amount should be compared to the cost of continued and expanded leased facilities for the same period, which would be in excess of $2.3 billion.

Land in the NCR represents between 15 to 25 percent of the cost of leasing; the lower figure represents land cost in the more remote suburbs, the higher represents land cost in the various central business districts of the NCR. The planning actions presented by each Defense component consistently reflect the recommendation to construct administrative facilities on land now owned by the Department or on land owned by another government agency that would become available to DoD.

Finally, as demonstrated in this report, the lease acquisition process contributes to the costly fragmentation of operations. The construction alternative will provide consolidation of split organizations and result in cost savings from a reduction in duplicated space, personnel, equipment, transportation, and communications costs.

Conclusions

The conclusions reached by the Steering Committee are that during the next 10-year period a significant improvement in facilities management of DoD administrative space will result when:

- Lease space is reduced and government-owned facilities are provided, the Department could potentially **save** (or avoid spending) $1 billion.

- Short term alterations are minimized resulting in approximate savings of $80 million.

- O&M costs of DoD owned buildings are reduced by renovating DoD buildings, the Department may **save** more than $200 million.

- Consolidation of components are completed, the resulting improved efficiency , could **reduce** transportation costs by $125 million and eliminate some duplication of personnel functions.

- Improved security is achieved through strategic consolidation of components and construction of secure facilities on DoD owned space, rather than the extreme costs incurred as the result of renovation of privately owned space, a potential **savings** of $105 million may be realized.

- Relocation of selected activities is achieved, the reduction of leased space and the resulting availability of DoD owned space should result in a **net savings**, provided government-owned space is made available.

- Administrative procedures are improved, the increased ceilings for procurement of DoD-owned space and improvements, and construction of facilities on DoD-owned land will result in "soft cost" **savings** that are difficult to quantify, but will be substantial.

- A standing committee is established to respond to facilities management issues, then a **more** streamlined method of responding to component needs will be realized.

The findings of the Committee, after conducting analysis of Defense components in the NCR, are that:

- Government-owned buildings, such as the Pentagon, have deteriorated beyond the point where effective routine, day-to-day maintenance and repair are sufficient to continue long-term operation of the space.

- Work conditions in government-owned buildings, such as the Pentagon, are below industry standards, resulting in diminished work performance, reduced morale, and questionable safety standards.

- Lack of current, up-to-date procedures and controls for leasing and construction of space has resulted in a dependence on leased space by DoD from the private sector to satisfy current and short-term needs, resulting in continued fragmentation of components.

- Escalated cost of leased space has resulted in an abnormally high cost of administrative space to the government; ergo, in the long-term owned space is significantly less expensive than leasing.

* * *

If this study were limited to a single conclusion, it would be that a program of renovation and construction of government buildings is required to accommodate the department's administrative personnel in the NCR. The long-term stability of the workforce, the cost saving potential, the need to satisfy security and technological requirements, the need to reduce fragmentation and associated administrative costs all present strong arguments for such a renovation/construction program. If some form of an administrative space program, as outlined in this report, is stalled or fails to materialize, or if a "business-as-usual" approach continues, the results will be tantamount to regression rather than advancement toward the goals mutually desired by the Congress and the Department.

ment on the date of enactment of this Act, other than such administrative space as is contained in the Pentagon Reservation.

(ii) During fiscal year 1992, 90 percent of the number of square feet specified in clause (i).

(iii) During fiscal year 1993, 80 percent of the number of square feet specified in clause (i).

(2) Any administrative space temporarily leased for exclusive use by personnel of the Department displaced from administrative space in the Pentagon Reservation as a result of the renovation of facilities within such reservation shall not be included in computing the maximum limitations provided for in paragraph (1)(B).

(3) The reduction of leased administrative space resulting from the implementation of this section shall be carried out in consultation with the Administrator of General Services.

(b) PROHIBITION.—After September 30, 1991, the Department of Defense may not use any space under any lease or other agreement in the area known as Buzzard's Point in Washington, D.C., including the facility located at 1900 Half Street, Southwest.

(c) DEFINITIONS.—As used in this section:

(1) The term "administrative space" means property used for the operation of an office, for storage of office equipment or materials, or to support activities carried out in an office, including property with special architectural features, fixed equipment, or utilities (such as laboratories, dark rooms, automatic data processing areas, food service areas, and security vaults).

(2) The term "National Capital Region" means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(3) The term "Pentagon Reservation" has the same meaning given such term by section 2674(f)(1) of title 10, United States Code.

SEC. 2804. OPERATION AND CONTROL OF THE PENTAGON RESERVATION

(a) IN GENERAL.—(1) Chapter 159 of title 10, United States Code, is amended by inserting after section 2673 the following new section:

"§ 2674. Operation and control of the Pentagon Reservation

"(a)(1) Jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation is transferred to the Secretary of Defense.

Reports.

"(2) Before March 1 of each year, the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives a report on the state of the renovation of the Pentagon Reservation and a plan for the renovation work to be conducted in the fiscal year beginning in the year in which the report is transmitted.

"(b) The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody,

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and control of the Department of Defense, and located at the Pentagon Reservation. Such individuals—

"(1) may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on Department of Defense property or in travel status; and

"(2) shall have the same powers as sheriffs and constables to enforce the laws, rules, or regulations enacted for the protection of persons and property.

"(c)(1) The Secretary may prescribe such rules and regulations as the Secretary considers appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation, including rules and regulations necessary to govern the operation and parking of motor vehicles on the Pentagon Reservation.

"(2) Any person who violates a rule or regulation prescribed under this subsection is liable to the United States for a civil penalty of not more than $1,000.

"(3) Any person who willfully violates any rule or regulation prescribed pursuant to this subsection commits a Class B misdeameanor.

"(d) The Secretary of Defense may establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

"(e)(1) There is established in the Treasury of the United States a revolving fund to be known as the Pentagon Reservation Maintenance Revolving Fund (hereafter in this section referred to as the 'Fund'). There shall be deposited into the Fund funds collected by the Secretary for space and services and other items provided an organization or entity using any facility or land on the Pentagon Reservation pursuant to subsection (d). Establishment.

"(2) Monies deposited into the Fund shall be available, without fiscal year limitation, for expenditure for real property management, operation, protection, construction, repair, alteration and related activities for the Pentagon Reservation.

"(f) In this section:

"(1) The term 'Pentagon Reservation' means that area of land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles.

"(2) The term 'National Capital Region' means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City."

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2673 the following new item:

"2674. Operation and control of the Pentagon Reservation."

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Department of Defense
DIRECTIVE

September 1, 1987
NUMBER 4165.6

USD(A)

SUBJECT: Real Property Acquisition, Management, and Disposal

References: (a) DoD Directive 4165.6, subject as above, December 22, 1976 (hereby canceled)
(b) DoD Directive 4165.16, "Real Property; Construction on Leased Land and Release of Leaseholds," December 19, 1958 (hereby canceled)
(c) DoD Instruction 4165.12, "Prior Approval of Real Property Actions," July 23, 1973 (hereby canceled)
(d) through (jj), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive consolidates references (a) through (f) and updates DoD policy on acquisition, management, and disposal of real property.

B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their Guard and Reserve components), and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2. Encompasses all DoD real property holdings except:

a. Civil projects governed by regulations of the Secretary of the Army.

b. The acquisition and management of defense industrial plants that are governed by DoD Directive 4275.5 (reference (g)).

C. DEFINITIONS

The terms used in this Directive are defined in enclosure 2.

D. POLICY

1. DoD policy prescribes that the Military Departments and Defense Agencies shall determine which real property is needed to satisfy military requirements both in peacetime and in case of war, ensures that the property is obtained, and disposes of only that real property having no foreseeable military requirement.

2. DoD Directive 4001.1 (reference (h)) established DoD policies to vest authority and responsibilities to lower organizational levels; allow installation commanders the freedom to obtain goods and services that best satisfy their requirements whenever they can get quality, responsiveness and lowest cost; and allow installation commanders to retain and decide on the use of a share of money they save.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Production and Logistics) (ASD (P&L)) shall establish DoD policy regarding the acquisition, management and disposal of real property.

2. The Secretaries of the Military Departments and Directors of Defense Agencies (when applicable) shall develop and maintain a continuing program to:

a. Program and distribute funds annually, specifically to ensure that each installation has developed a master plan. Such plans shall include mobilization, as well as current and projected peacetime requirements. The master plans shall be based upon a strategic assessment of the installation mission and expected use of the installation, cover at least a [illegible] period, be updated every 5 years (more often if necessary), and include a [illegible] annual listing of all military construction, family housing, and major repair and maintenance projects needed to meet the installation's requirements within the time period covered by the plan.

b. Ensure that installations currently hold or have plans to obtain the real property they need; and underused real property for which there is no immediate need is made available and, if possible, outgranted to others; and real property for which there is no forseeable peacetime or mobilization military requirement is declared excess.

c. Establish procedures that adhere to the laws, policies and guidance provided in this Directive.

F. PROCEDURES

1. Acquisition of Real Property

a. Legal Authorities. Some of the laws governing the acquisition of real property are as follows:

(1) 42 U.S.C. 4321, et. seq. (reference (i)) mandates policy and procedures to be followed before siting or acquisition of real property.

(2) 10 U.S.C. 2676 (reference (j)) specifies conditions under which a Military Department may acquire real property not owned by the Government.

(3) 10 U.S.C. 2233 (reference (j)) gives authority to the Reserve components to acquire real property.

(4) 40 U.S.C. 483 (reference (k)) covers the acquisition or exchange of Government-owned property.

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(4) 40 U.S.C. 483 (reference (k)) covers the acquisition or exchange of Government-owned property.

(5) 10 U.S.C. 2672 (reference (j)) sets minor land acquisition authority limits.

(6) 10 U.S.C. 2672a (reference (j)) provides authority for acquiring land when the need is urgent.

(7) 42 U.S.C. 4601-4655 (reference (l)) states the requirements that must be met regarding the acquisition of real property relative to uniform relocation assistance.

(8) 10 U.S.C. 2677 (reference (j)) covers the the use of advance options to acquire real property.

(9) 10 U.S.C. 2571 (reference (j)) states that real property may be acquired by interchange or transfer between the Military Departments or the U. S. Coast Guard.

(10) 10 U.S.C. 2682 (reference (j)) requires that real property used by a Defense Agency be under the jurisdiction of a Military Department.

(11) 43 U.S.C. 156 and 157 (reference (m)) states that withdrawal or restriction of public domain lands, including the Outer Continental Shelf, or any one acquisition of 5,000 acres or more in the aggregate requires specific legislation.

(12) 10 U.S.C. 2662 (reference (j)) specifies the reports that must be made to the Congressional Armed Services Committees for real property transactions.

(13) 10 U.S.C. 2675 (reference (j)) provides the authority for leasing real property in foreign countries.

b. DoD Guidance. In addition to the requirements set out by the legal authorities described in paragraph F.1.a., above, the following guidance applies to acquiring real property.

(1) An economic analysis, as prescribed by DoD Instruction 7041.3 (reference (n)), shall be used to help decide among the alternative methods to acquire real property.

(2) The financial accounting for real property shall be in accordance with DoD 7220.9-M (reference (o)).

(3) Before acquiring real property by purchase, or lease, DoD Components shall determine that the requirements cannot be satisfied by:

(a) Emergency use or national defense clauses in deeds of conveyance. Such clauses may be used only when a national emergency is declared by Congress or the President pursuant to the National Emergencies Act of 1976. They shall not be used for routine acquisitions in peacetime or as a cost saving measure.

(b) Excess or otherwise available property held by other Military Departments or Federal Agencies.

(c) Exercise of existing DoD authorities or those of the General Services Administration (GSA) for the exchange of DoD-controlled real property or surplus Federal property for privately owned property.

(d) Securing title to real property from State or municipal governments by donation or long-term nominal cost lease.

(4) Real property shall be acquired by one of the following methods that will satisfy the DoD requirement economically with as little impact as possible on the civilian economy:

(a) Acquisition of fee title to land, inclusive of all mineral rights and improvements, shall generally be considered in the best interest of the Government when:

1 The estimated value of the Government's proposed land use equals or exceeds the land's current market value.

2 A terminal date for the requirement is projected but the land would be used long enough so that any money spent for rentals and restoration would exceed 50 percent of the fair market value of the fee title.

3 Cost of acquiring an easement right approaches 75 percent of the current fair market value of the fee title.

(b) Leases should provide for the right of cancellation in whole or in part, at the option of the Government, giving the shortest possible notice to the lessor. When in the best interests of the Government, leases shall be for "Government purposes" rather than for specific purposes (e.g., Defense-Naval-Flying-Reserve). Desirability of an urban location, reduced travel time for employees or business representatives, reduced transportation costs, environmental impact, or desirability of single unit offices over split locations near one another should be considered in evaluating facility acquisition strategies. Before a leasehold can be acquired, it must be shown that the activity to be accommodated is essential to an assigned mission and Government-owned property already available cannot be used.

(5) The advisability of acquiring fee title to property currently held under lease shall be studied in those instances where the cost of restoration or decontamination of the land exceeds the current fair market value.

(6) State, regional, and local officials at all levels shall be consulted early in the planning stage of real property acquisition. (See DoD Directive 4165.61, (reference (p)).)

(7) To ensure the operational integrity of military airfields, it may be desirable to acquire land interests permitting the prohibition of land uses incompatible with aircraft operations. When appropriate, the

necessary rights shall be obtained by exchange or purchase. The development stages of acquisitions supporting the Air Installation Compatible Use Zone concept shall follow the guidelines in DoD Instruction 4165.57 (reference (q)).

2. Management of Real Property. The DoD Components shall ensure that real property holdings under their control are being used to the maximum extent possible consistent with peacetime and mobilization requirements. Each Military Department shall maintain a program monitoring the use of real property. The DoD Components' real property management programs shall adhere to the following general policies:

a. Annual Review. In accordance with E.O. 12512 (reference (r)), DoD Components shall periodically review their real property holdings, both land and facilities to identify unneeded and under-used property. Real property for which there is no foreseeable military requirement, either in peacetime or during mobilization, shall first be offered to other Military Departments and Defense Agencies for their possible use. In deciding whether real property shall be retained, the following criteria should be considered:

(1) Whether the property is being used effectively, is necessary to satisfy current or projected peacetime needs, or is needed to meet mobilization requirements.

(2) If the DoD Component Head has determined that the property is essential to protect future mission flexibility, operational changes, changes in equipment types, mobilization for a national security emergency, or for research or development of future defense or weapons systems.

(3) If the requirement for the property can be met by using other property of less cost providing equal or better working and operating conditions.

(4) Whether the property is used as a buffer zone and was previously conveyed to the Military Department for that purpose by a local community or private interests and is still required for that purpose.

(5) Whether the property is an internal parcel and access to it would disrupt installation operations.

(6) If the cost of declaring real property excess (because of new fencing, utilities, roads, replacement buildings, decontamination, or other factors) is likely to exceed the market value.

(7) If the property is affected by security or safety restrictions, including quantity safety distance safety arcs, radiation safety zones, Air Installation Compatible Use Zones (DoD Instruction 4165.57, reference (q)), or potential encroachments, radio interference zones, or specifically designated security areas.

b. Use of Real Property. Installation commanders should use the following priorities when assigning unused space on their installations. They may make exceptions to these priorities when they determine if it is in the best interests of the installation to do so. The commanders shall consider:

(1) Appropriated fund activities of the DoD Component serving as host at the installation.

(2) Nonappropriated fund activities of the DoD Component serving as host at the installation.

(3) Activities of other DoD tenants.

(4) Other Federal Agencies with priority to those providing base services such as a post office or the Federal Aviation Administration (FAA) at an airfield.

(5) All others.

c. Outgrants. 10 U.S.C. 2667 (reference (j)) sets forth the terms and conditions under which the Military Departments may lease nonexcess property. The Military Departments are encouraged to use this authority whenever possible. Unimproved lands (e.g., buffer, safety, restrictive, or maneuver areas) or other real property, temporarily not needed for DoD use, may be outgranted when interim usage will not interfere with the purpose for which the real property is held by the Department. In addition to the requirements of 10 U.S.C. 2667 (reference (j)), the Military Departments should adhere to the following policies:

(1) Whenever it is proposed to outgrant real property to the private sector for the express purpose of seeking private sector capital investment instead of military construction funds to support DoD missions, employees, or dependents of the military, advance notice shall be provided to the committees on Armed Services of the House and Senate. Such notice shall include a general description of what the private sector shall be asked to provide and shall be made at the earliest time practical, but before soliciting proposals from the private sector.

(2) All outgrants of Government-owned property shall include provisions requiring the grantee to obtain prior approval before allowing another party to exercise the rights and privileges authorized by the outgrant, directly or indirectly.

(3) In establishing the terms for leasing property to public educational institutions, the Secretary of the Military Department concerned, or designee, after consulting with the Department of Education, may consider actual or potential benefits to the United States, but should not set the rent below the sum necessary to cover maintenance, services, utilities, protection, repair, and other restoration costs (including environmental restoration) of the property, and related administrative costs.

(4) All proposed outleasing actions (irrespective of grantee or consideration) must be considered and assessed within the policy guidance of DoD Directive 5100.50 and 42 U.S.C. 4321 (references (s) and (i)).

d. Construction on Other-Than-Owned Land. The Secretary of the Military Department concerned may determine that a military construction project may be accomplished on land that is held in other than fee simple interest. (See 10 U.S.C. 2852 (reference (j)).)

e. Leaseholds. Whenever possible, each DoD Component shall take prompt action to relocate military activities accommodated in leased building space into Government-owned facilities, preferably located on a military installation, and to dispose of excess leaseholds. (See paragraph F.3.e., below.)

f. Charges for Use of Space. Unless specified differently in this or other DoD regulations, charges shall be assessed at fair market rates for use of DoD space by other Federal Agencies. Exceptions to this policy are:

(1) Real property and related services provided to an organization that solely supports or substantially benefits the installation's mission (e.g., a permit to a FAA Air Controller on an air base or a permit to the Federal Communications Commission (FCC) for a communication tower).

(2) Land held under existing permits. Agencies should only be charged when entering into new outgrants or on renewal of existing outgrants.

(3) DoD land used if the activity being conducted on the property benefits or enhances the national defense.

(4) Cases in which the income produced by a charge is less than the expense of administering the charge.

(5) Permits in the nature of an easement granting a right-of-way for roads, pipelines, cables, or similar purposes.

g. Annexation. It is DoD policy to be neutral relative to annexation by a municipality or political subdivision in accordance with State law, unless the Secretary of the Military Department concerned determines that such action would not be in the best interest of the Federal Government, or it is opposed by another local jurisdiction.

h. Coastal Zone Management. Applications for leases, licenses, or permits to use DoD real property affecting land or water uses in the coastal zone of a State shall contain certification that the proposed activity is consistent with DoD Instruction 4165.59 and 16 U.S.C. 1451 (references (t) and (u)) in complying with the State's approved coastal zone management program.

i. Relinquishment of Legislation Jurisdiction. 10 U.S.C. 2683 (reference (j)) describes when and how the Secretary of a Military Department may relinquish legislative jurisdiction over lands or interests under his or her control. Any action by a Military Department that would retrocede Federal legislative jurisdiction shall be taken only after consultation with the local United States Attorney and the General Litigation and Legal Advice Section, Criminal Division, Department of Justice.

j. Public Access. DoD Installations shall generally be operated as open posts, camps, or stations unless the installation commander determines otherwise, as stated in DoD Directive 5200.8 (reference (v)).

k. Maximum Use of Installation Resources. Cross Service and joint Service use of bases and facilities shall be promoted to achieve excellent customer service in overhead, support areas, and common logistical functions. (See DoD Directive 4000.19 (reference (w)).)

(1) The predominant user concept shall apply in the designation of host and/or tenant responsibilities at joint use installations.

(2) Designations of host and/or tenant responsibilities that cannot be settled by the Military Departments and Defense Agencies shall be referred to the ASD(P&L) for resolution. Designation of host responsibilities involving Reserve components shall be coordinated by the ASD(P&L) with the Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)).

l. Conservation of Natural and Cultural Resources. Installations of all sizes shall manage natural and cultural resources, land, or water areas in accordance with DoD Directives 4700.1 and 4710.1 (references (x) and (y)).

m. Energy Resources. The Military Departments shall initiate formal programs to identify potential energy resources (e.g., coal, oil, gas, geothermal steam) on DoD lands.

(1) The Military Departments shall make their land available for mineral exploration and extraction to the maximum extent consistent with military operations, national defense activities, and Army civil works activities in accordance with DoD Directive 4700.3 (reference (z)).

(2) If a commercial oil and gas resource development is located near a DoD installation, the Bureau of Land Management, Department of the Interior, shall be contacted immediately to advise on potential drainage problems. To prevent exploitation of a Government asset and upon the recommendation of the Bureau of Land Management, oil and gas shall be leased by the Department of the Interior under conditions specified by the Military Department concerned.

n. Federal Employee Parking. DoD Components should comply with Federal Property Management Regulations (FPMR), Regulation D-84 (reference (aa)), for Government-owned and -leased property under GSA control.

o. Base Realignment Announcements. 10 U.S.C. 2687 (reference (j)) specifies the procedures to be followed for base closures or realignments. An advance copy of any proposed realignment announcement, including those required by 10 U.S.C. 2687, shall be forwarded to the ASD(P&L) for information 14 days before, if possible, and in any event before the public release of the information.

p. Predesignation of Nonindustrial Facilities for Emergency Requirements. To ensure that installation commanders have access to sufficient housing, training, and other nonindustrial facilities needed to respond effectively to mobilization surges and other major national emergencies, the Military Departments shall, in accordance with E.O. 11490 (reference (bb)):

(1) Develop plans, programs, and procedures for selecting and predesignating nonindustrial facilities to meet emergency requirements.

(2) Task installation commanders to:

(a) Identify their supplemental nonindustrial facility requirements to include the conditions and extent of facility use.

(b) Request facility assignments by applying to the Federal Emergency Management Agency (FEMA) regional director in the area in which the facility is located (enclosure 3). The regional director shall coordinate such requests with other Federal Agencies and State and local emergency planners and resolve any conflicts in facility designations.

(c) Arrange for formal agreement with a facility owner or operator once FEMA has approved the predesignation of a facility.

(d) Maintain records on the assignment and planned use of predesignated facilities to aid in evaluating emergency preparedness capabilities.

q. Internal Management Control. In accordance with Public Law 97-255 (reference (cc)), management shall employ DoD Directive 5010.38 (reference (dd)) to ensure that an adequate program of internal management control is operationally effective and is providing adequate safeguards against waste, loss, unauthorized use, or misappropriation of real property.

3. Disposal of Real Property. Military Departments shall maintain aggressive review programs to ensure that, after screening with the other DoD Components, real property for which there is no foreseeable requirement is reported promptly to GSA or the Department of the Interior, in accordance with applicable regulations of those Agencies for disposal. (See paragraph F.2.a., above.) Disposal of real property controlled by the DoD Components is subject to the following considerations:

a. Mobilization Requirements. Government-owned real property held by a Military Department determined, after screening, "not for the time needed for public use" by the DoD Components but for which a mobilization requirement exists may be made available for interim use in one of the following ways, provided this will not involve modifying the property in a manner that would prevent its return to the holding Department for timely use in meeting its mobilization requirements:

(1) By permit to another Government Agency.

(2) By outgranting by license, easement, or lease.

(3) By declaring it as excess to GSA for disposal subject to adequate provisions for recapture in accordance with existing regulations, instructions, and statutes.

b. Emergency Reuse Rights. The release of the emergency reuse (recapture) rights retained by the Government may be effected in response to a petition from the grantee to the Secretary of Defense through the Department of Housing and Urban Development (HUD), Federal Aviation Administration (FAA), GSA, or the Department of Health and Human Services (HHS), if there is no

current mobilization requirement by any of the Military Departments. At the time such a petition is received, the Military Department shall review plans covering contemplated use of the facility in light of the current and projected physical condition of the improvements.

c. Excess Buildings and Improvements. When considering possible changes in mobilization requirements, disposal of excess buildings and improvements located on nonexcess land shall not be undertaken where such improvements are structurally sound, are adaptable to normal operational use, shall require only nominal maintenance, and the physical location will not interfere with approved new construction or such improvements are movable and are needed to satisfy a current requirement of a Military Department.

d. Documentation and Response to Contamination on Excess Real Property Except as may otherwise be provided by agreement between Departments or directed by OSD, the Military Department controlling the real property shall be responsible for funding and completing a survey to identify and fully document any toxic or hazardous materials and potential contamination, and the response to any contamination (including any excess and surplus real property). Titles 42 U.S.C. 6901, et. seq., and 42 U.S.C. 9601, et. seq. (references (ee) and (ff)) impose requirements for technical and administrative procedures for managing or disposing of hazardous wastes or response to contamination resulting from storage, releases, or disposal of hazardous substances. These requirements must be met by the Military Departments prior to the sale or other transfer of real property. The guidelines in the FPMR (reference (gg)) shall also be met. All plans for decontamination of potentially explosive materials shall be submitted to the DoD Explosives Safety Board by the Military Department concerned for approval before forwarding the draft disposal report.

e. Release of Leasehold. Immediately upon determination that a leasehold has become excess, the DoD Component concerned shall send a notice of availability to the appropriate offices of the other DoD Components and the U.S. Coast Guard, provided the leasehold terms do not prevent use by the other Services and there is a reasonable useful life remaining. Notices shall include a physical description of the property, terms of the lease, surrender date, and date of contract renewal.

(1) The DoD Component interested in acquiring such excess leasehold shall assume responsibility for continuing the leasehold interest.

(2) If no DoD interest is expressed, GSA shall be advised of excess leaseholds with at least 9 months of beneficial occupancy remaining to permit Federal screening.

f. Family Housing Units. Reports of excess Real Property (GSA Form 118) covering mortgaged or unencumbered family housing and related land and improvements or unimproved land acquired for family housing purposes shall include the statement: "Net proceeds from the sale of family housing, including related land and improvements, shall be deposited in the Family Housing Account of the appropriate Military Department." Use of such proceeds shall be in accordance with guidance provided by the Assistant Secretary of Defense (Comptroller) (ASD(C)), Program/Budget.

g. Land Exchange. Before the exchange of DoD land, the requirements of 42 U.S.C. 3122 and 10 U.S.C. 2662 (references (hh) and (j)) shall be met.

h. Timberland. Forest resources should be evaluated to determine the feasibility of harvesting and sale of forest products before any disposal of forest lands. This evaluation must consider the effects of harvesting on the future use and environmental quality of the property. Planned harvesting shall continue on land reported as excess until actual disposal or transfer.

i. Other Considerations

(1) Installed real property shall not be removed nor facilities otherwise "cannibalized" during the disposal process, except as authorized by the FPMR (reference (gg)).

(2) The disposal of real property, having an economic impact as defined in DoD Directive 5410.12 (reference (ii)), is also subject to that Directive.

(3) Excess land or buildings valued, in the project aggregate, at less than $1,000 may be disposed of by the Military Departments.

G. INFORMATION REQUIREMENTS

The reports in this Directive are exempt from licensing in accordance with subparagraph D.5.b.(2) of DoD 7750.5-M (reference (jj)).

H. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Assistant Secretary of Defense (Production and Logistics) within 120 days.

William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 3
1. References
2. Definitions
3. Directory of FEMA Regional Offices

REFERENCES (continued)

(d) DoD Directive 4165.62, "DoD Implementation of Personnel Parking Facilities Program," December 7, 1979 (hereby canceled)
(e) DoD Directive 4165.20, "Utilization and Retention of Real Property," January 31, 1985 (hereby canceled)
(f) DoD Directive 3005.2, "Non-Industrial Facilities for Mobilization," December 7, 1964 (hereby canceled)
(g) DoD Directive 4275.5, "Acquisition and Management of Industrial Resources," October 6, 1980
(h) DoD Directive 4001.1, "Installation Management," September 4, 1986
(i) Title 42, United States Code, Section 4321, et. seq., "National Environmental Policy Act"
(j) Title 10, United States Code, Sections 2233, 2571, 2662, 2667, 2672, 2672a, 2675, 2676, 2677, 2682, 2683, 2687, and 2852
(k) Title 40, United States Code, Section 483, "Federal Property and Administrative Services Act of 1949"
(l) Title 42, United States Code, Sections 4601-4655, "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970"
(m) Title 43, United States Code, Sections 156 and 157, "Outer Continental Shelf Lands Act"
(n) DoD Instruction 7041.3, "Economic Analysis and Program Evaluation for Resource Management," October 18, 1972
(o) DoD 7220.9-M, "Department of Defense Accounting Manual," October 1983, authorized by DoD Instruction 7220.9, October 22, 1981
(p) DoD Directive 4165.61, "Intergovernmental Coordination of DoD Federal Development Programs and Activities," August 9, 1983
(q) DoD Instruction 4165.57, "Air Installations Compatible Use Zones," November 8, 1977
(r) Executive Order 12512, "Federal Real Property Management," April 29, 1985
(s) DoD Directive 5100.50, "Protection and Enhancement of Environmental Quality," May 24, 1973
(t) DoD Instruction 4165.59, "DoD Implementation of the Coastal Zone Management Act," December 29, 1975
(u) Title 16, United States Code, Section 1451, et. seq., "Coastal Zone Management Improvement Act of 1980"
(v) DoD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980
(w) DoD Directive 4000.19, "Interservice, Interdepartmental, and Interagency Support," October 14, 1980
(x) DoD Directive 4700.1, "Natural Resources--Conservation and Management," November 6, 1978
(y) DoD Directive 4710.1, "Archeological and Historic Resources Management," June 21, 1984
(z) DoD Directive 4700.3, "Mineral Exploration and Extraction on DoD Lands," September 28, 1983
(aa) General Services Administration, Federal Property Management Regulations, Regulation D-84, April 7, 1987
(bb) Executive Order 11490, "Assigning Emergency Preparedness Functions to Federal Departments and Agencies," October 28, 1969, as amended
(cc) Public Law 97-255, "Federal Managers' Financial Integrity Act of 1982," September 8, 1982

REFERENCES (continued)

(dd) DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987
(ee) Title 42, United States Code, Section 6901, et. seq., "Resource Conservation and Recovery Act"
(ff) Title 42, United States Code, Section 9601, et. seq., "Comprehensive Environmental Response, " Compensation, and Liability Act"
(gg) General Services Administration, Federal Property Management Regulations, Title 41, Code of Federal Regulations, Chapter 101, Subchapters "D" and "H"
(hh) Title 42, United States Code, Section 3122, "Agricultural Act of 1970"
(ii) DoD Directive 5410.12, "Economic Adjustment Assistance to Defense-Impacted Communities," April 21, 1973
(jj) DoD 7750.5-M, "DoD Procedures for Management of Information Requirements," November 1986, authorized by DoD Directive 7750.5, August 7, 1986.

DEFINITIONS

1. Installation. Includes the land, buildings, structures, and utilities constructed or acquired for the operation and support of the mission of a post, camp, station, hospital, depot, base, arsenal, etc. Activities that are located within the confines of another installation and occupying portions of land, buildings, and structures of the main installation are considered to be tenants.

2. Installation Commander. A military officer or civilian who, under applicable Service regulations, is the senior person on an installation having authority jurisdiction over its general operations, and who is the commander or director of the host organization if there are tenants.

3. Nonindustrial Facility. A unit of real property, including improvements not used or suitable for research or as an ocean terminal, or for producing or maintaining materials, munitions, equipment, supplies, goods, or other products. Examples include hotels, motels, and resort area facilities.

4. Real Property. Lands, buildings, structures, utility systems, improvements, and appurtenances. Includes equipment attached to and made part of buildings and structures (such as heating systems), but not movable equipment (such as plant equipment). In a base closure or other property disposal action, movable and other property normally not regarded as real property may be treated as such under the concept of "related personal property."

5. Requirement. A military need, whether for a current or mobilization mission, based on why real property is needed, and what is to be accomplished by its use.

SHORE FACILITIES PLANNING MANUAL

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA. 22332

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DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA VIRGINIA 22332

IN REPLY REFER TO
NAVFACINST 11010.44D CH-1
FAC 201

24 FEB 1981

NAVFAC INSTRUCTION 11010.44D CHANGE TRANSMITTAL 1

From: Commander, Naval Facilities Engineering Command

Subj: Shore Facilities Planning Manual

Encl: (1) Revised and reissued pages II-1 through II-4, III-1 through III-15, IV-1 through IV-2b, IV-7 through IV-12, VI-1 through VI-5, VII-1 through VII-3, VIII-3 through VIII-6, VIII-9 through VIII-14, IX-7 through IX-10, D-3, D-4, E-1, F-1, F-2, G-1, L-1, L-2, and M-1.

(2) Pen changes

[illegible]

[illegible] revised procedures to the Shore Facilities [illegible].

3. Action. Addressees shall:

a. Remove pages II-1 through II-4, III-1 through III-15, IV-1, IV-2, IV-7 through IV-14, VI-1 through VI-5, VII-1 through VII-4, VIII-3 through VIII-6, VIII-9 through VIII-16, IX-7 through IX-10, D-3, D-4, E-1, F-1, F-2, G-1, L-1, L-2, M-1 and M-2. Substitute the attached revised enclosure (1) pages.

b. Enter changes listed on enclosure (2) as appropriate.

A. W. COLLINS
Assistant Commander
for Facilities Planning
and Real Estate

Distribution:
See page 2

Pen Changes

1. Make the following pen changes.

   a. On page II-7, paragraph B.2.b.(1).(b). change "computer-generated" to "developed."

   b. On page IX-4, paragraph D.1.q. should be deleted.

   c. On page IX-4, paragraph D.2. "% W, % WO" should be deleted.

   d. On page IX-5, paragraph D.3. "column headed by the letter "U"" should read "column headed by the letters "VI".

      "Column "U"" should be changed to "column "VI"".

      "See Appendix [illegible] should be changed to "See Appendix [illegible]."

   e. On page B-2 add the abbreviation "Facilities Requirements Plan" between "FPD" and "FY."

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN REPLY REFER TO
NAVFACINST 11010.44D
FAC 201
19 NOV 1979

NAVFAC INSTRUCTION 11010.44D

From: Commander, Naval Facilities Engineering Command

Subj: Shore Facilities Planning Manual

Ref: (a) OPNAVINST 11010.1J
(b) NAVMATINST 4860.13B (NOTAL)
(c) OPNAVINST 4040.33E
(d) NAVFACINST 11010.32E
(e) NAVFACINST 11010.63
(f) OPNAVINST 11010.20D

1. Purpose. This instruction provides a complete revision to the procedures and guidance for the accomplishment of shore facilities planning, in accordance with responsibilities assigned to the Naval Facilities Engineering Command [illegible] by reference [illegible]e (a).

2. Cancellation. NAVF[illegible] is cancelled and superseded by this instruction.

3. Background

a. Reference (a) directs the Naval Facilities Engineering Command to publish detailed procedures for the implementation of the Shore Facilities Planning System (SFPS).

b. This instruction describes the procedures and techniques for the performance of the SFPS and provides detailed instructions for the submission and review of the required documents. The facility planning techniques of (1) determining requirements, (2) evaluating existing assets, (3) comparing requirements with usable assets, and (4) determining the optimum means of correcting deficiencies and disposing of excesses are basic steps. The documentation produced by the SFPS provides assets and requirements data to all commands for all types of construction projects. The procedures for the development of military construction projects (Military Construction Requirements List) are described herein.

6. Action Addressees shall comply with the shore facility planning procedures outlined herein.

7. Reports and Forms

a. The reporting requirement contained in paragraph 5b has been approved by the Chief of Naval Operations and has been assigned symbol OPNAV 11000-1C.

b. The revised OPNAV Form 11000/4 (4-79) will be available from the Naval Publications and Forms Center, Philadelphia, PA 19120, in May 1980, under stock number 0107-LF-110-020. An initial supply will be provided to the Engineering Field Divisions under separate cover. The revised OPNAV Form 11000/4 (4-79) will be required for submission purposes beginning in June 1980.

A. W. COLLINS

Distribution: (2 copies each, except as indicated)

SNDL	A2A	(Department of the Navy Staff Offices)
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	B3	(Armed Forces Staff College, only)
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	C4L	(Director of Navy Laboratories)
	D1A	(Navy Council of Personnel Boards)
	E3A	(Lab, ONR)

TABLE OF CONTENTS

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SECTION III	The Facility Planning Document
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SECTION VI	Special Considerations
SECTION VII	Disposable Assets
SECTION VIII	Project Submissions
SECTION IX	Annual MILCON Requirements List (Report 1360)
SECTION X	Formulation of Annual Program

SECTION I - THE SHORE FACILITIES PLANNING SYSTEM

A. THE PLANNING PROCESS

1. PLANNING is defined as a detailed scheme, program, or method worked out beforehand for the accomplishment of an objective or goal. In terms of the Naval Shore Establishment, planning is the process of providing for the efficient use and orderly development of real estate and facility resources for naval installations.

2. The facility resources of the Naval Shore Establishment are fundamental to the execution of assigned missions. These missions are dynamic and often necessitate changes in characteristics of ships, aircraft, and other weapons systems. Mission changes can sometimes be anticipated and requisite actions planned over an extended period of time. In other cases, they result from unexpected developments external to an activity or the Navy. In either case, the acquisition of facilities ashore involves significant lead time for authorization and funding by Congress and for design and construction. Accordingly, Navy planning, programming, and budgeting must [illegible] replacement facilities required to [illegible] Navy [illegible] in prior years on a [illegible] basis.

3. The SHORE FACILITIES PLANNING SYSTEM (SFPS) has been developed to determine facility requirements necessary for the accomplishment of assigned missions and to ensure optimum utilization of existing assets at shore activities. Navy shore facilities must be:

In place when they are needed;
The minimum necessary to support the function;
Economical and efficient;
Financially attainable;
Utilized fully or disposed of when not required;
Maintained so as to achieve optimum life;
Sensitive to human needs.

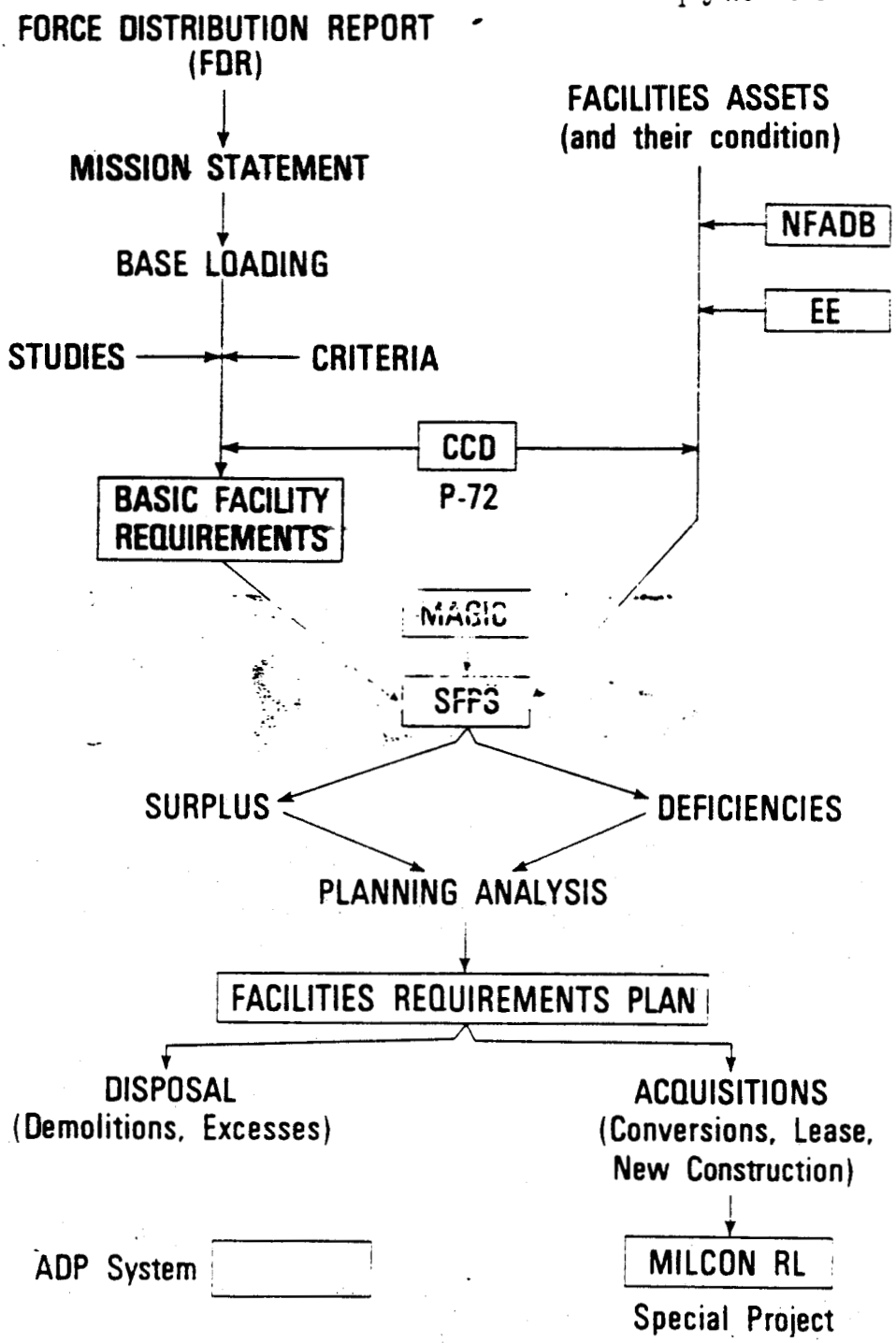
Use of the SFPS can assist in the attainment of these objectives.

B. PHASES OF THE PROCESS

1. Shore facilities planning is a continuous process, keying on the activity mission. If the mission is stable and assets remain the same, the process is static. If either of these changes, the process will indicate that action (a product) must be developed. Planning analysis will indicate the action or product required.

2. Logical steps in the process are:

a. Define the future mission, optimally 5 - 8 years ahead.



SHORE FACILITY PLANNING COMPONENTS AND RELATIONSHIPS

FIGURE I-1

SECTION II - SFPS ELEMENTS

A. FACILITIES REQUIREMENTS PLAN

1. The SFPS provides the capability to define facility use, acquisition and disposal plans in a concise, logical manner. It uses the Facilities Requirements Plan (FRP) to provide a display of facility planning data and to document a systematic planning rationale. (A

2. The FACILITIES REQUIREMENTS PLAN provides a statement of facility requirements, lists existing assets by condition and displays future plans to utilize, acquire or dispose of assets. As part of the plan, a host activity may include planning information relating to supported units. A host activity may also include facility requirements located at other host activities in its plan. A tenant activity plan may include facility requirements at more than one host location.

3. The Facilities Requirements Plan is made up of three elements:

a. Activity General Information

[illegible] element provides general data for the particular activity, including major claimant, special areas, tenants, supported units, etc. A sample of this is found as Figure II-1.

b. Facilities Requirements Plan Summary

This summary provides a concise overview, by category codes, of Basic Facility Requirements; existing assets; existing deficiencies and surpluses; and deficiencies and surpluses that would remain after implementation of the actions associated with the Facility Planning Document (FPD). Figure II-2 is an example. (R

c. Facility Planning Documents (FPD)

An FPD is prepared for each category code related to the defined mission of the activity, showing the detailed planning information for that particular category code, including Basic Facility Requirement, asset information, deficiency, surplus, and a plan for reduction of deficiency and surplus. Also included is a section for notes to explain any special conditions. Figure II-3 provides a sample FPD.

B. RELATED SYSTEMS

1. In addition to developing facility planning information, the SFPS also consolidates and sorts data from component automated data processing (ADP) systems, including:

MAGIC (Master Activity General Information and Control)

FAC80 RPT SYM/NO. 11016/R2001R01

F A C I L I T I E S R E Q U I R E M E N T S P L A N S U M M A R Y

ACTIVITY UIC. N-62688 ACTIVITY NAME. NAVSTA NORFOLK VA 11 FEB 81

CCN	CATEGORY CODE DESCRIPTION	UM	BASIC FACILITY REQUIREMENT	ASSETS ADEQUATE SUBSTNRD INADEQTE OTHER	ASSETS	EXISTING QUANTITY SURPLUS+ DEFICIENT-	PROPOSED QUANTITY SURPLUS+ DEFICIENT-
730-77	MISC PERS SUP S	SF	770	786	S	16 + 770 -	16 +
730-80	EMP PK BLDG	SF		1920	A	1920 +	1920 +
730-81	REHAB CENTER	SF	17900			17900 -	17900 -
730-83	CHAPEL	SF		18920	B	18920 +	18920 +
730-84	RELIGIOUS ED	SF	6760	3118	A	3642 -	3642 -
SUPP[illegible] CATEGORY	CODE 730-8[illegible] TOTAL	SF	9160	5518	A	3642	3642 -
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		
740-12	[illegible]	SF	9072	19670	A	10598 +	10598 [illegible]
740-19	CREDIT UNION	SF	3605	3732	A	127 +	127 +
740-25	FAMILY SVC C	SF	2258	3234	A	976 +	976 +
740-26	CIV CAF/RESTRNT	SF	22350	9783 19830	A S	7263 + 12567 -	7263 +
740-28	AMUSEMENT CENTR	SF	13360	13884	A	524 +	6536 +
740-34	THRIFT SHOP	SF	6300	6013	A	287 -	287 -
740-36	HOBBY SHOP-AR/C	SF	21494	5512 15982	A S	15982 -	
740-37	SPEC SERV CTR	SF	20467	20967	A	500 +	500 +
740-38	AUTO HOBBY SHOP	SF	5848	4100	A	1748 -	1748 -
740-40	BOWLING ALLEY	SF	51852	51852	A		
740-43	GYMNASIUM	SF	89395	88303 6012	A I	4920 + 1092 -	

FIGURE II-2

CCD (Category Code Directory for Navy Facilities Assets, NAVFAC P-72)
NFADB (Navy Facility Assets Data Base)
MILCON RL (Military Construction Requirements List)

2. A brief description of these systems as each relates to the Shore Facilities Planning System follows.

a. MAGIC (Master Activity General Information and Control)

(1). The MAGIC data base is an automated file containing general information on each Navy and Marine Corps shore activity (e.g., name, location, command relationships, host/tenant relationships and various codes used by the automated systems). The reconciliation of requirements and assets within the SFPS is dependent on the activity data in the MAGIC data base maintained by the Facilities Systems Office (FACSO) in Port Hueneme, California.

(2). At Navy shore activities, a HOST is an activity that [illegible] and/or [illegible] property. Navy shore activities are considered tenants or supported units if they are [illegible] property. The MAGIC file [illegible] between [illegible] Navy activities by HOST/TENANT (H/T) CODE. This indicates ties the user's Unit Identification Code (UIC) to its respective host and identifies the support relationship. Host/tenant codes are explained in Appendix C.

(3). A host activity may list property that is non-contiguous to the main site as a SPECIAL AREA (SA). Each special area is identified with a double alpha character designation (i.e., AD, CD, etc.). In addition to non-contiguous areas of a host, the situation exists where a host activity may require assets at another host's location. This condition is referred to as an ALTERNATE HOST, and the Facilities Requirements Plan of the initial host reflects use of assets at the alternate host location. This eliminates the creation of "islands of property" at a single location, and allows for the predominant host to hold all plant account.

(4). Operating procedures for the MAGIC system are described in NAVFAC Instruction 3400.4 series and summarized as follows:

(a). The activity will forward to the EFD (Code 20) marked-up ACTIVITY RECORD PRINTOUTS (ARP's) reflecting activity requested changes to special area listings. Additionally, the EFD will receive activity requests for changes to host/tenant codes, host identifiers and parent identifiers. The EFD processes these

b. NAVFAC P-72 (Category Code Directory for Navy Facilities Assets)

(1). The CATEGORY CODE DIRECTORY (CCD) is an automated file containing the Department of the Navy facility category codes, category code names and units of measure. The file also contains the Investment Category and Maintenance Cost Account Numbers for each category code. The CCD file is maintained at FACSO. Maintenance and operation of the CCD is as follows:

(a). Recommendations for CCD modifications are forwarded to NAVFACENGCOMHQ (Code 2013) for review. After approval, changes and additions are processed by NAVFACENGCOMHQ via CRT to the CCD file.

(b). NAVFAC P-72 is ~~computer-generated~~ developed from the CCD file. Tape extracts of the file are used by the other systems described herein.

[illegible] NFADB (Naval Facility Assets Data Base)

[illegible] The NAVFAC [illegible] NFADB Data Base [illegible] automated [illegible] data on all [illegible] activity owned [illegible] leased to the Navy and Marine Corps. Included in the NFADB are Class I (land) and Class II (buildings, structures, utilities) facilities. Data is provided on location, type of acquisition, type of construction, cost, size, utilization and condition. The SFPS uses the NFADB as the source for existing assets data. The NFADB file is maintained at FACSO. Maintenance and operation of the NFADB are described in detail in the NFADB Manual, NAVFAC P-78, and are summarized as follows:

(a). The EFD inputs facility utilization and condition data via the CRT, for those data elements addressed by SFPS. All other data is submitted by the NFADB reporting activities to the EFD as changes occur. These changes are also processed via CRT to FACSO.

(b). To confirm NFADB transactions, computer-generated PROPERTY RECORDS (PR's), OUTGRANT RECORDS (OR's) and DISPOSAL RECORDS (DR's) are returned by mail to reporting activities, with copies of these provided to the EFD for Navy activities and the Headquarters Marine Corps for Marine Corps activities.

(2). The following annual reports are generated from the NFADB:

(a). NAVFAC P-77, Inventory of Military Real Property, Navy

SECTION III - THE FACILITY PLANNING DOCUMENT

A. GENERAL

1. Each Facility Planning Document (FPD) is a record of existing and proposed planning data for a particular category code at an activity. A properly prepared FPD will provide proposals for optimum use of existing assets, and will provide a means for developing a plan to satisfy deficiencies and dispose of surplus facilities.

2. The FPD must be dynamic and it should be updated whenever:

   a. A change in mission or base loading dictates a change in requirements.

   b. The facility assets are changed as a result of an Engineering Evaluation.

   c. A project is completed that affects the quantity or the adequacy of a facility.

   d. Proposals for satisfying existing deficiencies or surpluses are revised.

3. It is essential that information from the Annual Inspection Summary, Special Projects Summary, Utilities Improvements Program, Fire Protection Survey, Energy Conservation Plan, and Master Plan be a part of the planning analysis in order that the availability of supporting facilities (such as roads, utilities, land) and other information not directly obtainable from the FPD, can be determined. In addition, the information contained in the Master Plan on environmental, intergovernmental and regional concepts should be used as well as regional plans, AICUZ plans, and other available information.

B. ELEMENTS OF THE FPD
(Refer to Figure III-1)

1. ACTIVITY UIC; NAME - Unit Identification Code and name of the activity.

2. AH/SU UIC; NAME - Unit Identification Code and name of the Alternate Host/Supported Unit, if applicable.

3. SPECIAL AREA; NAME - Special area designator and special area name, if applicable.

4. CATEGORY CODE, DESCRIPTION - The function of the facilities listed as extracted from the NAVFAC P-72.

5. RQMTS DATE - Computer generated indicating the date the EFD entered the Basic Facility Requirement into the data base.

6. LATEST CHANGE DATE - Computer generated, date that any element of the FPD was updated.

7. EFD CERT DATE - Latest date that the geographic EFD validated all data on the FPD page as accurate and complete and the activity has concurred with the plan. It is important that (A
the EFDs certify the FPDs as they are updated.

8. BASIC FAC RQMT; UM - Approved Basic Facility Requirement for the specific category code. The applicable units of measure are found in NAVFAC P-72. To ensure a proper comparison of requirements with the existing assets, all units of measure (A
indicated in P-72 must be completed. The primary unit of measure is denoted by parentheses ( ).

9. FACILITY ASSETS DATA - Data extracted directly from the NFADB file.

10. ADEQUATE; SUBSTNRD; INADEQUATE - Total quantities for all facilities with the [illegible] category code number [illegible] the NFADB. These [illegible] are listed for each [illegible] shown in NAVFAC P-72. The definitions of these terms are found in Section V.

11. OTHER - This column is used to enter assets that are not included in the NFADB; e.g., joint-use facilities owned by a non-navy activity, or GSA-leased facilities. For purposes of determining surpluses and deficiencies these assets are (R
considered to be adequate. When assets are included in this column it is necessary to include a General Note to describe the situation concerning these assets.

12. QUANTITY DEFICIENT; QUANTITY SURPLUS - These quantities are based on existing assets as compiled in the NFADB for the (R
particular category code. The quantities are calculated as follows:

a. Deficiency = requirements - adequate - other

b. Surplus = adequate + substandard + inadequate + other - requirement

In certain cases, it is possible to have both a deficiency and a surplus for the same category code. This condition results when some of the assets making up the surplus are substandard and/or (R
inadequate. These assets are therefore of no direct benefit in reducing a deficiency that is based on satisfaction by adequate assets. (Substandard assets can be made adequate by renovation, as is discussed later in this section).

(+) The scope associated with the planning action and (+) designator will be included in the calculation of PROPOSED QUANTITY DEFICIENT and PROPOSED QUANTITY SURPLUS shown on the FRP Summary. The asset (whether existing or planned as an acquisition) will contribute to reducing any deficiency and/or will increase any surplus shown for these "proposed" quantities on the FRP Summary. The TOTAL PROPOSED ADEQUATE ASSETS, shown on the FPD, is based on the summation of all scopes with a planning action that has a (+) designator. (R

(-) The planning action associated with this designator proposes to remove the asset quantity displayed in the SCOPE column from the particular category code. The asset would, therefore, not figure in the calculations of TOTAL PROPOSED ADEQUATE ASSETS, and the "proposed" quantities on the FRP Summary. (R

(0) The condition of the asset shown in the SCOPE column is inadequate and therefore will not impact the calculation [illegible] TOTAL PROPOSED ADEQUATE [illegible] contribute to the PROPOSED QUANTITY SURPLUS on the FRP Summary. (R

The calculation of the PROPOSED QUANTITY DEFICIENT and PROPOSED QUANTITY SURPLUS is as follows:

PROPOSED QUANTITY DEFICIENT = Requirement - TOTAL PROPOSED ADEQUATE ASSETS - Other Assets

(A

PROPOSED QUANTITY SURPLUS = TOTAL PROPOSED ADEQUATE ASSETS + Other Assets + All Scopes with (0) designator - Requirement

24. NT - Indicator of which FPD ACTION NOTE listed on the FPD is associated with the particular planning action.

25. ACQ - Additions, new construction, leases, and proposed acquisitions of Class II assets.

26. TOTAL PROPOSED ADEQUATE ASSETS - Is the summation of all the quantities in the SCOPE column which have a (+) designator.

27. NOTES FOR CATEGORY CODE - This is the heading for the notes section of the FPD.

for conversion. The appropriate planning action for that existing asset is "CONVTO" (conversion to), and the ID column should indicate the proposed category code to which the asset will be converted. Such conversion will be commonplace in the optimum utilization of assets. A proposed conversion may result in certain facilities being converted from inadequate to adequate or substandard, depending on the degree of satisfaction they provide.

Conversions may be recommended within the FRP of a host or a tenant activity. It may also be used to indicate a change in user of an asset while the plant account holder remains unchanged. Conversion of an asset from a host to a tenant or a supported unit (H/T Code 3) is an example of this. The UIC of the losing or gaining activity should be shown in an FPD Action Note.

d. Class 3 Property - The proposed facility plan may [illegible] relocatable facility. This proposed acquisition [illegible]

e. Reassignment - The change in plant account from [illegible] host to another within the Navy is referred to as a reassignment. In developing Facility Planning Documents for utilization of vacant regional facilities, it may become necessary to recommend reassignment between the Naval commands.

The activity that is receiving facilities in a reassignment will express the planning action as "REASFR" (reassignment from). The UIC of the releasing activity should be shown in the ID column. Conversely, the planning action for the releasing activity will be denoted as "REASTO" (reassignment to), with the receiving activity's UIC indicated in the ID column. (See Section VII). (D

4. FACILITY UPGRADE - There are two planning actions associated with upgrading facilities:

a. Renovation - The planning action "RENOV" will be used to designate a facility scheduled to be renovated. This planning action can only be used for a substandard facility, as it implies an upgrading of condition to adequate. An inadequate facility cannot be renovated since inadequate has been defined as a facility that cannot have its condition upgraded for its present use through "economically justifiable means".

6. VACANT ASSETS - If a facility is vacant, the ID column should indicate "VAC". If the ID column is left blank, the facility will be understood to be occupied.

D. FPD DATA ELEMENT ORIGINS

1. Some of the data depicted on the FPD is extracted directly from the other systems discussed in Section II of this instruction.

a. The "NAME" associated with ACTIVITY UIC, AH/SU UIC, and SPECIAL AREA are extracted from the MAGIC data on file (See highlighted data in Figure III-2).

b. The category code "DESCRIPTION" and the "UM" (unit of measure) for the particular category code are taken from the Category Code Directory, P-72 (See highlighted data in Figure III-3).

c. The "FACILITY ASSET DATA" shown on the FPD are extracted directly from the data in the Navy Facility Assets Data Base (See highlighted data in Figure III-4).

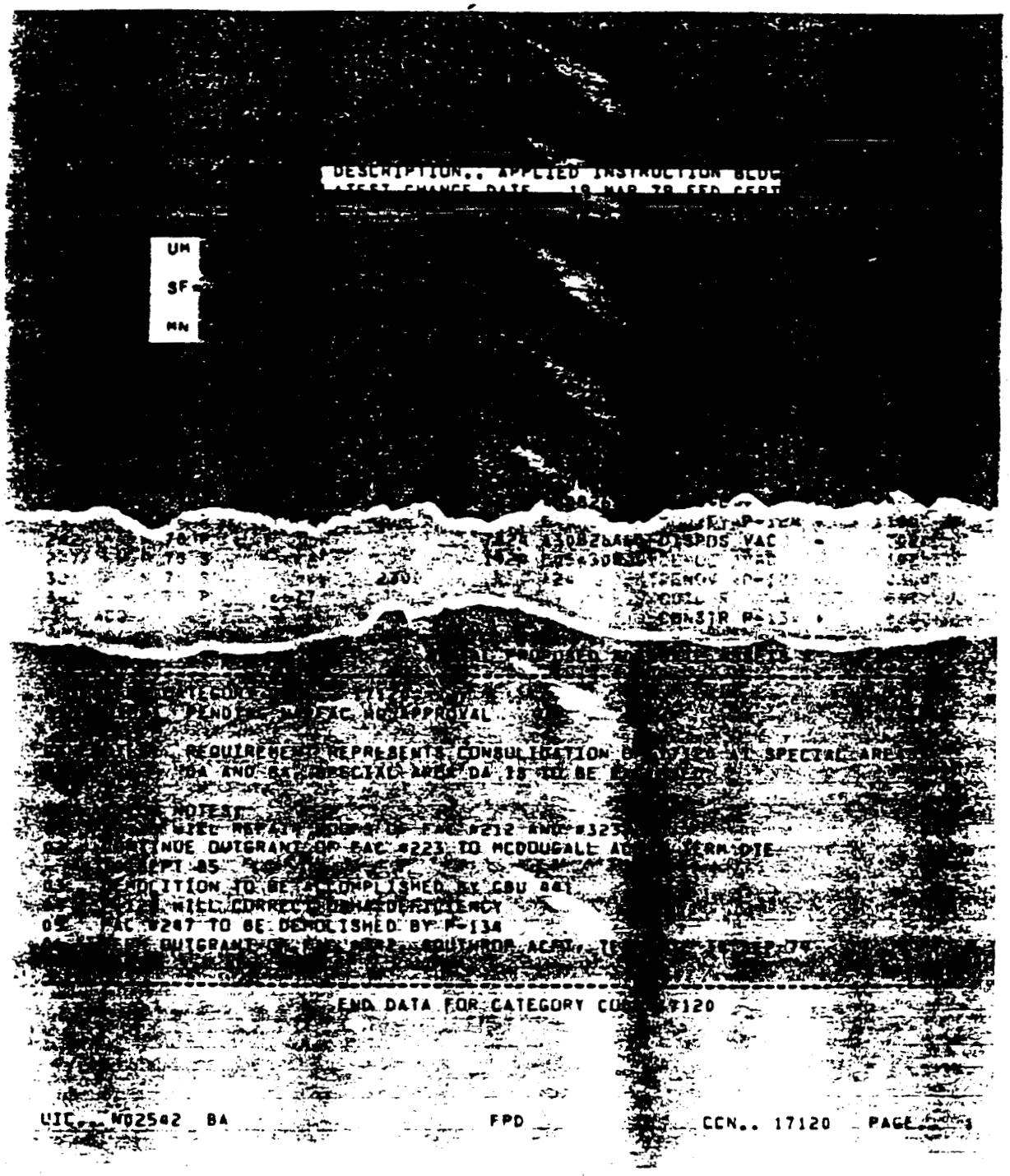
2. Data that will be input/updated via the CRT are depicted in Figures III-5 and III-6. Data highlighted in Figure III-6 are input/updated by NAVFACENGCOMHQ.

3. The data highlighted in Figure III-7 are computer generated and cannot be updated via the CRT.

E. ACTIVITY CONCURRENCE

1. On completion of the FPD's for an activity, the planning analysis will be reviewed by the activity and concurrence indicated by letter to the EFD. (R

2. If the activity does not concur with the EFD and agreement cannot be reached, the activity, will advise NAVFACENGCOMHQ by letter, via the EFD and chain of command, outlining the differences. NAVFACENGCOMHQ will then undertake steps to resolve the differences.



CATEGORY CODE DIRECTORY DATA ELEMENTS

FIGURE III-3

ACTIVITY UIC... N02542
SPECIAL AREA... BA

CATEGORY CODE.. 17120

EFD CERT DATE..

BASIC
FAC RQMT

38677

320

OTHER

ACTION	ID	D	SCOPE	NT
RENOV	P-123	+	7500	01
USE		+	3000	
CONVTO	21910	-	2600	
DISPOS	VAC	-	2100	
[illegible]	[illegible]	-	[illegible]	03
OUTG-C		-	8024	[illegible]
MODIFY	P-124	+	[illegible]000	04
DISP	[illegible]	-	[illegible]024	
CENCL	[illegible]	-	[illegible]924	05
RENOV	P-123	+	2300	01
OUTG-B		+	6677	06
CONSTR	P-[illegible]	+	8200	[illegible]

[illegible] PROPOSED [illegible] ASSETS = [illegible]

CATEGORY CODE.. 17120
[illegible] PENDING NAVFAC HQ APPROVAL

GEN NOTES: REQUIREMENT REPRESENTS CONSOLIDATION OF 17120 AT SPECIAL AREAS DA AND BA, SPECIAL AREA DA IS TO BE EXCESSED

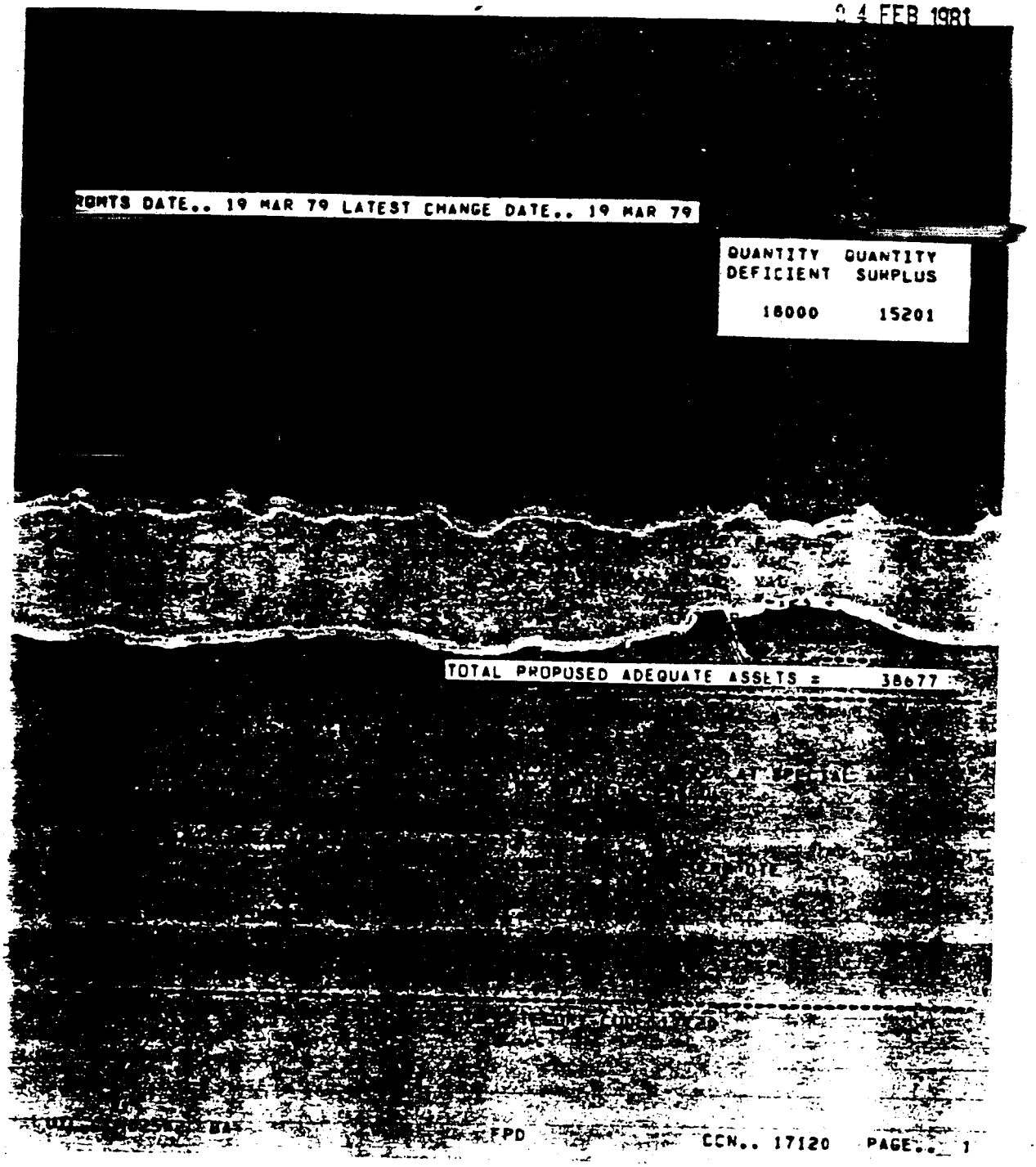
EFD ACTION NOTES:
01 P-123 WILL REPAIR ROOFS OF FAC #212 AND #323
02 CONTINUE OUTGRANT OF FAC #223 TO MCDOUGALL ACFT, TERM DTE 30 SEPT 85
03 DEMOLITION TO BE ACCOMPLISHED BY CBU 441
04 P-124 WILL CORRECT OSHA DEFICIENCY
05 FAC #247 TO BE DEMOLISHED BY P-134
06 TERM OUTGRANT OF FAC #342, SOUTHROP ACFT, TERM DTE 30 SEP 79

END DATA FOR CATEGORY CODE 17120

UIC.. N02542 BA FPD CCN.. 17120 PAGE.. 1

ENGINEERING FIELD DIVISION
UPDATABLE DATA ELEMENTS

FIGURE III-1



COMPUTER GENERATED UPDATABLE DATA ELEMENTS

FIGURE III-[illegible]

SECTION IV - BASIC FACILITY REQUIREMENTS

A. PURPOSE

Basic Facility Requirements is the title given to the listing of quantities, by category code, of those facilities required to perform the mission of a shore activity. It should include only those facilities necessary to support the assigned mission.

B. DEVELOPMENT

1. The activity must ensure that the Basic Facility Requirements reflect the mission and base loading projections. (A
If an activity finds that the information is no longer current, it should initiate an update.

2. The requirement for each category code is derived by applying base loading/quantitative workload data to the planning factors/criteria included in NAVFAC P-80, "Facility Planning Factor Criteria for Navy and Marine Corps Shore Installations". Particular attention is directed to Chapter 2 of P-80 which indicates that requirements shall be limited to minimum [illegible] need. Standard planning factors should be employed [illegible] and, if the actual requirement is less than the [illegible] by the use of the factor, the lesser amount should be used. The fact that a planning factor is provided by NAVFAC P-80 does not automatically mean that the entire quantity allowed is actually required by the activity, particularly where considerable external community support is available within a reasonable distance. Entry shall be made only for that quantity which is actually needed regardless of criteria. Requirements within each category code shown must be supported by justification data showing the complete rationale used to determine the requirement. The justification provided may range from calculations based upon a table in NAVFAC P-80, to an engineering analysis of space requirements when no planning factor exists. In developing the justification, application of environmental adjustment factors (EAF's) and related regional and community impact should be given careful consideration.

3. NAVFAC P-80 does not include criteria for all facility category codes. In cases where criteria are unavailable or inappropriate for the local situation, the back-up justification must include adequate detail to substantiate the requirement. (R
Regardless of the method employed to justify requirements, the number of personnel associated with each functional area should be included. Possible means of justification include:

C. BASE LOADINGS

1. The most critical aspect in requirements determination is the use of current and complete projections for base loadings (personnel, aircraft, ships, etc.). Regardless of the number of requirements being updated, base loadings associated with those requirements must be provided. Additionally, the source of these quantities should be included. Requirements should be based on five-year projected base loadings. (R

2. A base loading sheet must accompany any change to Basic Facility Requirements. This will permit easy reference and ensure consistency in updating requirements. The base loading sheet provided should consolidate all loading information that was necessary to develop the requirements submitted. This loading information will also indicate units deployed from the site, units deployed to the site, transient loadings, and students. Dependents of deployed personnel are normally shown at the homeport location. A suggested format for base loading sheets is [illegible] Figure IV-[illegible]. Personnel should [illegible] by graded and ungraded civilian, officer and enlisted, with student personnel [illegible]. Aircraft, ships and vehicles should be listed [illegible]. Other work loads or base loadings should be expressed in normal terms (tons of ammunition, number of units per unit of time, etc.). If [illegible] of the base loading information is classified, that portion will be made by separate submission, ensuring that identification is sufficient for referral to the appropriate Basic Facility Requirements submission. Likewise, the Basic Facility Requirements submission should be cross referenced to that classified base loading. The major claimant should review this loading data and advise NAVFACENGCOMHQ of any necessary corrections to the data. (A

3. The source document from which to derive an activity's base loading projection is the Navy Force Distribution Report (FDR). This report is a classified forecast of ships, aircraft, and personnel, by location. For a list of other documents relating to loading for specific criteria, refer to NAVFAC P-80. An explanation should accompany all base loading data that differ from the FDR. All loadings must be based upon "approved" versus "proposed" force levels. It is essential that all base loading questions be resolved prior to development of requirements calculations, since non-concurrence by the major claimant during the review process can result in a major rework of calculations and possible delay in needed projects. (A

BASE LOAD - PERSONNEL

BASE LOAD-PART A-(PERSONNEL) PROJECTION YEAR 19

ACT NAME .

LOCATION

PERSONNEL PERMANENT

MILITARY				CIVILIAN			
OFF	QTY	EM	QTY	GS	QTY	WB	QTY
07+		E9		11+		4	
06		E8					
05		E7		8 - 10		3	
04		E6					
03		E5		5 - 6		2	
02		E4					
01		E1-3		1 - 4		1	
WO		RECR					
SUB TOTAL							

SUPPORTED

MILITARY				CIVILIAN			
OFF	QTY	EM	QTY	GS	QTY	WB	QTY
07+		E9		11 -		4	
06		E8		8 - 10			
05		E7				3	
04		E6		5 - 6			
03		E5				2	
02		E4		1 - 4			
01		E1-3				1	
WO		RECR					
SUB TOTAL							

BASE LOADING SHEET - PERSONNEL

FIGURE IV-1

SAMPLE

BASE LOAD - SHIPS/CRAFT
PROJECTION YEAR 19_

ACT. NAME _____

LOCATION _____

CLASS	SHIP TYPE	HOMEPORT	% DEPLOYED	QUANTITY

BASE LOADING SHEET

FIGURE IV-1 (continued)

SAMPLE

BASE LOAD - OTHER

SUPPLY

GENERAL				BULK	AMMUNITION		
CAT CODE	T	M/T	QTY	CAT CODE	CAT CODE	S/T	QTY
431-10				411-10	421-12		
441-10				411-20	421-22		
441-20				411-30	421-32		
441-35				411-40	421-35		
441-70				411-50	421-42		
441-71				411-60	421-48		
441-72				411-82	421-52		
441-73				411-84	421-62		
451-10				412-15	423-10		
451-70				412-25	423-20		
				412-35	425-10		
				[illegible]	425-[illegible]		

VEHICLES, EQUIPMENT	QTY		QTY
BUSES		UTILITY JEEP	
SEDANS, STA WAG, AMB		BOMB TRUCK	
TRUCKS		BOMB TRAILER	
TRAILERS		FLATBED TRUCK	
CYCLES, SCOOTERS, ETC		PLATFORM TRUCK	
TRACTOR, TRUCK (WHSE)		GCA MOBILE UNIT	
CRUSH, MIX, BATCH, PVNG		AIRFRAME VAN	
DRILL, BLAST, DRIVING EQ		ARMAMENT VAN	
EXCAVAT, GRADING EQUIP		ENGINE VAN	
MISC. CONSTR/MAINT EQUIP		FIREFIGHTER-OPS	
FIREFIGHTING EQUIP		REFUELER/DISPENSER	
WEIGHT HANDLING EQUIP		LOCOMOTIVES	
TOW TRUCK		OTHER: (SPECIFY EACH)	
REFUELER AV TRUCK			
REFUELER TRAILER			
REFUELER TRUCK			
MOBILE POWER UNIT			
OXYGEN TRAILER			

BASE LOADING SHEET

FIGURE IV-1 (continued)

b. A TENANT (H/T Code 1) is an activity or unit occupying facilities on the plant account of another activity (host) and for which the major claimant of the tenant usually has MILCON programming responsibility. Basic Facility Requirements of a tenant include facilities needed for the sole or predominant use and operation by the tenant activity in performing its own assigned mission and tasks. (R
Common-use facilities provided by the host will not be included in the facility requirements of a tenant. Example: A naval air reserve unit (NARU) is normally a tenant to a host naval air station. The NARU and the naval air station will require certain facilities (runways, jet engine test cells, etc.) that are used by both. These common-use facilities will be shown in the host (naval air station) Basic Facility Requirements.

c. SUPPORTED UNITS (including shore activities exempted per paragraph E1 above) are those activities which occupy facilities on the plant account of their host and for which (R
the host is also responsible for planning and programming support. The [illegible] of listing data for supported units are available within the SFPS:

(1) Supported Unit With Requirements Shown Separately from Host Requirements (H/T Code 3). The unit will provide a statement of requirements for facility support to the host activity. The host activity will list requirements for the supported unit separately in numerical Unit Identification Code (R
(UIC) order of the supported unit(s). Each category code for each such supported unit will require complete supporting justification. Listing requirements in this way will allow effective planning at the unit level, and enable the host to clearly define the facility support it provides.

(2) Supported Unit With Requirements Integrated into the Host Requirements (H/T Code 4). The unit will also provide a statement of requirements for facility support to the host activity. The host activity will include these support requirements in the total (R
host facility requirements, but identify the supported unit requirements separately in the justification statements.

The identification of a supported unit by UIC number is at the option of the host activity.

2. Facilities required at the designated SPECIAL AREAS of the (R
host should be separately identified on the submission.

H. REVIEW

1. The EFD is the point of contact for all reviews and approvals of Basic Facility Requirements. While all Basic Facility Requirements require certification by the EFD, the EFD's have approval authority over certain category codes. NAVFACENGCOMHQ will continue to monitor all requirements submissions to ensure continuity of navy-wide planning. Additionally, codes not delegated to the EFD's will be approved by NAVFACENGCOMHQ through coordination with the EFD's. The activity has the basic responsibility of ensuring that a requirement is not modified without analyzing the impact of such a change on the Planning Analysis section of the FPD.

a. The EFD will enter via the Cathode Ray Tube (CRT) all Basic Facility Requirements. Those category codes requiring NAVFACENGCOMHQ approval will automatically be denoted by the computer with a Standard Note to indicate that NAVFACENGCOMHQ approval is pending. (R

b. NAVFACENGCOMHQ will notify the EFD of approval/modification action by letter within [illegible] days of receipt and, if appropriate, will remove the Standard Note from the FPD within this period.

c. After review of the requirements submission, including NAVFAC review comments, the EFD will notify the activity, in writing, of action taken on the requirements submission, with copies to the chain of command and NAVFACENGCOMHQ. (R

D. Upon final approval, the EFD will distribute an updated Facilities Requirements Plan (Activity General Information Sheet, Facilities Requirements Plan Summary, and the appropriate FPD's) to the cognizant activity and appropriate commands.

2. A copy of the Basic Facility Requirements submission is provided to the area coordinator to enable that coordinator to be cognizant of the facility requirements of the activities located within his geographic area of responsibility. The area coordinator reviews the submission primarily to ensure that facility requirements at a single location are not duplicated unnecessarily, that assets are utilized on a regional basis, and (R

a. NAVFACENGCOMHQ will notify the EFD of approval/modification action by letter within 45 days of receipt and, if appropriate, will remove the Standard Note from the FPD within this period.

b. After review of the requirements submission, including NAVFAC review comments, the EFD will notify the activity, in writing of action taken on the requirements submission, with copies to the chain of command and NAVFACENGCOMHQ.

c. The EFD will enter via the Cathode Ray Tube (CRT) all Basic Facility Requirements. Those category codes requiring NAVFACENGCOMHQ approval, as indicated in paragraph H1 above, will automatically be denoted by the computer with a Standard Note to indicate that NAVFAC-ENGCOMHQ approval is pending.

d. Upon final approval, the EFD will distribute an updated Facilities Requirements Plan (Activity General Information Sheet, and Facilities Requirements Summary, to the appropriate FPD(s) to the cognizant activity and appropriate commands.

2. A copy of the Basic Facility Requirements submission is provided to the area coordinator to enable that coordinator to be cognizant of the facility requirements of the activities located within his geographic area of responsibility. The area coordinator reviews the submission primarily to ensure that facility requirements at a single location are not duplicated unnecessarily, that assets are utilized on a regional basis, and that host/tenant relationships specified in the loading are correct. Comments and recommendations relating to the facilities listed, or other aspects of the submission, should be made within 45 days to the appropriate EFD. A copy of these comments should be provided to NAVFACENGCOMHQ.

3. Using the copy provided, each command echelon should provide its comments, on an exception basis, to the EFD, with copies to NAVFACENGCOMHQ and activity within forty-five (45) days of the date of the facility requirements submission concerning:

a. Exceptions to individual or collective Basic Facility Requirements, and

b. Exceptions to the base loading upon which the facility requirements are based.

4. The EFD will coordinate such comments and make any changes necessary after consultation with the appropriate commands.

SECTION V - ENGINEERING EVALUATION OF EXISTING ASSETS

A. PURPOSE

1. The Engineering Evaluation (EE) of existing assets is an on-site inspection by the Engineering Field Division of buildings and structures at an installation. The following items are determined or verified:

   a. Current functional use/uses, by category codes

   b. Using activity, by Unit Identification Code (UIC)

   c. Adequacy for current use, with identification of any deficiencies which may impact upon suitability for its use

   d. Potential for conversion to another use

   e. Potential for renovation

   f. Facility obsolescence and demolition potential

   g. Accuracy of [illegible] on current Existing Conditions Map

   h. Inclusion in the Navy Facility Assets Data Base (NFADB)

   i. Correctness of area, length, width, height, etc.

2. Other steps which should be accomplished in conjunction with the on-site inspection are:

   a. Determination of the extent to which existing facilities satisfy the requirements enumerated in the Basic Facility Requirements.

   b. Identification of facilities excess to Basic Facility Requirements that may be converted to other use, reassigned or disposal accomplished.

These steps are often considered as being separate and distinct from the EE. However, they cannot be totally separated and should be accomplished while on location.

B. METHOD OF ACCOMPLISHMENT

1. The EE for a shore installation is performed by the EFD in close cooperation with the activity commanding officer. The scheduling of EE's should be based on factors such as productive capacity of the EFD, currency of existing assets data, mission

```
 STRUCTURE      C L A S S   2   P R O P E R T Y   R E C O R D
(004) UIC..N00205                                  (001) PR NO........2-00017
            NAVSUPPACT NEW ORLEANS LA              (005) FACILITY NO..390
                                                   (106) SPEC AREA....


      L O C A T I O N                        G E N E R A L   I N F O R M A T I O N
(101) COUNTRY..US   UNITED STATES                  (007) ACTION.........CORRECTION
(102) STATE....22   LOUISIANA                      (008) FAM HOUSING....NO
(103) COUNTY...071  ORLEANS                        (009) EE DATE........01 JUN 78
(104) CITY.....1690 NEW ORLEANS                    (011) PR REVIEW DATE.
(105) ND.......08                                  (010) FACILITY NAME..
(107) MAP GRID.T26                                       WHARF BERTHING

      A C Q U I S I T I O N                          M E A S U R E M E N T S
(201) ESTATE........14 N/REASSIGNMENT               (301) LENGTH....      3,745 FT
(202) ACQ CONTRACT..                                (302) WIDTH.....         30 FT
(203) ACQ DATE......01 MAY 66                       (303) HEIGHT....          0 FT
(204) GOVT COST.....$1,896,993                      (304) AREA......     12,483 SY
(207) LAND CCN......91110

                                  C O N S T R U C T I O N
(401) YEAR BUILT..........1943
(402) CONSTRUCTION TYPE..SEMI-PERM                  (409) PROJECT NO.
(403) YEAR LAST IMPROVED..1975                      (410) HISTORIC PLACE

                          T A X   S T A T U S / U T I L I Z A T I O N

(502) CATEGORY CODE...15220          (501) USE..GENL PURP/BERTHING WHARF

(510) USER UIC........N00205.....NAVSUPPACT NEW ORLEANS LA
            AREA/ST            OTHER/FR*            ALT/                DEF CODES

ADEQ(515)              (516)                (517)                (524)

SSST(518)              (519).....3,725.00   (520)                (525)A04 A21 F30

INAD(521)              (522)                (523)                (526)
    TOTAL                          3,725.00

79JAN22        EFD.N62467      MC.N00011      ACTIVITY.N00205     PR.2-00017
```

FIGURE V-1

to reflect current conditions as follows:

a. Use/Users

Identify additional use/users not previously documented. Spaces occupied by supporting functions such as corridors, toilets, mechanical equipment rooms, etc., are to be allocated among the various uses.

b. User and host-tenant relationships

c. Functional adequacy for current use

d. Siting adequacy for current use based on safety criteria

e. Suitability for other uses

Although not included as part of the EE data elementd, this information should be recorded during an EE, especially [illegible] items [illegible] and [illegible] above [illegible] comments. This information can then be entered on the Facility Planning Document(s) that relate to the building.

f. Condition of facility

Is it adequate, substandard or inadequate? What are deficiencies?

3. The facility assets are entered on the EE Worksheet or Property Records under three basic condition standards.

a. An ADEQUATE facility is defined as being fully capable of supporting its current use without modifications or repairs which normally require approval and funding beyond the authority of the activity's commanding officer. This means that the facility should be within the limits and restrictions of planning criteria, satisfy structural and mechanical criteria, and does not conflict with operational requirements or safety restrictions. Facilities that are acceptable but barely satisfactory, will be considered adequate.

b. SUBSTANDARD describes a facility with modification or repair deficiencies that normally require approval and funding beyond the authority of the activity commanding officer to make the facility adequate for its function. A facility will be considered substandard if deterioration will result in deficiencies within the next five years. (A substandard facility can be converted or redesignated to another functional use, if it can be economically justified.)

NAVFACENGCOMHQ by letter, via the EFD and chain of command, outlining the differences. The major claimant, EFD, activity commanding officer and NAVFACENGCOMHQ will take steps to resolve the differences. In the event an agreement cannot be reached, the matter will be submitted by NAVFACENGCOMHQ to CNO for resolution. Planning will proceed in the areas of agreement.

2. Upon completion of the EE, and concurrence by the activity, the EFD will process the revised data via CRT into the NFADB file.

E. DATA MAINTENANCE PROCEDURES

1. Revisions to the Facility Requirements Plan should be submitted as changes occur. A general updating will be accomplished as EFD resources permit. Whenever possible evaluations will be done in connection with other EFD inspections. Partial evaluations may be required for those category codes [illegible] projects programmed in early years of the Military Construction Program.

2. The primary responsibility for the accuracy of the EE is vested in the EFD. Activity commanding officers are, however, expected to assist in maintaining accuracy of the facilities assets data. If the activity determines that elements of the status/utilization data need updating, copies of the appropriate Property Records or EE Worksheet should be annotated and forwarded to the EFD (Code 20) for concurrence and data entry. It should be extremely rare that a facility deteriorates between EFD visits, to the extent that a change in condition prior to the next EFD visit is warranted. However, if due to a natural disaster or unusual deterioration a change is essential, additional documentation should be attached describing the reason for the proposed change. The deficiencies of the facility and how they impair or prohibit its use for its designated function should be fully explained. The attachment of photographs is encouraged. A statement should be included to indicate that the deficiencies are included in the activity's current Annual Inspection Survey (AIS). Copies of these justifications for changes in facility condition should be provided to NAVFACENGCOMHQ. Prior to entering any of these changes into the data base, the EFD should ensure that the justification data has been forwarded to NAVFACENGCOMHQ, Code 201.

F. FORMAT

1. A detailed description of the individual data elements in the NFADB is provided in NAVFAC P-78. It should be noted that data element (501), local facility description, does not appear on the Facility Planning Document, but does appear in the EE Worksheet and Property Records. If such a local description is desired on

SECTION VI - SPECIAL CONSIDERATIONS

A. DISCUSSION AND PURPOSE

1. During the development of Basic Facility Requirements and EE data, an awareness of the desired end product is required. In order to properly develop the FPD's, care must be taken to ensure that requirements and assets used to satisfy those requirements are aligned with respect to the category code, special areas, etc. It is also essential that the correct user be shown for each facility. The following sections are designed to assist in avoiding mismatches in requirements and assets, to ensure proper FPD display, and to highlight special items that impact on the development of the FPD.

B. SPECIAL SFPS CONSIDERATIONS (R

1. Some activities have unique situations with respect to the SFPS and therefore require specialized guidance.

a. COMBINED NAVY AND MARINE CORPS RESERVE CENTERS - These centers are under the command of the Chief of Naval Operations. The facility programs for these activities are coordinated and administered by the Chief of Naval Reserve, in accordance with the procedures of CNAVINST 11010.1 series and this instruction. The requirements should be computed as outlined in NAVFAC P-80 criteria for category code 171-15. The Marine Corps portions of these combined centers are to be considered as supported units (H/T Code 3, See Appendix C) with their facility planning and programming being a part of the host planning document. The requirements for Marine Corps portions require approval by the Commandant of the Marine Corps. The requirements and assets (user), are to be designated as Marine Corps Reserve Unit under UIC "NMCRES".

b. MARINE CORPS AIR RESERVE TRAINING DETACHMENTS (MARTD) In those cases where MARTD's are located at naval air stations, total facility planning support should be provided by the commanding officer of the naval air station or naval air reserve unit, i.e., the MARTD should be considered as a "Supported Unit" (H/T Code 3).

c. PARENT ACTIVITIES - Parent activities are responsible for the facility planning of branches within their area of cognizance. Planning for these branches may be done (R

C. COGNIZANT COMMAND COORDINATION (R

1. In special cases, criteria and MILCON programming responsibilities are governed by higher authority or more cognizant commands. Such cases include:

a. NAVAL AIR RESERVE COMPONENTS - Based on DOD policy and congressional authorization acts, the CNO has established a Navy policy that "common use" facilities (including unaccompanied personnel housing) required for naval air reserve components located at a regular naval air station will be provided as follows:

(1). At an installation where there is an existing air station deficiency as well as a deficiency of the reserve component, the reserve component needs shall be added to the total requirement programmed by the air station for MILCON funding.

(2). At an installation where there is no corresponding air station deficiency, reserve component requirements will be submitted by the reserve activity for Military Construction Naval Reserve (MCNR) funding.

b. MILITARY HEALTH AND MEDICAL FACILITIES - The programming of Military Health and Medical Facilities varies from the procedures established by this instruction. Review and approval of projects in the Medical Construction Program by the Assistant Secretary of Defense (Health Affairs) is required prior to inclusion in the Department of Defense Annual Military Construction Program and is in addition to the regular Navy Military Construction Program review promulgated by OPNAVINST 11010.1 series and this instruction. By OPNAVINST 11110.2, the Chief, Bureau of Medicine and Surgery has been assigned technical responsibility for coordination of the Health and Medical Facilities Program. Activities should, therefore, request the assistance of BUMED in the formulation of any project relating to that program. The procedures of this instruction, however, should be followed in regard to identification of requirements, assessment of existing facilities, and reporting of excesses.

will be referred to NAVFACENGCOMHQ Code 2012 for coordination and resolution with NAVFACENGCOMHQ Code 08. The EFD will enter all unaccompanied personnel assets information (condition and unit of measure by category code) into the NFADB via CRT.

(3). Each EFD Code 20 will recommend planning actions for satisfaction of deficiencies and surpluses of unaccompanied personnel quarters in the preparation of the Facility Planning Documents for the activity.

(4). Military Construction project submissions for unaccompanied personnel housing will be processed in accordance with Section VIII of this instruction.

(5). CNO must approve conversion/diversion of unaccompanied personnel quarters to other uses, and vice versa, in accordance with OPNAV Instruction (A
11012.2 series. The process can be initiated upon completion of the FPD. A request for CNO approval for conversion/diversion should be forwarded to CNO (OP-01) via the EFD and major claimant. NAVFACENGCOMHQ and the Naval Military Personnel Command (NMPC 64). In the forwarding endorsement (R
the EFD should certify that the conversion/diversion is in conformance with the Facilities Requirements Plan.

D. FAMILY HOUSING

1. Family housing is excluded from the SFPS, except that assets constructed by family housing funds under category codes for which criteria is found in NAVFAC P-80 should be considered when planning for similar facilities under the SFPS.

E. CLASSIFIED PLANNING INFORMATION

1. The SFPS data base maintained at FACSO is not secure, therefore, no classified information may be entered into the automated file.

2. When requirements are classified, the EFD will input, via CRT, zeroes in the "BASIC FAC RQMT" field of the FPD. This action will serve as a "flag" to indicate classified requirements until NAVFACENGCOMHQ annotates the requirement by the addition of Standard Note number 13, QUANTITY CLASSIFIED.

SECTION VII - DISPOSABLE ASSETS

A. DISCUSSION

1. The Facility Planning Document displays a plan for the acquisition and disposition of assets. This plan identifies necessary assets that should be retained to support mission requirements. It also shows those assets that are surplus to the activity's mission requirements, and are therefore "disposable assets." This section describes the options for disposing of these unnecessary assets. (R

2. NAVFAC P-73, Real Estate Procedural Manual, tasks NAVFACENGCOMHQ (Code 204) and the EFD (Code 24) with coordinating disposal actions. However, the EFD (Code 20) has the primary responsibility for identifying surplus facilities and ensuring that the proposed disposition action is in conformance with the Facilities Requirements Plan.

B. DISPOSAL OPTIONS

1. The initial planning action to indicate a disposable asset is "DISPOS." This planning action can be used until the disposal method can be further defined and a more descriptive planning action inserted in its place. These more descriptive disposition planning actions are as follows: (R

a. OUTG-C, OUTG-R - Continuation of an outgrant, termination of an outgrant, respectively. The property remains on the plant account of the Navy activity. (A

b. DEMOL - Demolition of facility included in MILCON project.

c. REASTO - Reassignment of asset(s) from one Navy or Marine Corps host to another.

2. Once an asset has been identified as surplus to the needs of an activity, it may be appropriate to delete the asset from the Navy inventory by the excessing process. An asset that is being excessed will continue to have the planning action "DISPOS" shown on the FPD. Further description of the excessing action can be described by use of an FPD Action Note. Additionally, the NAVFAC P-78 requires that the appropriate Excess Action Code (Data Element 604) be inserted on the property record of the excessed asset. (R

3. Procedures for initiating and processing dispositions are detailed in NAVFAC manuals P-73 and P-78. (R

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FACILITY PLANNING ACTION --- DISPOSITION REPORT

07 JAN 81

SUB-MAJOR CLAIMANT (CODE F5).. LOGPAC
ACTIVITY (UIC N-61552)... SUBIC BAY RP NS

CCN	DESCRIPTION	SX	AM/SU UIC	AM/SU NAME AND LOCATION	FACILITY	U	ACTION	ID	SCOPE	UM	COND
740-03	EX CNTL ADMIN				[illegible]	N	DISPOS		1030	SF	INAD
					65	Y	DISPOS		1750	SF	INAD
					CATEGORY CODE 740-03 TOTAL				3078	SF	
740-04	EX CAFE				211	Y	DISPOS		10605	SF	INAD
740-09	EX SVC OUTLETS				511	Y	DISPOS		10000	SF	INAD
					95	Y	DISPOS		3111	SF	INAD
					88	N	DISPOS		8740	SF	INAD
					27	N	DISPOS		8440	SF	INAD
					CATEGORY CODE 740-09 TOTAL				30501	SF	
740-16	EX MAINTE SHOP				65	Y	DISPOS		2909	SF	INAD
740-17	EX CNTL SPT FAC				186	N	DISPOS	VAC	9020	SF	INAD
740-20	TEMPORARY LODNG				13	N	DISPOS		1176	SF	SUBS
					739	N	DISPOS		960	SF	SUBS
					[illegible]	N	DISPOS		1176	SF	SUBS
					[illegible]	N	DISPOS		1176	SF	SUBS
					CATEGORY CODE 740-20 TOTAL				4488	SF	
740-28	AMUSEMENT CENTR				[illegible]	Y	DISPOS		1127	SF	INAD
740-37	SPEC SERV CTR				167	Y	DISPOS		10995	SF	INAD
					299	N	DISPOS		1937	SF	INAD
					[illegible]	N	DISPOS		16887	SF	INAD
					CATEGORY CODE 740-37 TOTAL				29819	SF	
740-43	GYMNASIUM				[illegible]	N	DISPOS		1740	SF	INAD
740-52	GUN/SKT/TRP BLD				198	N	DISPOS		1120	SF	INAD
740-55	YOUTH CENTER				1993	N	DISPOS	VAC	1936	SF	INAD
740-56	THEATER				167	Y	DISPOS		10881	SF	INAD

FIGURE VII-1

SECTION VIII - PROJECT SUBMISSIONS

A. PURPOSE

1. The Facilities Requirements Plan for an activity documents facility deficiencies and identifies solutions to these deficiencies, including proposed construction projects. Such projects costing in excess of $100,000 will be submitted on the OPNAV Form 11000/4 for potential entry into the Military Construction Requirements List (MILCON RL). The 11000/4 is the only document that will be accepted for this purpose.

2. Submission of a DD Form 1391 and Facility Study is not required for a proposed MILCON project until it reaches an advanced stage of programming; until that time the 11000/4 provides project data for use by the major claimant and others.

B. PROCEDURES

1. Activities will initiate the 11000/4 for projects. From time to time, guidance can be expected from the major claimant regarding priorities and urgencies for selected projects. In addition, the EFD will provide technical assistance through the development of the Facility Planning Document to determine the best means for satisfying deficiencies (i.e., new construction, modernization, rehabilitation of existing assets, etc).

2. Identification of a deficiency is not enough, taken alone, to justify a project. Although the existing Basic Facility Requirements may support a project, loadings and criteria governing those requirements may have changed. Care must be taken, therefore, to ensure that the approval requirements are current. Projects must be free from embellishment and must show evidence that their continued deferral will result in diminished mission capability and/or morale impairments. The validity of each project as it relates to real Navy needs is critical.

3. When compiled into the MILCON RL, the projects form the MILCON backlog. A large project backlog does not increase an activity's chances for getting a project funded. CNO undertakes an annual analysis of deficiencies by investment category in the MILCON RL, assessing the impacts of the projects in each investment category on military readiness and mission performance. The product of this analysis is utilized by OP-44 as MILCON appropriation sponsor to develop annual issue papers and base line assessments. These documents are submitted in the POM process and are used to recommend to the Resource Sponsors required MILCON support levels. This analysis of deficiencies by investment category is fundamental to:

a. Allocation of a proper share of the Navy's total resources to MILCON for correction of facility deficiencies, and

resulting from aging, obsolescence, routine mission changes, changes in homeports, etc., at existing shore activities. These programs consist of projects that satisfy deficiencies identified during development of the Facility Planning Document.

C. SUPPORTING DOCUMENTATION

1. All OPNAV Form 11000/4 submissions must include FPD Sheets for each category code included in the project. The FPD(s) will indicate by means of the various planning actions the planning rationale used to develop the project. Projects that include category codes for which there are facilities assigned to a supported unit that have their requirements separately identified (H/T code 3), must also include an FRP Summary to indicate that a surplus situation does not exist for the supported units of the host under that category code. (R

2. The submission must include a SITE PLAN depicting location of the proposed site. The site plan may be a portion of the Existing Conditions Map, Master Plan/CIP or an appropriate sketch at a scale of less than one inch equals 400 feet. The site plan shall identify the following:

a. Location of proposed construction
b. Location of facilities to be demolished
c. Location of existing utility lines
d. Proposed paved areas such as parking lots (if they are significant cost items)
e. Existence of safety hazards such as ESQD arcs, AICUZ, etc.

3. Those projects which are being justified primarily on the basis of expected savings over an existing mode of operation must be supported by a Primary Economic Analysis, also referred to as a Type I Analysis. A Savings-to-Investment Ratio (SIR) greater than 1.0 is required to justify a project solely on the basis of economics. Projects in which economic considerations are secondary to operational requirements should be supported by a Secondary Economic Analysis, also referred to as a Type II Analysis. Quantitative measures applied to alternatives in Type II analyses include Net Present Value (NPV) and equivalent Uniform Annual Cost (UAC). In accordance with OMB Circular A-94, a 10% effective annual discount rate will be used to evaluate time-distributed costs and benefits. Economic analyses must be performed in accordance with procedures described in the current versions of SECNAVINST 7000.14, NAVFACINST 11010.32 series, NAVFAC P-442, Economic Analysis Handbook. The EFD will provide technical assistance as resources permit.

The determination as to whether an existing facility should be modernized (or improved) or replaced by new construction will be based upon an economic analysis of viable alternatives. Each alternative under consideration must be considered in terms of its

6. A statement must be included in block 21 of the OPNAV Form 11000/4 to indicate that the proposed MILCON project does or does not impact a building, structure or area of possible historical significance.

7. Project submittals shall list (under Block 21) all costs, by funding source, for items required to make the facility complete and usable.

8. The EFD will not forward the 11000/4 package to NAVFACENGCOMHQ unless the package is complete as described above. If the 11000/4 package is missing any of these components, it will be held at the EFD pending receipt of required information, or returned to the activity for re-submission in cases requiring extensive revisions or where extensive delay is anticipated.

D. PREPARATION GUIDANCE

1. The activity prepares and submits the OPNAV 11000/4 (Figure [illegible]) to NAVFACENGCOMHQ via the EFD, type commander, and major claimant with copies to the area coordinator and other interested commands. Tenant activities will provide copies to the host/alternate host.

2. The General Information portion of the 11000/4 depicts data relating to the activity submitting the project:

a. Classification

(1). Self-explanatory. It is desirable to have all information on the 11000/4 unclassified to facilitate processing. Should it be necessary to classify only the Project Description/Justification (Block 21), it should be indicated on the 11000/4 so that information in Block 21 may be removed and the remainder of the data processed normally.

b. Project Number

(1). Enter in the upper right corner the project number, assigned by the activity, consisting of the letter "P" and three digits. This number will serve throughout the planning, programming and construction process as a permanent identification for that project. It is essential to use the same project number until the completed facilities are reported to the Navy Facility Assets Data Base. If a project requires re-numbering because of a decision to split, combine or otherwise alter it, during any phase of the planning, programming or construction process, NAVFACENGCOMHQ will request the EFD or Activity to re-number the project. When a project is

complete or cancelled, the project number will be retired. A project that is deleted from the MILCON RL may be returned to the RL with the same P-number, when justified, provided the project scope, as resubmitted, is supported by the SFPS. However, if a project is deleted and resubmitted with a conceptual change, e.g., category codes added or deleted from initial submission, a new P-number must be assigned. If an activity exceeds 999 projects in the course of its planning, the series is started anew with P-001. The use of a four-digit number, or a three-digit number with an alphabetic suffix, to designate a project is not permitted.

c. Submitting Activity Name and Location

(1). Enter the name and location of the submitting activity as listed in the Catalog of Naval Shore Activities (OPNAV P09B3-105). Limit to a maximum of 50 typing spaces. (NOTE: The 11000/4 for components, detachments and branches will be submitted by the [illegible] will name the parent activity.)

d. Activity Unit Identification Code (UIC)

(1). Enter the UIC of the activity [illegible] listed in NAVCOMPT Manual, Volume 2, Chapter 5.

e. Major Claimant Code

(1). Enter a one or two-digit code from Appendix F to identify the MILCON major claimant/sub-major claimant of the submitting activity. For example, activities under the command of LOGPAC would use F5; activities under the command of NAVTELCOM enter M.

f. Host Activity

(1). If the submitting activity is the host activity, enter the word "SAME". If the submitting activity identified is a tenant, enter the name and location of the host. If the submitting activity is a parent, sponsoring MILCON for a branch, enter the name and location of the host activity for the branch. Host name and location are indicated in Part II, Section 2 of the Catalog of Naval Shore Activities and are limited to a maximum of 50 typing spaces.

g. Host UIC

(1). Enter the UIC for the host activity as listed in NAVCOMPT Manual, Volume 2, Chapter 5. Leave blank if host reads "SAME" as submitting activity.

forwarded.

(2). If a Type II economic analysis has been done, enter an "S" and submit a copy with the 11000/4 submission.

(3). For projects for which an economic analysis is not appropriate as described in paragraph C3 above enter the letters "NR" (for "not required") in this column. (A

e. Column 6, Preliminary Environmental Assessment

(1). A copy must be provided to the EFD for review and comment. A copy of the PEA will remain on file at the EFD. Enter an "A" (for accomplished) in column 6.

f. Column 7, Site

(1). A sketch showing the proposed location of the facility must be prepared (as indicated in paragraph C2 of this Section) and forwarded with the 11000/4, as an "X" placed in column 7.

g. Column 8, Related Projects

(1) If the project is one of a series of "related projects" (See paragraph B 6), enter the project number of the other projects.

h. Columns 9 and 10, Percent Requirement Satisfied

(1) Leave blank, information in these data elements is no longer required. (D

i. Column 11, Major Claimant Priority

Activity Leave Blank

Major Claimant: Enter the investment category priority number for each project. Priority numbers are to be assigned in consonance with other items within the investment category. Previous numbers are not to be duplicated; new priority numbers for like items not yet entered into the RL data file should be carried to tenths in order to fit between priority whole numbers appearing on the latest RL update.

in column 16, leave blank.

h. Column 18, Estimated Cost

Enter the estimated cost of the project in thousands as shown on the cost estimate attached as supporting documentation (for preparation details see Appendix N).

i. Column 19, Construction/Mission Code

Enter the one-digit construction code to identify the purpose of the project, as defined in Appendix J. Suffix this code with the alpha designator to identify whether the mission supported by the construction is current or a new expanded mission, as defined in Appendix J.

j. Column 20, Validation Code

[illegible]

EFD: The reviewing EFD or NAVFACENGCOMHQ will enter in this column coded reason(s) for non-validation of the project, if applicable, as shown in Appendix A.

k. Block 21, Project Description/Justification

The information provided in this block will be used in assessing the MILCON RL during development of annual Program Objectives Memorandum (POM) issues. It is necessary that the data be presented in clear, concise language, and should be a condensation of the basic information and facts to permit an immediate understanding of the problem. A specific format has been devised for use in this block and shall be utilized for all submissions. This format is the same as presented in NAVFACINST 11010.32 series to be used for block 11 of the DD Form 1391. The format is as follows:

(1). PROJECT: Provide a one sentence statement that indicates what this project provides.

(2). REQUIREMENT: Answer the question: "Why does the Navy need this project?" The facts presented here must clearly show that the military requirement for the project is essential to effectively support current and future operations set forth in the latest mission. The requirement must establish maximum utilization of existing assets and identify alternatives considered, along with reasons for their rejection.

must be established within applicable criteria limitations (See Section IV). Of equal importance is the narrative justification required to explain the project. It is vital that this statement be presented in clear, concise, language which provides in condensed form the basic information and facts to permit an understanding of the problem.

b. Proposed projects will be subjected not only to initial review and certification, but to continuing review in order to determine if they merit retention in the MILCON RL. Initial certification in no way ensures such retention. Through changes in criteria, mission, personnel and equipment loading, projects can become obsolete and will be deleted. Development of new, higher priority requirements can make a project non-competitive for funding within the five years of the FYDP, at which time it should be deleted. The MILCON RL must at all times represent requirements which are "real world" in the sense that they merit funding within the resources realistically [illegible] to [illegible] available.

2. The EFD has the responsibility to validate the [illegible] data related to each project. This applies to the [illegible] total submission and to subsequent submissions with changes to the original. If the project is considered invalid for any of one or more data items and the discrepancy cannot be resolved with the activity, the reason(s) for such invalidation should be recorded in column 20 of the 11000/4 with the applicable code selected from Appendix K. If the nonvalidation code is "A" (scope not supported by SFPS and EFD has no positive knowledge that the project can be supported) the EFD should return the project to the activity.

3. Major claimants will review the OPNAV 11000/4 so that all projects included in the MILCON RL and the annual MILCON programs can be supported. As required by NAVFACINST 11010.32 and DODINST 4100.33, each project should be reviewed for conformance with Office of Management and Budget Circular A-76. In addition, the major claimant will assign project priorities to each project in accordance with current guidance from CNO, and review the narrative justification and modify as required. The judgements of the major claimant are critical in selecting a given project for programming.

4. Upon receipt of the project submission and endorsements, NAVFACENGCOMHQ will review to determine that all actions as required above have been completed. If the review determines the project to be valid, it will be entered into the MILCON RL for programming consideration.

must be established within applicable criteria limitations (See Section IV). Of equal importance is the narrative justification required to explain the project. It is vital that this statement be presented in clear, concise, language which provides in condensed form the basic information and facts to permit an understanding of the problem.

b. Proposed projects will be subjected not only to initial review and certification, but to continuing review in order to determine if they merit retention in the MILCON RL. Initial certification in no way ensures such retention. Through changes in criteria, mission, personnel and equipment loading, projects can become obsolete and will be deleted. Development of new, higher priority requirements can make a project non-competetive for funding within the five years of the FYPD, at which time it should be deleted. The MILCON RL must at all times represent requirements which are "real world" in the sense that they merit funding within the resources realistically expected to be available.

2. The EFD has the responsibility to validate the [illegible] required in each project. This applies to both the original submission and to subsequent submissions with changes to the original. If the project is considered invalid for any of one or more data items and the discrepancy cannot be resolved with the activity, the reason(s) for such invalidation should be recorded in column 20 of the 11000/4 with the applicable code selected from Appendix K. If the nonvalidation code is "A" (scope not supported by SFPS and EFD has no positive knowledge that the project can be supported) the EFD should return the project to the activity.

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4. Upon receipt of the project submission and endorsements, NAVFACENGCOMHQ will review to determine that all actions as required above have been completed. If the review determines the project to be valid, it will be entered into the MILCON RL for programming consideration.

SECTION IX - ANNUAL MILCON REQUIREMENTS LIST (Report 1360)

A. PURPOSE

1. Navy activities develop and submit an OPNAV Form 11000/4, Project for Correction of Facility Deficiencies, to enter a project into the MILCON RL. Each project is reviewed through the chain of command, and a priority rating is established by the major claimant. Based upon the combined priority ratings of all major claimants, the Chief of Naval Operations, utilizing the services of NAVFACENGCOMHQ and the multi-year programming procedures described in NAVFAC P-907, develops tentative fiscal year programs and continually refines this planning, leading to the development of the annual budget year request. The proposed annual funding levels are taken from the Five Year Defense Program (FYDP) which covers the five years following the "budget" year. All projects with probable funding beyond the period of the FYDP are shown as "unprogrammed". From the data bank, a series of reports are generated for use in maintaining the MILCON RL as a dynamic [illegible] planning [illegible] programming tool.

2. [illegible] MILCON RL [illegible] activity submitted 11000/4's for the period of eight years preceding the date of the RL Report 1360. All projects which have been on the RL for more than eight years and which remain in an unprogrammed status, are automatically deleted from the data bank. Projects thus deleted must be re-submitted in accordance with Section VIII if the activity or major claimant feels that the project is competitive for funding and desires their retention in the MILCON RL.

3. The RL Report 1360 has been developed to provide a display of the RL data maintained on file. The applicable portion of this report is provided to each addressee (activity, area coordinator, EFD, major claimant). Those activities not having projects in the RL will not receive a copy of the report. The purpose of this Report 1360 is to:

a. Provide a ready means for verification of the RL data bank by the activity.

b. Provide a simple procedure for the deletion of projects that, due to changes in mission or workload, or changes in relative priority, are no longer needed or are no longer competitive for funding.

c. Provide an alternative process for updating/correcting errors for projects identified in the RL.

d. Provide a means for identification of projects shown in the RL for which SFPS validation by the EFD has not yet

submission should be made. If a project is no longer required it may be deleted by correspondence via the EFD and the chain of command or merely lined out on a copy of the 1360 with copies to NAVFACENGCOMHQ and other interested commands.

4. A common misconception is that a large backlog of projects will assist the activity, or claimant, in obtaining more MILCON dollars. However, the Multi-Year Programming System is designed primarily to benefit major claimants based on the quality of their input. In addition, projects of poor quality have the negative effect of diminishing the Navy's credibility. For example, one project whose needs is overstated or not properly supported casts suspicion on the validity of other projects submitted by the same activity and its major claimant.

5. Any exceptions to the basic procedures provided herein will be enumerated in the annual CNO letter distributing the RL Report 1360 for review.

C. ACTIVITY RESPONSIBILITIES

1. The RL Report 1360 [illegible] ming actions.

2. Upon receipt of its 1360, each activity will review all MILCON and NAF projects identified to ensure that they reflect real problems supportable by mission functions, and that the projects have not been overtaken by events. In addition, the activity will:

a. Correct any clerical or machine errors by lining out the error and clearly inserting the correction immediately above the red pencil. Corrections of this type are not considered to be "changes" as referred to in paragraph C2b below.

b. Update as necessary the 1360 Reports to reflect the planning analysis of the current FPD's for the appropriate category codes as noted in paragraph B2 above. If changes in one or more of the data entries describing the project are necessary, line out the existing entries to be changed and clearly insert the changed data immediately above the entry in red pencil.

c. Forward one copy of the corrected/updated report to NAVFACENGCOMHQ via the EFD and the major claimant. Copies to other commands should be provided at the discretion of the activity commanding officer or as directed by the major claimant. This action must be accomplished within thirty (30) calendar days of the date of the report.

for resolution of a difference exceeds the allowed time or review, the EFD will indicate the reason(s) for invalidation as explained in paragraph 3 below. If a variance in opinion cannot be resolved, the EFD shall so indicate in the forwarding endorsement. Resolution of immediate program year discrepancies must receive first priority; the later years should be corrected/validated within a reasonable time as resources permit.

3. If the project is considered to be valid with regard to the SFPS the column headed by the letter "V" in the report will normally be left blank. (An exception is the code "M" which will be used by EFD's to indicate that a project is valid and is one of two or more projects for improvements to the same existing facility or provides necessary reconfiguration of space, and therefore the project is valid but its scope is not additive within the SFPS.) If the project is considered to be invalid and the discrepancy cannot be resolved with the activity or if review time is insufficient to initiate validation procedures for an individual project, the reason for such invalidation will be entered in column [illegible] of the [illegible] (See Appendix K).

4. Other [illegible] may be made by NAVFACENGCOMHQ [illegible] facilities [illegible] activity projects that require [illegible] or explain the reason for project deletion. The continued emphasis on maintaining high quality projects in the MILCON RL has resulted in special review efforts by NAVFACENGCOMHQ, under the direction of CNO. The purpose of these partial RL reviews is to identify projects that are no longer needed or which appear to be poorly supported. It is not the intent of the NAVFACENGCOMHQ review to relieve any command of the review responsibilities described above, but to demonstrate that closer attention should be given to the quality of the MILCON RL at all levels of review. Descriptions of the codes used in se reviews (the "X" codes) will be provided in the letter distributing the 1360 package.

5. Any projects deleted from the MILCON RL in accordance with the procedures described herein will be listed, by activity, on the Report 1491. A copy will automatically be distributed with the 1360 package to each activity that had one or more projects deleted during the previous 1360 update cycle.

E. CHAIN OF COMMAND REVIEW

1. Major claimants will review activity submissions and forward the marked up Report 1360 and the Report 1360 NAF to NAVFAC-ENGCOMHQ for updating of the RL data bank. Other RL reports will be used for major claimant priority update; it is not intended that the 1360 described herein be used for priority assignments.

2. The major claimant review should include the identification of projects which are or may be affected by known base closures,

REPORT 1360Q (TB 606-40A) MILITARY CONSTRUCTION RE[illegible]ST SEQ.NO. 200 DATE 08/29/78

UIC .... N-61552-00 ACTIVITY LOCATOR NAME ..... [illegible] NS PAGE 1

APPN ... MCON SUB MAJOR CLAIMANT (CODE F5) .. [illegible] EFG FIELD DIVISION 40

IC	MC PRI	CATCD	PROJECT DESCRIPTION	PROJ	SCF	ALT HOST UIC	SA	QUANTITY	[illegible]	EY	PY	P/COST	CBC	CC	% W	% WO	PI	UCD	ECON	DTE	ENTR	VI
04	0020	143-25	NSWG-1 WESTPAC FACILITY	832	G			10,[illegible]	[illegible]	81	81	600	4	3A			99	012	0.0	02FEB	78	
		143-25	OPERATIONS BUILDING	832	K			6 [illegible]	[illegible]					3A								
		610-10	ADMINISTRATION BUILDING	832	L			[illegible]	[illegible]					3A								
			PY 81 TOTAL						[illegible]			600										
18	0150	872-10	SECURITY FENCE	720				29 [illegible]	[illegible]	75	83	520	5	4B			99	012	0.0	02FEB	78	
16	0060	740-69	SVC CLUBS SPRINKLER SYS	844	[illegible]			4[illegible]	[illegible]	81	83	230	5	2B			99	012	0.0	24APR	78	
		740-69	BLDGS 205 & MC-12	844	K			22 [illegible]	[illegible]					2B								
		740-63	BLDG 418	844	L			18 [illegible]	[illegible]					2B								
			PY 83 TOTAL						[illegible]			750										
16	0160	730-10	REPL FIRE STATION #5	036				8,900	[illegible]	76	UP	730	5	3B			99	024	0.0	24APR	78	
03	0260	159-66	LST RAMP	146			SL	[illegible]	[illegible]	76	UP	1,150	5	1B			99	024	0.0	24APR	78	
15	0050	721-11	BEQ E1-E4 252 MN	200				40,824	[illegible]	79	UP	3,000		1B			99	018	0.0	24APR	78	
16	0050	740-17	COLD STORAGE WAREHOUSE	208				3,200	[illegible]	80	UP	830	5	3B			99	018	5.0	24APR	78	
03	0250	152-20	BERTHING WHARF	214				800	[illegible]	75	UP	2,950	5	4B			99	024	8.6	24APR	78	
15	0220	721-11	BEQ MOON	219	G			650	[illegible]	77	UP	4,550	5	2B			99	018	0.5	02FEB	78	

CONTINUE

FIGURE EXX-1

EX-1-1

i. QUANTITY, U/M - Numerical scope and unit of measure for the project as designated on the 11000/4, columns 17 and 18. A change to this scope requires a revalidation of that project.

j. E/Cost, EY (Estimated Cost, Estimated Year) - The estimated cost of the project (in thousands) and the fiscal year to which the cost applies as designated in the 11000/4, column 19. A change to the estimated cost requires a revalidation of that project.

k. PY (Program Year) - The fiscal year of the MILCON program in which funding is anticipated, as shown in the RL, as of the date of the 1360. The activity may not change this date.

l. P/Cost (Program Cost) - The anticipated cost of a facility (in thousands), if it is built in the PY. This cost includes applicable inflation factors and is computer generated. Activities should [illegible] change [illegible] cost.

m. CI - A single-digit code denoting reason [illegible] may be critical as designated on the 11000/4. (See Appendix H for codes.)

n. CC (Construction Code) - A single-digit construction code identifying the purpose that the project is planned to satisfy, as designated on the 11000/4, column 2. (See Appendix J for CC Codes.)

o. % W/% WO - These columns will be blank, as the data elements are no longer used. (R

p. PI (Primary Investment) - If the project is included within a Primary Investment Program (Shipyard, Modernization, Pollution Control, etc.), the two-digit code for the program is designated on the 11000/4, column 4. (See Appendix I for codes.)

q. UCD (Usable Completion Date) - The number of months between appropriation of funds by Congress and the beneficial occupancy of the facility.

r. ECON (Economic Analysis) - If a primary economic analysis has been developed for a project, the savings/-investment ratio is as designated on the 11000/4, column 6. If a secondary economic analysis is performed an "S"

SECTION X - FORMULATION OF ANNUAL PROGRAM

A. GENERAL

1. The MILCON RL is a listing of projects which have withstood the rigorous review and validation process by the activity's chain of command. The program year associated with the projects listed in the MILCON RL is, however, highly tentative, in view of constantly changing priorities and resource allocations. In most cases, only those projects indicated for the next budget year program have any real meaning as far as anticipation of funding is concerned.

2. The CNO tasks the major claimants with the preparation of DD Forms 1390, 1390S, 1391, 1391C and Facility Studies as projects are selected for programming in iterations for the next budget year program.

B. PREPARATION OF PROJECT DOCUMENTS

1. [illegible] major claimant will task activities with [illegible] and [illegible] will [illegible] DD Forms 1391, 1391C and Facility Studies in accordance with NAVFACINST 11010.32 series. Technical advice and assistance in the preparation of these forms may be obtained from the EFD on request. The data entered on the forms should be capable of withstanding the many critical reviews of the MILCON program within the Navy, OSD, Office of Management and Budget, and the Congress. The detailed justification will include any mandatory statements required by NAVFACINST 11010.32, e.g., flood control, air/water pollution, economic analysis, environmental impact and project siting.

2. For proposed projects already included in the MILCON RL:

a. The activity need not submit new DD Form 1391 and Facility Study documentation if that previously submitted for a program year is still current. However, the current submittal should be referenced to ensure that the appropriate documentation is used for programming purposes.

b. The activity should submit a DD Form 1391 with facility study including Economic Analysis and Environmental Impact Statement, as applicable, for each project not previously submitted and supported by the major claimant for the current program year. The original with copies should be sent via the EFD and chain of command to NAVFACENGCOMHQ. Copies should also be sent to any designated offices having technical oversight for a particular project (e.g., Naval Supply Systems Command Code 03210 for

of MILCON programming documents. Submission schedules for these documents will be established to allow sufficient time for EFD and chain of command reviews prior to the meeting of the Shore Facilities Programming Board (SFPB), which is usually held in the fall, in preparation of initiating design. Major claimants will task activities with the preparation and submission of documents for specific projects in accordance with the schedule provided in the CNO guidance letter.

APPENDIX A

DEFINITIONS

For the purpose of this instruction, the following definitions are applicable:

ACTIONS (FPD Planning)

Descriptive planning terms used in the Planning Analysis section of the Facility Planning Document, which when implemented, will result in the following:

1. Reduce the facility deficiency by acquisition of facilities (i.e., conversions from other category codes, leases, or new construction).

2. Reduce the facility surplus by dispositions of facilities (i.e., leases, conversions to other category codes, reassignments, and demolitions).

[illegible] the optimum utilization of existing facilities [illegible] the approved Basic Facilities Plan [illegible] construction [illegible]

[illegible] reference [illegible] extract Facility Planning Action Reports from an activity's Facilities Requirements Plan to depict excesses, planned construction, etc.

5. Provide documented support for subsequent project submissions and excessing actions as necessary to implement the Facilities Requirements Plan.

ADDITION

Addition, expansion, and extension each constitute a physical increase to a real property facility that adds to the overall external dimensions of the facility. As a general rule, if the dimensions used to record the facility in inventory are increased, then an addition has occurred.

ADEQUATE

An "ADEQUATE" facility is fully capable of supporting its current use without modifications or repairs which require approval and funding beyond the authority of the activity's commanding officer.

CONVERSION (continued)

currently assigned to the facility. Two elements are necessary for conversion: (a) a major structural revision and (b) change in functional purpose.

DETACHMENT

A physically distinct but functionally related and administratively dependent extension of an established shore (field) activity, bureau or command; normally categorized as a detachment, branch, annex or other similar title.

EXIGENT MINOR MILCON (EMM)

Exigent Minor MILCON supports projects costing more than $100,000 and no more than $500,000 which demand remedy sooner than would be possible if normal MILCON procedures were follo[illegible]. EMM [illegible] provides the same [illegible] [illegible] [illegible] [illegible]er Urgent Minor Construction program.

FACILITY

A separate, individual building, structure, utility or other form of real property, including land, which is subject to separate reporting under the Department of Defense Real Property Inventory. (NOTE: This definition differs from that used elsewhere because it includes "land".)

FACILITY DEFICIENCY

The quantitative difference in terms of some unit measure between a stated requirement for a facility and the adequate assets available for the satisfaction of that requirement. A facility deficiency may be satisfied in various ways by lease or purchase, by reassignment of otherwise surplus assets, by adaption of existing assets, by new construction, etc.

FACILITY REQUIREMENTS PLAN

The complete Shore Facilities Planning System package for a shore activity, comprising the Activity General Information, a Facilities Requirements Plan Summary, and the individual Facility Planning Documents for each facility category at the activity.

FACILITY PLANNING DOCUMENT (FPD)

The complete record of planning information for a single facility

APPENDIX A (Cont'd)

MAJOR CLAIMANT

Those commands, bureaus and offices designated by the CNO, as claimants responsible for the presentation and formulation of MILCON programs for the shore (field activities under their command) to the OPNAV Resource Sponsors.

MILITARY INSTALLATION PLANNING

A comprehensive document developed for Navy/Marine Corps activities to establish land use and provide direction in the utilization of existing facilities to support mission needs and, when required, to provide for the modification of existing assets or the acquisition of additional land or facilities.

MISSION-ORIENTED FACILITY

A facil[illegible] specific task or [illegible] or [illegible] to the primary mission [illegible] naval [illegible]

MULTIPLE USE BUILDING

A building which supports more than one function and is reportable under multiple category codes.

NAVAL ACTIVITY

A unit of the Department of the Navy, of distinct identity, established under an officer in command or in charge.

NAVAL SHORE ACTIVITY

A naval activity on shore, established by the Secretary of the Navy, or in certain cases, by the Chief of Naval Operations. Includes organizational adjuncts established and located at special areas by a naval activity to carry out assigned missions.

PARENT ACTIVITY

A shore activity which has administrative and/or operational control of detached sub-organizational units or detachments.

PARENT COMMAND

A parent command has operational, planning and programming responsibility for its field units regardless of geographic location.

SHORE FACILITY PLANNING

The determination of the facility requirements for individual shore activities of the Navy establishment, the evaluation of the adequacy of existing real property to satisfy these requirements, the determination of facility deficiencies or excesses, the provision for maximum utilization of existing facilities, the translation of deficiencies into requirements for construction, and the initiation of disposal action of excess properties.

SPECIAL AREA

A geographic area, under the cognizance of a host activity, which is specially identified due to its non-contiguous location. Specific justification must be provided for the designation of special areas, or the retention of that designation, for any area that is not located at a significant distance from the boundary of the reporting activity.

SUBSTANDARD (Condition)

Substandard describes a facility with deficiencies [illegible] approval and funding beyond the authority of the activity commanding officer for modifications or repairs to made the facility adequate for its function.

SUPPORTED ACTIVITY/UNIT

For the purpose of the SFPS, an activity or unit that does not prepare a Facilities Requirements Plan, occupies facilities accounted for in the NFADB by another activity (host) and has its facility requirements reflected in the Facilities Requirements Plan of the host activity.

SURPLUS

Adequate, substandard and inadequate assets of a facility category that exceed the category requirement.

TENANT ACTIVITY

For the purpose of the SFPS, an activity that has a Facilities Requirements Plan but occupies facilities accounted for in the NFADB by another activity (host). A tenant may have hosts other than his designated host.

APPENDIX B

ACRONYMS

AC	Area Coordinator
ADCA	Anticipated Date of Contract Award
ADP	Automatic Data Processing
AICUZ	Air Installations Compatible Use Zones
AIS	Annual Inspection Survey
APPN	Appropriation
ARP	Activity Record Printout
CATCD	Category Code
[illegible]	Construction Code
[illegible]	[illegible]
CCN	Category Code Number
CMC	Commandant of the Marine Corps
CNO	Chief Of Naval Operations
CRT	Cathode Ray Tube Computer Terminal
DE	Data Element
DOD	Department of Defense
DR	Disposal Record
EAF	Environmental Adjustment Factors
E/COST FY	Estimated Cost and Fiscal Year
EE	Engineering Evaluation
EFD	Engineering Field Division
EIA	Environmental Impact Assessment
FACSO	Facilities Systems Office
FDR	Force Distribution Report

APPENDIX B (cont'd)

O&MN	Operations and Maintenance, Navy
OR	Outgrant Record
OSD	Office of Secretary of Defense
P/COST	Anticipated Cost in the Program Year
"P" No.	Project number assigned by activity
PI	Primary Investment Category
POM	Program Objective Memorandum
PR	Property Record
PRV	Project Rating Value
[illegible]	Percentage of Plans and Specifications [illegible] program year
RDT&E	Research, Development, Test and Evaluation
RJE	Remote Job Entry
SA	Special Area
SCF	Supplementary Category Flag
SFPB	Shore Facilities Programming Board
SFPS	Shore Facilities Planning System
SNDL	Standard Navy Distribution List
SMC	Sub-Major Claimant
U/M	Unit of Measure
UCD	Usable Completion Date
UDF	Unvalidated Deficiency Flag
UIC	Unit Identification Code
UPHS	Unaccompanied Personnel Housing Survey

APPENDIX C

SHORE FACILITY PLANNING SYSTEM --- HOST/TENANT CODES

ACTIVITY TYPE	H/T CODE	PLANT ACCOUNT	FPD DISPLAY	USER UIC
HOST	0	Holds Class 1 and/or Class 2 plant account	Identified by UIC on own FPD	Required. Must show as user of facilities
TENANT	1	Holds no plant account	Identified by UIC on own FPD	Required. Must show as user of facilities
HOST	2	Holds Class 1 [illegible]	No SFPS [illegible]	Required. Must [illegible]
[illegible] UNIT	3	[illegible]	[illegible] by UIC [illegible] host FPD	[illegible]
SUPPORTED UNIT	4	Holds no plant account	Not Identified by UIC, included on host or parent FPD	For a supported unit, either the host or supported unit UIC may appear as user.

UIC for students, midshipmen, etc).

* UIC's for other than shore activities

ALTERNATE HOST SITUATIONS

When a host activity (host A) or a tenant of that host requires facilities that are on the plant account of another host (host B), host A or its tenant is said to have facility requirements at an "alternate host" location. Examples:

Alternate host for a host activity

The headquarters of the Naval Space Surveillance System is located at the Naval Surface Weapons Center (NSWC), Dahlgren, VA. The Space Surveillance System does, however, report Class 1 and Class 2 property at various locations. The Space Surveillance System is, therefore, a host [illegible], and should have a H/T code "0", and NSWC Dahlgren [illegible] as an alternate host activity.

Alternate hosts for a tenant activity

The Naval Regional Dental Center, Long Beach has branch clinics at NAS Point Mugu, CBC Port Hueneme, and WPNCEN China Lake. Requirements are entered for the Regional Dental Center at the clinic locations. The Dental Centers's UIC is shown as the user of the clinic facilities. (The clinics should all be listed as H/T code "4".)

The Naval Regional Dental Center has a H/T code "1", and its host is listed as Naval Support Activity, Long Beach.

Alternate hosts for supported units

When a supported unit uses facilities at more than one host activity the activity at which it has the largest number of personnel should be listed as its host activity. The activity is treated as a supported unit of each host activity at which it is located, that is, its requirements are included with the requirements of the host activity at which that portion of the supported unit is located.

Few activities listed as H/T code "3" or "4" actually use facilities at more than one host. One of these is the dummy UIC NMCRES which is used to designate that portion of any Navy/Marine Corps Reserve Center which is designated for use by the Marine Corps.

APPENDIX D

Shore Activities Under the Command of CNO Exempt from Facilities Requirements Plan Preparation

SNDL	ACTIVITY TYPE	NO.	ACTIVITY NAME
FA1	4495	1	Atlantic Command Operations Support Facility
FA2	3149	1	Fleet Intelligence Center EUR and LANT
FA3	3158	1	Fleet Post Office LANT
FA22	4478	1	Oceanographic System LANT
FA27	1765	1	Aviation Weapons Facility
FA32	2522	5	Construction Battalion Unit CINCLANTFLT
[illegible]	[illegible]	1	Fleet Accounting and Disbursing Center LANT
FB1	[illegible]	1	Fleet Intelligence Center PAC
FB38	4479	1	Oceanographic System PAC
FB41	2525	5	Construction Battalion Unit CINCPACFLT
FB47	3126	1	Fleet Accounting and Disbursing Center PAC
FC3	1087	1	Naval Activities Spain
FD1	4480	1	Oceanographer of the Navy
FE1	5772	1	Security Group Headquarters
FE3	2650	1	Courier Service HQ
FE4	5771	2	Security Group Activities (San Vito, Fort George Meade)
FF8	3586	3	Inspection and Survey Board
FF13	3952	1	Liaison Group (Fort Ritchie)
FF18	5216	1	Tactical Doctrine Activity
FF20	3426	1	Historical Center

APPENDIX D (cont'd)

SNDL	ACTIVITY TYPE	NO.	ACTIVITY NAME
FKM20	3705	1	International Logistics Control Office
FKM21	2120	1	Clothing and Textile Research Unit
FKM25	5505	1	Regional Plant Equipment Office
FKM26	2725	1	Defense Printing Service
FKM28	3115	1	Regional Finance Office
FKN3	2547	6	Construction Officer in Charge (Including Trident)
FKN7	[illegible]	1	[illegible]
FKN8	[illegible]	1	[illegible]
FKN10	6206	1	Support [illegible] NAVFACENGCOM
FKP3A	4806	6	Plant Representative Office
FKP6C	5760	1	Sea Sparrow Project Support Office
FKP6D	2836	1	Experimental Diving Unit
FKP8	6152	16	Supervisor of Shipbuilding/Conv/Repair (except those located at Navy activities) (R
FKP9	5858	1	Shipbuilding Liaison Officer
FKP10	5866	1	Ship System Command Management Office
FKQ5	5905	1	Space System Activity
FKR1C	8200	2	Marine Aviation Detachment NAVAIRSYSCOM
FKR2A	4805	7	Plant Representative Office
FL3	2755	1	DOD Computer Institute
FO2	3885	18	Legal Service Office

APPENDIX D (cont'd)

SNDL	ACTIVITY TYPE	NO.	ACTIVITY NAME
FT71	7345	3	School Honor Naval
FT72	7550	4	Department of Naval Science
FT74	7765	58	School Reserve Officers Training Corps
FT84	2710	1	Defense Activity for Non-Traditional Education Support
FT89	1485	1	Air Training Unit
FU1	1093	1	Administrative Unit
----	5900	1	Space Projects Activity

DEFICIENCY CODES (R

First Character - Deficient Status or Condition Types
(Deficient because of)

A - Physical Condition
B - Functional or Space Criteria
C - Design Criteria
D - Location or Siting Criteria
E - Nonexistent
F - Total Obsolescence or Deterioration

Second and Third Characters - Facility Components or Related Items
(Area of deficiency)

01	Heating System
02	Ventilation/Exhaust
03	Environmental Control Systems (Air Conditioning, etc.)
04	Plumbing/Piping/Fixtures
05	Fire Deterrent Systems
06	Fuel Systems/Piping
07	Refrigeration System
08	Elevators/Escalators/Dumbwaiters/ Materials Handling Systems
09	Sewerage, etc.
10	Lighting/Fixtures
11	Power Capacity
12	Wiring/Feeders
13	Alarm Systems
14	Communications
20	Foundation
21	Slab/Floor Decking
22	Columns
23	Walls
24	Roof/Ceiling/Trusses
25	Piling
26	Building Interior/ Configuration
27	Roof
28	Soundproofing
29	Waterproofing
30	Building or Structure (Total)
31	Fencing
32	Drainage
33	Landscaping
34	Stabilization
35	Paved Surfacing
36	Explosive Quantity Distance
37	Airfield Safety Clearance
38	Pollution Abatement
39	Excessive Noise
40	OSHA Deficiency
41	Toilets
42	Fender Systems
43	Rails/Tracks
44	Cold Iron
45	Seismic Design
46	Security Systems
47	Energy Monitoring/ Control System
48	Compressed Air System
49	Potable Water System
50	Gas System
51	Hydraulic System
52	Steam System
53	Vacuum System

APPENDIX F

MAJOR/SUB-MAJOR CLAIMANT CODES

Major Claimant Code	Sub-Major Claimant Code	NAME	ABBREVIATION	
A		Department of the Navy Staff Offices	NAVSTAFO	
A	A1	Judge Advocate General	JAG	
A	A2	Deputy Comptroller of the Navy	NAVCOMPT	
A	A3	Chief of Naval Research	ONR	
A	A4	General Counsel	GENCOUNS	
A	A5	Naval Civilian Personnel Command	NCPC	
A	A6	Chief of Information	CHINFO	
A	A7	Director of Naval Petroleum and Oil Shale Reserves	NAVPETRES	
A	A8	Other Navy Staff Offices	OTH/STAFF	
B		Chief of Naval Reserve	CHNAVRES	
B	B9	Other Reserve	OTH/RES	
D		Chief of Naval Operations	CNO	
	DC	Commander, Naval Base, Philadelphia	COMNAVBASE, Philadelphia	(R
	DD	Commander, Naval Base, Norfolk	COMNAVBASE, Norfolk	(R
	DE	Commander, Naval Base, Charleston	COMNAVBASE Charleston	(R
	DF	Chief of Naval Reserve	CHNAVRES	
	DI	Commander, Naval Base, San Diego	COMNAVBASE San Diego	(R
	DK	Commander, Naval Base, Seattle	COMNAVBASE Seattle	(R
	DN	Commandant Naval District Washington	COMNDW	
	DP	Superintendent Naval Academy	NAVACAD	
	DO	Board of Inspection and Survey	INSURV	
	D1	Naval Observatory	NAVOBSY	
	D9	Other CNO and Special	OTH/CNO	

APPENDIX F (cont'd)

Major Claimant Code	Sub Major Claimant Code	NAME	ABBREVIATION
	H4	Chief of Naval Training Support	TRASUPP
	H5	Director Naval Education and Training	DNET
	H9	Other Naval Training	OTH/TRNG
I		Bureau of Medicine and Surgery	BUMED
	I9	Other Medicine and Surgery	OTH/MED
J		Naval Military Personnel Command	NMPC
	J9	Other Personnel	OTH/PERS
K		Naval Material Command	[illegible]
	K0	Naval Air Systems Command	[illegible]
	K2	Naval Sea Systems Command	[illegible]
	K3	Naval Electronics Systems Command	NAVELEX
	K4	Naval Supply Systems Command	NAVSUP
	K5	Naval Facilities Engineering Command	NAVFAC
	K6	Director of Naval Laboratories	LAB/CNM
	K7	Project Managers	PM/CNM
	K8	Strategic Systems Project Office	SSPO/CNM
	K9	Other Naval Material Command	OTH/CNM
L		Office of the Oceanographer	OCEANAV
	L9	Other Ocean/Meteorology	OTH/OCNMET
M		Naval Telecommunications Command	NAVTELCOM
	M9	Other Communications	OTH/COMM
N		Naval Security Group Command	NAVSECGP
	N9	Other Security	OTH/SEC
O		Naval Intelligence Command	NAVINTCOM
	O9	Other Intelligence	OTH/INT
R		Commandant of the Marine Corps	MARCORPS
	R0	Ground Forces	MC/GRD
	R1	Air Forces	MC/AIR

APPENDIX G
AREA COORDINATOR CODES

(R

CODE	AREA COORDINATOR
04	Commander, Naval Base, Philadelphia
05	Commander, Naval Base, Norfolk
06	Commander, Naval Base, Charleston
08	Chief of Naval Reserve
11	Commander, Naval Base, San Diego
13	Commander, Naval Base, Seattle
21	Commandant, Naval District, Washington, D.C.
30	Commander in Chief, U.S. Atlantic Fleet
30A	Commander, Naval Air Force, U.S. Atlantic Fleet
30B	Commander, U.S. Naval Base, U.S. Atlantic Fleet, Guantanamo Bay
31	Commander in Chief, U.S. Naval Forces, Europe
31A	Commander, U.S. Naval Activities, United Kingdom
31B	Commander, Fleet Air, Mediterranean
31C	Commander, Middle East Forces
40	Commander in Chief, U.S. Pacific Fleet
40A	Commander, U.S. Naval Forces, Japan
40B	Commander, U.S. Naval Forces, Korea
40C	Commander, U.S. Naval Forces, Marianas
40D	Commander, U.S. Naval Forces, Philippines

APPENDIX H

CRITICAL USE (UCD) CODES

1. Required to assure synchronous product delivery and facility availability for procurement of a weapons system.

2. Required due to expiring lease (or other loss of real estate).

3. Required to permit vacating of facility being displaced by related projects.

4. Required to permit utilization of related projects.

5. Other.

APPENDIX I

PRIMARY INVESTMENT PROGRAM CODES

CODE NUMBER	DESCRIPTION
01	PILOT TRAINING
02	SHIPYARD MODERNIZATION
03	NARF
04	POLLUTION ABATEMENT-AIR
05	POLLUTION ABATEMENT-WATER
06	NOISE ABATEMENT
07	MEDICAL/HEALTH FACILITIES
08	WEAPONS SECURITY IMPROVEMENTS
09	PUBLIC WORKS CENTER PROJECTS
10	SUPPLY CENTER MODERNIZATION
11	SAFEGUARDING INVESTMENTS (LAND ENCROACHMENT)
12	ENVIRONMENTAL CONTROL
14	COLD IRON
15	BEQ UPGRADE
16	CHAPELS
17	DEFENSE INTELLIGENCE PROGRAM
19	F-18
20	F-14
21	A-7E
22	MK-48
23	S-3A
24	688 CLASS SUBMARINE
25	AIRBORNE MCM
26	VSS HOMEPORTING
27	WHOLESALE CONSOLIDATION
28	PAY/PERS ADMIN SUPPORT SYSTEM (PASS)
29	TOMAHAWK TRAINER
30	ORD FACS MODERNIZATION
31	P3C/ASTAC
32	LAMPS
33	DEEP DIVE SYSTEM
34	PROJECT CEASAR
35	TRIDENT
37	SEAFARER
38	RDT&E FACILITIES
39	CHILD CARE CENTERS
40	NAF
41	OCEAN OPERATIONS
42	SHORE INTERMEDIATE MAINTENANCE ACTIVITIES (SIMA)
43	SURTASS
44	AE/AOE HOMEPORTING
	SER (SHORE ESTABLISHMENT REALIGNMENT)

APPENDIX J

CONSTRUCTION/MISSION CODES

Construction Codes

1. Construction; new facility

   Erection, installation or assembly of new facility which will appreciably increase the total assets at an activity.

2. Modernization; Rehabilitation; Alteration

   Primary purpose to accomplish major repairs or alter the physical characteristics of an existing facility, with no change in its functional purpose (category code), and no appreciable change in quantity (size). Will change the condition of the facility from SUBSTANDARD to ADEQUATE.

3. Construction; Replacement

   To replace a facility which has been, or is to be destroyed, damaged or deteriorated beyond economical repair and will serve the same functional purpose (category code) with no appreciable change in quantity (size).

4. Construction; Addition

   Erection, installation, or assembly which will appreciably increase the size of an existing facility.

5. Conversion

   Primary purpose to accomplish major repairs or alter the physical characteristics of an existing facility which will change the functional purpose (category code) but with no appreciable change in size. Will result in an ADEQUATE facility.

6. Real Estate; Realty Rights

   For the purchase or other acquisition of additional Class I real property.

APPENDIX K

PROJECT VALIDATION INDICATORS

CODE	DESCRIPTION
A	Scope (quantity) not now supported by SFPS documentation and EFD has no positive knowledge to indicate that the project can be supported.
B	Scope (quantity) not now supported by SFPS documentation but EFD has positive knowledge that the project can be supported and that efforts are in progress to update documentation (Facility Planning Document).
C	Estimated cost unreasonable for scope, category code, and estimated year, or cost estimate not provided.
D	Preliminary Environmental Assessment insufficiently documented or not provided.
E	Economic analysis unrealistic, insufficiently documented, or not provided.
F	Proposed facility not included on an approved master plan or site plan not provided.
H	More than one of items A through F. Explain by note or by forwarding letter/endorsement.
M	One of multiple projects for improvement to same existing facility. Project is valid.
W	Project requires waiver of criteria. Project justification appears adequate but exception to criteria must be obtained (OSD, DDESB, etc.).
X	For special review purposes. Use will be described by the letter distributing the 1360.

APPENDIX L

PLANNING ACTIONS

The following planning actions, action identifiers (ID), and action designators (D) are for use in the "Satisfaction of Deficiency/Surplus" portion of the Facility Planning Document. The designators are used to include the scope associated with a particular planning action in the calculation of the Total Proposed Adequate Assets shown on the FPD and the Proposed Quantity Deficient and Proposed Quantity Surplus on the Facilities Requirements Plan Summary.

The designators are computer-generated and are based on the action and condition of the associated asset (i.e., adequate, substandard, inadequate). The identifier column is used to further define the associated planning action. The primary use of this column will be to indicate vacant assets (VAC). If this column is not completed for a facility (left blank), it will be considered by the computer as "used". If a particular asset is vacant and [illegible] "VAC" entered in the ID column) other descriptive information may be included as an FPD Action Note.

Shown below are the planning actions, possible identifiers and designators for the particular asset condition. It should be noted that the planning action for renovation (RENOV) is only applicable for a substandard asset.

APPENDIX L (cont'd)

ACQUISITION PLANNING ACTIONS

ACTION	ID	D	DEFINITION
CONSTR	(P-001)	+	New construction (project number associated should be shown in ID column)
LEASE		+	Inlease
CLASS 3		+	Trailers, vans, etc.
CONVFR	(CCN)	+	Convert from another category code (the previous category code should be shown in ID column)
REASFR	(UIC)	+	Reassign from another UIC (releasing activity UIC may be shown in ID column)

APPENDIX M
STANDARD NOTES

(R

FPD STANDARD NOTE NUMBER	STANDARD NOTE NAME
01	QUANTITY DEFERRED FOR MORE INFORMATION
02	WAIVER OF OSD CRITERIA REQUIRED PRIOR TO FUNDING AT REQUIREMENT SCOPE
03	WAIVER APPROVED BY OSD
04	APPROVED PENDING SYSCOM REVIEW
05	COMBINED REQUIREMENT WITH OTHER ACTIVITY
06	INCLUDES UP TO 20% FROM OTHER EXCHANGE CON
07	APPROVED FOR PLANNING PURPOSES ONLY
08	WAIVER OF EAF GRANTED
09	ENGINEERING ANALYSIS REQUIRED WITH PROJECT SUBMISSION
10	REQUIREMENT PENDING NAVFACENGCOMHQ APPROVAL
11	REQUIREMENT PENDING CMC APPROVAL
12	REQUIREMENT APPROVED BY CMC
13	QUANTITY CLASSIFIED
14	ASD(HA) APPROVAL REQUIRED PRIOR TO CONSTRUCTION IN EXCESS OF $250,000
15	WHEN PLANNING THIS CON, REFER TO ALL FPD's IN THIS CON
30	FY 1980 UNACCOMPANIED PERSONNEL HOUSING SURVEY
31	FY 1981 UNACCOMPANIED PERSONNEL HOUSING SURVEY
32	FY 1982 UNACCOMPANIED PERSONNEL HOUSING SURVEY
33	FY 1983 UNACCOMPANIED PERSONNEL HOUSING SURVEY
34	FY 1984 UNACCOMPANIED PERSONNEL HOUSING SURVEY
35	FY 1985 UNACCOMPANIED PERSONNEL HOUSING SURVEY

APPENDIX N
PROJECT COST ESTIMATE

GENERAL:

The 11000/4 submission must include a cost estimate of sufficient detail to allow for a comprehensive review of project costs and to provide justification of costs to higher authority. To this end, project cost estimates will be developed on NAVFAC Form 11013/7. The Form 11013/7 is to include a narrative as well as the specific associated costs as follows:

(1) A brief but definitive description of work

(2) Scope of the primary facility

(3) List of special design features required

(4) Major special mechanical and electrical systems

(5) Supporting Facilities (all project related items outside the 5 foot building line, such as pavements, utilities and their related components, landscaping, etc.)

(6) Assumptions used to estimate the work - It is important that all assumptions in cost development be stated so that cost can be verified by the reviewer. This will identify the basis for costs, should any future adjustments be necessary

(7) Source of Unit Costs if obtained from a published Cost Guide

PREPARATION OF ESTIMATE:

For primary facilities, backup can vary from a simple cost per square foot of gross area to a detailed quantity take off. The per square foot of gross area is ususally adequate for the OPNAV Form 11000/4, however it should be adequately developed and justified. It should be clear that all required major components have been included. Three possible levels of backup are:

(1) Dollars per square foot

(2) Dollars per major trade (i.e., General Construction, Plumbing, HVAC, Electrical, etc.)

(3) Dollars per building system (Special systems should be shown as separate entries.)

Supporting facilities should also be shown with as much detail as

(b) Energy - The estimate should allow for insulation requirements, modifications to conventional HVAC systems, solar heating systems or special architectural/mechanical considerations to achieve reduction in energy usage.

(c) Sound Attenuation - add for:

Zone 2 : 3%

Zone 3: 5%

If normal construction uses materials (such as masonary and concrete) with inherent sound attenuation characteristics, these percentages may be reduced.

(d) If the other factors, such as special security restrictions, will increase costs these should also be listed.

SOURCE OF DATA:

(1) NAVFAC P-438 - Historical Military Construction Costs Data. Published by NAVFAC. Lists building costs per square foot by category codes. Good source of building cost data when local experience is not available. Based on bid results.

(2) NAVFAC P-448 - Conceptual Military Construction Cost Data. (Old DM-10). Source of data on unusual projects. Not reliable for building costs.

(3) DOD 4270.1CG - Published by DOD yearly. Lists costs of selected types of facilities. These are DOD costs from all services and are used as a guide to higher levels to review costs. In the past many have been on the low side.

NOTE: Due to differences between various cost guide methodologies, care should be exercised to become familiar with the guide prior to its use.

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON, D.C. 20350

IN REPLY REFER TO
OPNAVINST 11010.1J
OP-44
1 October 1979

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OPNAV INSTRUCTION 11010.1J

From: Chief of Naval Operations

Subj: Policies, responsibilities, and procedures for facilities planning of the Naval Shore Establishment

Ref: (a) NAVFACINST 11010.44D
(b) NAVFACINST 11010.63
(c) NAVFAC P-73
(d) OPNAVINST 6240.3B
(e) NAVFACINST 11010.57B

Encl: (1) Definition of Terms

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1. Purpose. To establish policies, responsibilities, and procedures for facilities planning of the naval shore establishment. The policies, responsibilities, and procedures established herein do not apply to Marine Corps activities and the Navy Family Housing program.

2. Cancellation. OPNAVINST 11010.1H and the following OPNAV reports symbols and forms are cancelled:

SYMBOL	TITLE
OPNAV 11000-1	Basic Facility Requirements List
OPNAV 11000-1A	Evaluation of Existing Shore Facility Assets
OPNAV 11000-1B	Summary of Facility Deficiencies and Excesses
OPNAV 11000-1D	Summary of Disposal of Facility Excesses

FORM NO.	
OPNAV 11000/1	Basic Facility Requirements List
OPNAV 11000/2	Evaluation of Existing Shore Facility Assets
OPNAV 11000/3	Summary of Facility Deficiencies and Excesses
OPNAV 11000/5	Summary of Disposal of Facility Excesses

3. Background. The facilities of the naval shore establishment are fundamental to the execution of assigned missions. These missions are dynamic and respond to changes in characteristics of ships, aircraft, and other weapon systems. Mission

changes can sometimes be anticipated and requisite actions planned over an extended period of time. In other cases, they result from unexpected developments external to an activity of the Navy. In either case, the acquisition of facilities ashore involves significant lead time for authorization and funding by Congress and for design and construction. Accordingly, new or replacement facilities required to support Navy missions must be identified and included in military construction programs on a timely basis. This instruction addresses the planning phase of the system used to fund and acquire shore facilities through the military construction program. A companion instruction will describe the programming and budgeting phases of the military construction program.

4. Shore Facilities Planning. Navy facilities planning consists of two formal processes: Shore Facilities Requirements Planning and Activity Master Plans. These processes are described in references (a) and (b) respectively.

a. Shore Facilities Requirements Planning. A Shore Facilities Planning System has been developed by the Naval Facilities Engineering Command to assist in determining facility requirements at shore activities necessary for the accomplishment of assigned missions. The facility requirements for each activity are formalized in a statement of Basic Facility Requirements, and are predicated on those facilities required to perform its mission. A comparison of these requirements with the existing assets produces a document listing facility deficiencies which serves as the basis for formulating activity master plans and military construction programming. Each deficiency requiring military construction is described on form OPNAV 11000/4 (Project for Correction of Facility Deficiency) and is entered into the Military Construction Requirements List (MILCON RL) and depicted in the activity's master plan. The MILCON RL is a composite listing of previously authorized and funded projects, budgeted and programmed projects, and those projects which are required to satisfy deficiencies but which have not been programmed. The MILCON RL will be utilized as one of the primary bases for determining the resources to be committed to military construction during the Navy programming process. Therefore, it is vital that all projects which are placed within this file not only be validated by the Shore Facilities Planning System (SFPS) from a technical standpoint, but that each project be reviewed by responsible echelons of command to assure that the deficiencies are in fact valid and urgent, thus requiring serious consideration for funding. It is

essential that commanding officers, immediate superiors in command, area coordinators, and the major claimants apply a rigid test of the real world requirement and urgency for each deficiency identified by the planning process. In addition to a strict review during the initial submission of projects, the status of projects in the MILCON RL will be reviewed, as described in reference (a), at least annually to confirm that projects are still needed. Also, projects are reviewed in detail during the preparation of master plans as described in reference (b).

b. Installation Planning. The Naval Facilities Engineering Command is assigned the responsibility for shore installation planning. To accomplish this task, NAVFAC has developed a broad range of planning services to deal with long-range, mid-range, and day-to-day planning in support of fleet and shore commands.

(1) Long-range planning is accomplished by conducting regional and systems studies. Regional studies exist, or are under development, for 20 geographical areas in which the Navy and Marine Corps have a significant presence. These geographical areas include Oahu, San Diego, Norfolk, Guam, Charleston, Jacksonville, New Orleans, San Francisco, Puget Sound, Okinawa, the Philippines, Japan, the Mediterranean, Washington, D. C., North Carolina, the United Kingdom, the Caribbean, Pensacola, Texas and Los Angeles. These regional studies provide an overview description of shore facility assets for the use of fleet commands and area coordinators. Additionally, they constitute a data base for special studies and master plans in that they provide information on socio-economic, physical, geographical and climatological considerations that are common to all activities in a given region. In accomplishing regional studies, problem areas are identified and given visibility for follow-on study and action proposals.

(2) Systems studies are conducted to provide insight into functional systems such as ordnance, POL and supply. These studies provide a catalog of system-related data and are useful in determining problem areas within a system for further study and resolution.

(3) Where a number of Navy and Marine Corps activities are geographically related and share community and personnel support facilities, experience the same traffic and transportation problems, and interface with the same community and jurisdictional entities, NAVFAC prepares complex master plans.

Sewells Point, Point Loma and New London are examples of some fifty shore installations where activities are studied in the aggregate because of common assets and problems.

(4) Comprehensive master plans are maintained for Navy and Marine Corps activities to insure logical and efficient use of facilities and real estate assets, and to guide activity growth and change. Utilizing requirements data developed by the Shore Facilities Planning System, NAVFAC, together with activity commanding officers, their staffs, and the activity major claimant, update the activity's master plan. Master plan updates are scheduled to follow or coincide with SFPS document updates, complex plans, and regional studies. Owing to resource constraints, it is necessary to apply planning resources to activities requiring them the most. Activities which have encroachment problems, changes in mission or base loading, or that are involved in programs to eliminate explosives safety or airfield operation waivers, require more in-depth planning and more frequent attention. Two hundred eighty-eight Navy and Marine Corps activities have been rated on these factors and categorized into one of three classifications. Category A includes activities with significant facility problems requiring a considerable amount of funding assistance. Category B includes activities with facility problems requiring corrective programs, but not in the magnitude of Category A. Category C activities are relatively stable and would be expected to receive little construction activity. Updating of master plans follows a three-year cycle for Category A activities, a six-year cycle for Category B activities, and a nine-year cycle for Category C activities. This insures that all activities receive master planning assistance from NAVFAC on a maximum nine-year cycle. New or significantly changed master plans are approved by CNO (OP-44). The master plan update process provides the mechanisms for insuring that activity projects are sited to meet operational, safety and environmental requirements, but also to insure that road and utility infrastructure support and site improvements have been considered.

5. Action

a. Chief of Naval Operations

(1) CNO (OP-40) will periodically promulgate a Force Distribution Report, which shows the aggregate of ships, aircraft, and personnel included in the FYDP which will require support from host shore activities, to assist major claimants

in promulgating workload information to their subordinate commands and to activities which must identify Basic Facility Requirements.

(2) CNO (OP-44) will review and approve significant changes to activity master plans as well as new activity master plans.

b. Major Claimants

(1) The major claimants will promulgate to their activities mission, task, and workload information to be used as a basis for preparing Basic Facility Requirements and activity master plans. This information will identify the ships, aircraft, and personnel to be assigned and the functions to be performed to accomplish the assigned missions.

(2) The major claimants will assure that the activities have current Basic Facility Requirements on file, in accordance with reference (a) and actively participate in updating activity master plans in accordance with reference (b).

c. Naval Facilities Engineering Command (NAVFACENGCOM)

(1) Publish facility planning standards and criteria for Navy-wide guidance, ensuring that such standards and criteria are:

(a) Realistic and in accordance with those promulgated by the Office of the Secretary of Defense or other competent authority, and

(b) Coordinated with the cognizant technical systems command, bureau or office prior to issue.

(2) Conduct shore facilities requirements planning for all components of the Navy, and others as directed by preparing and submitting, in accordance with reference (a), Engineering Evaluation of Existing Assets and Facility Planning Documents. Ensure that detailed procedures for the Navy Shore Facilities Planning System are published in reference (a) to implement the policies of this instruction. Ensure that Facility Requirements Plans are updated prior to the initiation of a master plan in accordance with reference (b).

(3) Prepare regional systems studies for CNO, CNM, SYSCOMS, Bureaus and Fleet Commands. Prepare and submit

to CNO for approval of Naval complex plans and activity master plans. Approved master plans will be utilized for siting facilities to ensure maximum economy of construction, efficiency of operations, and compliance with federal and Navy policies in areas such as safety, environment, energy, and regional planning. Deviations from an approved plan will not be permitted without prior approval by CNO.

(4) Provide project validation and site approval, prior to start of design, for all facilities.

(5) Maintain data bases on Navy facility assets, requirements, deficiencies, excesses, and military construction projects.

d. Commanding Officers

(1) Prepare and submit, in accordance with reference (a):

(a) Identification of Basic Facility Requirements (requirements are to be updated prior to the initiation of a master plan).

(b) Form OPNAV 11000/4, Project for Correction of Facility Deficiency.

(c) Report of excess real property in accordance with reference (c).

(2) Prepare and submit environmental impact documentation in accordance with reference (d).

(3) Review current Engineering Evaluations of Existing Assets, and Facility Planning Documents, to ensure that those facilities designated as inadequate, thereby generating a deficiency, are actually incapable of performing the designated function.

(4) Review projects in the MILCON RL to ensure that deficiencies reflect actual activity requirements supported by assigned mission, tasks, and functions.

(5) Review all available assets to ensure that occupied assets are properly utilized, as reflected in the Basic Facility Requirements, and that surplus assets are considered for satisfaction of deficiencies prior to generation of MILCON projects.

(6) Actively participate in scheduled master plan update procedures in accordance with reference (b). Ensure full participation of activity department heads and key personnel.

(7) Prepare and submit site approval requests for all projects involving the acquisition or modification of Class 2 Navy property, regardless of type of funding, in accordance with reference (e).

(8) Prepare and submit historic and cultural preservation documentation in accordance with reference (d).

6. Definition of Terms. Provided as enclosure (1).

7. Report and Form

a. The following report symbol is assigned to the reporting requirements set forth in this instruction:

SYMBOL	TITLE	PARAGRAPH
OPNAV 11000-1C	Project for Correction of Facility Deficiency	5d

b. OPNAV 11000/4 (Rev. 3-77) S/N 0107-LF-110-0035 is now available through normal supply channels in accordance with NAVSUP 2002 until the revised edition of 4-79 S/N 0107-LF-110-0020 becomes available.

c. This report is approved for two years only from the date of this directive.

J. T. TAYLOR
By direction

Distribution:

SNDL	A2A	(Department of the Navy Staff Offices)
	A4A	Chief of Naval Material
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	D2A	DIRNCRFSS UNSECNAV
	E2	(Activities under command of the Deputy Comptroller of the Navy)
	E3	(Activities under command of the Chief of Naval Research)
	FA	(Shore activities under command of CINCLANTFLT)
	FB	(Shore activities under command of CINCPACFLT)
	FC	(Shore activities under command of CINCUSNAVEUR)
	FD1	(COMNAVOCEANCOM)
	FE	(Shore activities under command of COMNAVSECGRU)
	FF	(Shore activities under command of CNO)
	FG	(Shore activities under command of COMNAVTELCOM)
	FH	(Shore activities under command of CHBUMED)
	FKA	(Shore activities under command of CHNAVMAT)
	FKM	(Shore activities under command of COMNAVSUPSYSCOM)
	FKN	(Shore activities under command of COMNAVFACENGCOM)
	FKP	(Shore activities under command of COMNAVSEASYSCOM)
	FKQ	(Shore activities under command of COMNAVELEXSYSCOM)
	FKR	(Shore activities under command of COMNAVAIRSYSCOM)
	FL	(Shore activities under command of COMNAVDAC)
	FS	(Shore activities under command of COMNAVINTCOM)
	FT	(Shore activities under command of CNET)

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DEFINITIONS OF TERMS

1. Facility. A separate, individual building, structure, or other form of real property, including land, which is subject to separate reporting under the Department of Defense real property inventory. (NOTE: This definition differs from that used elsewhere because it includes "land".)

2. Facility Requirements. The facilities required by an activity to perform its mission, tasks, and functions and to support assigned forces. Facility requirements are expressed normally as quantities of land, waterfront space, easements, types of buildings and structures, capacity of utilities, et cetera, in terms of units of measure. A facility requirement is an abstract specification and is not identifiable with a particular building or structure.

3. Project. A statement of a construction requirement for a facility or group of like facilities in terms of a category code, title, unit of measure, quantity required, estimated cost, description, justification, to produce a functional entity. It usually has a clearly dominant feature (the principal construction feature), such as a single building or structure, or a group of buildings, such as bachelor quarters. Project statements will also be used to identify excess facilities, or for such other identification as may be directed.

4. Shore Activity Planning. That planning which encompasses the determination of mission, tasks, functions, and workload to be accomplished by a Naval shore activity, and provides for the coordination and technical support.

5. Shore Facilities Requirements Planning. The determination of the facility requirements for individual shore activities of the Naval establishment, the evaluation of the adequacy of existing real property to satisfy these requirements, the determination of facility deficiencies or excesses, the provisions for maximum utilization of existing facilities, the translation of deficiencies into requirements for construction, and the initiation of disposal action on excess properties.

6. Regional and Systems Studies. Studies designed to provide data common to activities because of similarities in geography or similarities in mission and function. Undertaken to identify problem areas as well as to provide valuable data concerning existing assets.

7. Shore Installation Master Planning. The comprehensive planning performed for an activitiy or a complex of activities to assure the timely and orderly physical development of facilities required to support present and future military operations. Planning is undertaken to blend considerations of the environment, operational necessities, and human concerns. The planning process includes analysis and evaluation of land, water areas, and airspace; operational and functional relationships, circulation and infrastructure; site selection; determination of capital improvements best suited to satisfy the facility requirements; activity guidelines for the design of facilities and landscape; and assurance of the engineering and construction feasibility of the proposed development. Specific information on the master planning program is detailed in reference (b).

8. Major Claimants. Those commands, bureaus, and offices designated by the CNO as claimants for a share of military construction programs for the shore activities under their command.

9. SFPS. The Shore Facilities Planning System has been designated to document the status of facility requirements planning at the activity level. This documentation is expressed on the computerized printouts detailing the information on file in the data base of the Shore Facilities Planning System and on form used to note the proposed satisfaction of documented deficiencies in terms of military construction projects and to note the proposed methods of disposal for facility surpluses. Detailed procedures for the use of this system are provided in reference (a). The specific purpose of each form and computer generated document is as follows:

a. Facilities Requirements Plan - This plan provides a statement of facility requirements, lists existing assets by condition and displays future plans to utilize, acquire of dispose of assets. The Facilities Requirements Plan is computer generated and is made up of three primary elements.

(1) Activity General Information - Depicts general data for the particular activity, including major claimant, special areas, tenants, detachments, etc.

(2) Facilities Requirements Plan Summary - Serves to provide a concise overview, by five digit category code of Basic Facility Requirements, existing deficiencies and surpluses, and deficiencies and surpluses that would remain after implementation of the proposed planning actions associated with the Facility Planning Document.

(3) Facility Planning Document (FPD) - Prepared for each category code related to the defined mission of the activity, showing the detailed planning information for that particular category code, including Basic Facility Requirement, asset information, deficiency, surplus, and a proposal for reduction of deficiency and surplus. Also included is a section for notes to explain any special or peculair situations.

b. OPNAV Form 11000/4 - Project for Correction of Facility Deficiency lists individual projects for correction of facility deficiencies, to enable the various command echelons to review all projects and establish priorities for accomplishment.

Reference

AR 405-45
C2

CHANGE No. 2

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, *15 March 1982*

REAL ESTATE

INVENTORY OF ARMY MILITARY REAL PROPERTY

Effective 15 April 1982

This change reduces the reporting requirement to semiannual, eliminates the requirement to provide installation layout maps to HQDA, and corrects editorial errors throughout.

Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration date unless sooner superseded or rescinded.

AR 405-45, 18 March 1977, is changed as follows:

1. New or changed material is indicated by a star.

2. Remove old pages and insert revised pages as indicated below:

Remove Pages	*Insert Pages*
1-1 and 1-2	1-1 and 1-2.1
2-1 and 2-2	2-1 and 2-2.1
2-5 and 2-6	2-5 and 2-6.1
2-11 and 2-12	2-11 and 2-12.1
3-1 and 3-2	3-1 and 3-2
4-1 and 4-2	4-1 and 4-2
C-1 and C-2	C-1 and C-2
E-1 and E-2	E-1 and E-2

3. File this change sheet in front of the publication for reference purposes.

The proponent agency of this regulation is the Office of the Chief of Engineers. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to HQDA (DAEN-REP-S) WASH DC 20314.

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Brigadier General, United States Army
The Adjutant General

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AR 405-45
C 1

CHANGE
No. 1

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, *15 November 1980*

REAL ESTATE

INVENTORY OF ARMY MILITARY REAL PROPERTY

Effective 15 December 1980

This change corrects editorial errors throughout, and updates function codes in chapter 2, Commands in appendix A, Using Agencies in appendix B, and Country Codes in appendix C.

Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration date unless sooner superseded or rescinded.

AR 405-45, 18 March 1977, is changed as follows:

1. New or changed material is indicated by a star.
2. Remove old pages and insert revised pages as indicated below:

Remove Pages	*Insert Pages*
1-1 through 1-3	1-1 through 1-3
2-1 through 2-4	2-1 through 2-4.1
2-7 through 2-10	2-7 through 2-10.1
A-1	A-1
B-1	B-1 and B-2
C-1 and C-2	C-1 and C-2

3. File this change sheet in front of the publication for reference purposes.

The proponent agency of this regulation is the Office of the Chief of Engineers. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to HQDA(DAEN-REP-S) WASH DC 20314

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:
J. C. PENNINGTON
Major General, United States Army
The Adjutant General

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ARMY REGULATION
No. 405-45

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, *18 March 1977*

REAL ESTATE

INVENTORY OF ARMY MILITARY REAL PROPERTY

Effective with reports prepared as of 31 December 1977

This revision changes the method of reporting Real Property Inventory (RPI) and Building Information Schedule (BIS) data. DA Forms 2541, 3640, and 3641 have been discontinued. Reports will be made via magnetic tape or punched cards. Local supplementation of this regulation is permitted, but is not required. If supplements are issued, Army staff agencies and major Army commands will furnish one copy of each to HQDA (DAEN-REP-S) WASH DC 20314; other commands will furnish one copy of each to the next higher headquarters.

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*On 1 October 1977 this regulation will supersede AR 405-45 dated 3 August 1973, and will cancel Reports Control Symbols ENG-205 and ENG-75(R3); it will rescind DA Form 2541, 1 Sep 66, DA Form 3640, 1 Jul 71, and DA Form 3641, 1 Jul 71.

CHAPTER 1
GENERAL

1-1. **Purpose.** This regulation sets forth the requirements for general information and statistical data and prescribes a uniform procedure for reporting such data so that a central inventory of Army military real property may be maintained. This central inventory is a basic source of information on status, cost, capacity, condition, use, maintenance, and management of the real property overall and by individual installations. It will be used as the basis for the annual publication entitled *Inventory of Army Military Real Property, for the Building Information Schedule* (BIS) as required by AR 210-20, and for supplying information to offices of the Department of Defense (DOD), Congressional committees, General Services Administration (GSA), and other interested Government agencies.

1-2. **Applicability.** *a.* This regulation is applicable to all Army installations, commands, and activities, including the Army National Guard and Army Reserve, having accountability for or occupying Department of the Army (DA) real property. Chapter 2 provides instructions for reporting all real property at Army installations. Chapter 3 provides instructions for reporting leaseholdings located in foreign countries that are not all or part of installations.

b. The reporting medium specified in paragraph 2-1*a*(1) of this regulation is applicable until the Integrated Facilities System (IFS) is fully implemented at an installation. At that time, RPI/BIS data specified herein will be reported through the medium of IFS in accordance with the input instructions contained in the IFS Assets Accounting Module, Users Manual Volume II.

c. Defense agencies using Army property acquired by assignment or permit will provide real property inventory input data required by existing agreements.

1-3. **Scope.** ★ *a.* The central inventory will include all real property under the control of the DA located in the United States, its possessions and territories, the Commonwealth of Puerto Rico, and in foreign countries; that is, every item owned, leased, or otherwise acquired and controlled by the DA, including property and improvements acquired from other DOD departments and Government agencies. It will be maintained in a current status by semiannual changes as required.

b. Do not include in these reports—

(1) Property in an officially designated combat zone.

(2) River and harbor and flood control property under jurisdiction of the Secretary of the Army.

(3) Property in the National Industrial Reserve, property disposed of subject to right of recapture, or National Security Clause, unless such property is under Army military control.

(4) Property furnished by GSA.

1-4. **Authority.** Section 410 of Title IV of the National Security Act of 1947, as amended (10 USC 2701), requires the Secretary of Defense to maintain records of all real property on both a quantitative and monetary basis, and report thereon periodically to the President and to the Congress. DOD Instruction 4165.14 required that each military department establish and maintain a real property inventory to satisfy that reporting requirement. The Chief of Engineers has been assigned staff responsibility for maintaining the central inventory of Army military real property provided for in this regulation. In the execution of real estate inventory management responsibility, direct communication is authorized with organizational elements having accountability for, or occupying, DA real property on matters pertaining to real poperty inventory.

1-5. **Reporting responsibility.** *a.* The responsibility for accuracy, completeness and timeliness of real property information required by this

regulation is assigned to the MACOM in control of the property. This includes responsibility for forwarding adequate implementing instructions to all installations, enforcing compliance with instructions, and insuring that installations maintain the capability for complying with current reporting requirements.

b. Installations in an excess status will be reported by the district or division engineers having accountability or as assigned by DA.

c. Inventories for Army installations licensed to states for sole occupancy by the Army National Guard, which have had property accountability transferred, will be prepared by the US Property and Fiscal Officers in accodance with instructions contained in this regulation and procedures established by the Chief, National Guard Bureau.

1–6. Definitions. *a. Building construction, permanent.* A building suitable and appropriate to serve a specific purpose for a maximum period of time (at least 25 years) and with a minimum of maintenance.

b. Building construction semipermanent. A building suitable and appropriate to serve a specific purpose for limited period of time (less than 25 years and more than 5 years) with a moderate to high degree of maintenance.

c. Building construction, temporary. A building suitable and appropriate to fill a need for a short period of time (5 years or less) without regard to degree of maintenance, the designs and details of which provide minimum facilities with maximum initial economies.

d. Building, portable. A building designed for the continuing purpose of being moved easily intact from one location to another, and usually maintained for a short length of time in one location; e.g., shelters for workers, construction offices, unconnected sanitary facilities, self-contained office and night guard trailers and movable tool sheds. Portable buildings and structures are not items of realty and will not be reported for RPI purposes.

e. Buildings, relocatable. Buildings designed and constructed to be easily dismantled to facilitate economical movement from one site to another; e.g., temporary classrooms, offices, storage buildings. Trailers serving as housing will be considered as relocatable buildings. Criteria for determining a relocatable building an item of real property is contained in paragraph 4*c*, AR 700–112.

f. Cold storage, space volume. The actual cubic space inclosed within the inner surfaces of the outside or inclosing walls and contained between the inner surfaces of the structural members (roof, trusses, rafters or ceiling, whichever is lower) and the finished surfaces of the lowest floors.

g. Condition.

(1) *Usable.* The condition of a facility which indicates it is serviceable for a useful purpose.

(2) *Nonusable.* The condition of a facility which indicates it is unserviceable because it has deteriorated to the extent that it needs extensive restoration, or constitutes a danger to health and safety of personnel or equipment.

h. Construction. The erection, installation or assembly of a new facility; the addition, expansion, extension, alteration, conversion, or replacement of an existing facility; or the relocation of a facility from one installation to another. Includes equipment installed and made a part of such facilities, and related site preparation, excavation, filling and landscaping, or other land improvements.

i. Facilities. All items of improvements on land. Examples of such items are buildings, roads, parking areas, fences, communication lines, waterlines, railroads, storage tanks, etc. For purposes of this inventory, buildings will be distinguished in the report from other facilities.

j. Gross floor area. The gross floor square footage will be computed as described in appendix C, AR 420–17.

k. Installation. Land and the improvements thereon under the control of the DA at a fixed location at which functions of the Army are or may be carried on, and which has been established by order of the DA or by an oversea command under delegated authority. Such land and

improvements within a common boundary utilized as a post or camp, with functions such as airfield, hospital, depot, arsenal, industrial plant, cemetery, harbor or port, generally will be designated as a single installation. For the purpose of inventory reporting, subinstallations and property at separate locations (other than leaseholdings not part or all of an installation and assigned space in Federal public buildings) accommodating an activity, whether or not established by general order, will be reported as an installation.

l. Installation, active. An installation being utilized regularly in its entirety or in part for its intended purpose. Land acquired for an intended installation will be reported as an "active" installation whether or not any construction has been completed.

m. Installation, excess. An installation for which there is no foreseeable DA requirement as determined in accordance with procedures set forth in AR 405–90.

n. Installation, inactive. An installation which is not in use, either intermittently or otherwise, by Active Army or Reserve Component organizations other than caretaking detachments. Inactive installations are retained in a non-use status in sup-

port of mobilization requirements or are pending disposal or transfer to another Federal agency.

★o. *Installation, semiactive.* An installation which is not in continuous use by Army organizations other than an Active Army Garrison required to support intermittent use of Reserve Component or field exercise requirements. An installation which is in custody of a non-Army agent charged with support of Reserve Component training and/or maintenance of the installation as a mobilization base.

★p. *Installed personal property (building equipment).* Those items of accessory equipment and furnishings, including materials for installation thereof, which are required for operation and affixed as a part of the building or facility, such as fixed overhead crane runways, elevators, lavatories, plumbing, heating, ventilating, cooling, electrical and sprinkler systems, communications systems less handsets, hot water heaters, garbage disposals, built-in furniture and window-type air-conditioning units installed in such a manner that removal would require reconstruction of the realty.

★q. *Real property.* Land and rights therein, ground improvements, utility systems, and buildings and structures excluding plant equipment. Terminology and classification of items of real property to report for inventory purposes are contained in AR 415-28.

★r. *Utility plant.* A utility plant housed separately from the building(s) served and producing a usable utility service will be separately inventoried. Equipment such as generators, air conditioners, etc., furnishing a utility service physically installed in a building and serving only that building will be considered a part of that building and will not be separately inventoried.

★s. *Vacant space.* All completely vacant land, buildings, and facilities that are not programmed or committed for use during the 12 months following the "as of date" of the report. Include all land, buildings, structures, and utilities which are presently reported "in use" but have been declared as "excess." Also include vacant space of 1,000 square feet or more per building in partially vacant buildings and those areas of vacant land totaling 100 acres or more comprising part of an installation that are not programmed for use during the 12-month period following the "as of date" of the report. All space reported as vacant will be assumed to be available for use by others. Vacant space does not include areas outgranted.

1-7. Source documents. The real property records maintained in accordance with AR 420-17, where available, will be used as the source for inventory reporting. The best records available for property at those installations that do not maintain records under that regulation will be used as a source to prepare the reports. Reliable records pertaining to land holdings and outgranted property in the United States, its possessions and territories, and the Commonwealth of Puerto Rico are maintained by division and district engineers of the Corps of Engineers. Reporting officials should consult the appropriate division or district engineer as necessary to insure the maximum accuracy in inventory reporting of these items.

1-8. Security classification of reports. The instructions contained herein require individual detailed information for each facility or item of real property to—

a. Describe physical features of a facility;

b. Report accountability for a facility;

c. Furnish location information on a facility;

d. Describe the designed or permanently converted use of a facility.

Inasmuch as this is only obvious physical information such as use, type of construction, construction materials, size, location, etc., it will ordinarily be unclassified. If classified, information will carry the least restrictive classification considered to be consistent with security regulations and will be handled separately from the unclassified portion.

CHAPTER 2

INSTALLATION INVENTORY OF ARMY MILITARY REAL PROPERTY AND BUILDING INFORMATION SCHEDULE

(Requirement Control Symbol ENG-242)

2-1. Scope. This chapter provides instructions for reporting all real property at Army installations located in the United States, its possessions and territories, the Commonwealth of Puerto Rico, and in foreign countries. The report will include general information applicable to the installation as a whole and appropriate quantitative and qualitative information on every item of real property owned, leased, or otherwise acquired and controlled by the DA, and considered to be part of the installation. In those cases where another Government department or agency and the Army occupy real property jointly, such property will be included in the Army inventory only if the Army has accountability as established by DD Form 1354 (Transfer and Acceptance of Military Real Property).

★*a. Reporting medium.*

(1) *Input.*

(a) Installation reports will be submitted by magnetic tape or punched cards, whichever is more convenient for the reporting command or installation. Keypunch transcripts may be submitted by those reporting commands that do not have capability to prepare tape or to punch cards. Keypunch instructions are included in chapter 4.

(b) Negative reports will be submitted semiannually in memorandum form for those installations at which no change occurred during the reporting period.

(c) Initial report on new installations will be so noted at the time of submission.

(d) An installation layout map identifying the location of all structural improvements and pavements will be prepared concurrently with new reports. Copies of existing maps required in connection with property accountability in AR 420-17 may be used. If suitable maps are not already available, they will be prepared. Revised maps will be prepared annually to reflect changes which have occurred during the year.

(2) *Output.* Magnetic tapes or microfiche reflecting the updated inventory will be prepared by the Office of the Chief of Engineers (OCE) as of the end of each reporting period and distributed to each command or installation that reported for the period. Printouts may be prepared if justification exists to warrant hardcopy.

★*b. When prepared.* Reports will be prepared semiannually as of 31 March, and 30 September. Reports on existing installations will be updated and revised as of the end of each reporting period in which reportable changes have occurred, in order to reflect the real property comprising the installations as of that date. Initial reports for new installations will be prepared as of the end of the reporting period in which the property was acquired. Land acquired for an installation will be reported as an active installation, whether or not any improvements have been completed.

★*c. Routing and review.*

(1) For initial reports of new installations, responsible reporting officers designated under the provisions of paragraph 1-5 will prepare and dispatch, within 5 working days following the end of the reporting period, punched cards to the appropriate DA headquarters, MACOM, or Defense agency for review by qualified personnel for accuracy and completeness. Upon completion of the review, and approval, the punched cards with an 80/80 proof listing will be forwarded to HQDA(DAEN-REP-S) WASH DC 20314 in accordance with paragraph *d* below.

(2) Division and district engineers should transfer to the using service, prior to the end of the reporting period, newly acquired or constructed items of real property. This should be done in the prescribed manner on a DD Form

1354 so as to provide for timely and reliable reporting. If such property has not been so transferred, it must be reported to the using service on a preliminary DD Form 1354 for inclusion in existing reports or for a new installation report. New construction will be transferred or a preliminary report provided when the newly constructed item is ready for beneficial occupancy or is usably complete.

d. Submission.

(1) Reports for installations in the United States must be submitted to reach HQDA (DAEN-REP-S) WASH DC 20314 as soon as possible after the "as of" date, but not later than 15 calendar days after the end of the reporting period.

(2) Reports for installations in possessions and territories, the Commonwealth of Pue Rico, and in foreign countries must be submit to reach HQDA(DAEN-REP-S) WASH 20314 as soon as possible after the "as of" da but not later than 25 workdays after the end the reporting period.

(3) Submissions that contain initial repo of new installations, will be transmitted with five workdays following the end of the quarte through the major command to reach HQDA cited in (1) above. These submissions will be sp cifically so noted in a letter of transmittal. Dis position will be stated on final disposals.

(4) The installations header and the invento ry detail records (cards number 1, 2, and 3) mus be kept separated from the BIS detail record (card number 4) when the reports are submitted.

Section II. REAL PROPERTY INVENTORY (RPI)

★2-2. Instructions for reporting RPI. *a. General.*

(1) A complete inventory will be maintained for each existing or newly acquired or activated installation located wholly within a state or country. In those cases when an installation is located in more than one state, the portion located in each state will be treated as a separate installation with a separate installation number and submitted as a separate report.

(2) New acquisitions of land and improvements thereon at an installation become reportable at the end of the reporting period in which any one of the following actions is completed: withdrawal from public domain; transfer from other federal agencies; possession by order of possession; acceptance of options; and execution of lease, license, permit, or other acquisition document. Newly constructed buildings and facilities will be reported at the end of the reporting period in which they become ready for use, as evidenced by transfer on DD Form 1354. Disposals and capital increases and decreases will be reported at the end of the reporting period in which action was completed.

(3) Buildings or facilities scheduled to be demolished or otherwise disposed of as a direct result of replacement by new construction, or removed in order to clear the site for new con struction under any Military Construction Army (MCA) program, will be identified in the report. See paragraph 2-2*d*(20)(*B*).

(4) Initial reports on new installations will be made by preparing the two header cards (cards number 1 and 2), followed by an inventory detail record (card number 3) for each reportable item of real property. Report the information applicable to each data field of each card. If no entry is applicable, leave the field blank.

(5) Revisions to existing installation inventories will be made by preparing a card to show all data field changes for any given line item on the installation inventory report. Only those particular data fields to be changed need be reported.

(6) Installations which have been completely disposed of during the reporting period will be reported by submitting a number 1 card with the first seven card columns (cc) completed. See paragraph 2-1*d*(3) above.

(7) When an installation is reassigned from one command to another, the receiving command will be furnished at the time of transfer of accountability the inventory report, or equivalent listing, for the installation updated to the time of transfer.

b. Specific instructions for header card number 1.

(1) *Change Code (card column 1).* Enter the appropriate code to reflect the type of action being reported for the installation header of card number 1, as follows:

(a) Enter an "A" when a new installation is reported for the first time.

(b) Enter an "M" when changes are being made to data previously reported on card number 1, or when an additional data entry is being made.

(c) Enter a "D" to indicate the disposal of an entire installation. This code will delete the entire installation inventory report from the master file.

(2) *Card Number (cc 2).* Enter a "1."

(3) *Installation Number (cc 3–7).* This is a five-character identifying symbol. Its principal use is to provide continued and positive identification of the installation. Installation numbers for existing installations may be obtained from existing real property inventory reports. Installation numbers for new installations located in the United States and

those under the jurisdiction of US Army Europe will be obtained by the reporting command from HQDA(DAEN-REP-S) WASH DC 20314. Numbers for new installations located elsewhere will be assigned by the reporting command.

(4) *Installation Name (cc 8-37).* Enter the name of the installation. The entry cannot exceed 30 characters including spaces. Names should agree with designations published in official orders or be otherwise properly assigned and approved by the commander. To facilitate continuity of records, names applied to new installations in those areas where the command has authority to act should be such as to insure their retention over a long period of time. The use of names of occupying service units as installation names does not insure retention over a long period of time.

(5) *Command Code (cc 38).* Enter the appropriate code from appendix A for the DA headquarters, Army field command, or Defense agency having reporting responsibility.

(6) *Using Agency Code (cc 39-40).* Enter the appropriate code from appendix B. This code, in many cases, will be similar to the command code. In other cases the code will be for elements of the Army which do not have accountability, and which are being provided with logistic support by major Army commands.

(7) *Type of Installation (cc 41).* Enter "P" (permanent) or "T" (temporary). The installation is "temporary" unless officially designated as a "permanent" installation by Department of the Army General Orders No. 60, dated 16 August 1954, or orders subsequent thereto.

(8) *Status, Kind, Operator Code (SKO) (cc 42).* Enter the appropriate code from the table below to show the status of the installation, the kind of installation, and the operator if it is an industrial installation:

Code	*Status, Kind, Operator*
A	Active, Nonindustrial
B	Inactive, Nonindustrial
C	Excess, Nonindustrial
★F	Semiactive, Nonindustrial
D	Active, Industrial, Government operated
E	Active, Industrial, Contractor operated
W	Inactive, Industrial, Government operated
X	Inactive, Industrial, Contractor operated
Y	Excess, Industrial, Government operated
Z	Excess, Industrial, Contractor operated

(9) *Function Code (cc 43).* Enter the appropriate code from the table below to show the principal function of the installation:

Code	*Function*
	★ *Training Installations*
E	Aviation Training
T	Basic/Recruit Training
P	National Guard Training
W	Schools and Centers/Advanced Trng
★J	Other Training Installations
	★ *Operational Installations*
A	Airfield
B	Air Defense Site
★1	Brigade Station
G	Communications Site
★2	Division/Corps Station
K	Harbors and Ports
L	Headquarters and Administration
M	Hospital
V	Reserve Centers
X	Security Site
★R	Other Operational Installations
	★ *Production/Logistics Installations*
C	Ammunition Plant
D	Arsenal
H	Depot
S	Proving Ground
N	Missile Plant
U	Research Development and Test
★9	Other Production/Logistics Installations
	★ *Welfare/Morale Installations*
F	Cemetery
Y	Housing
Z	Recreation Site
★4	Other Welfare/Morale Installations

(10) *Function Description (cc 44-73).* Enter word description to match code used above. If "Other" was coded above, enter an appropriate function description. Entries in this data field cannot exceed 30 characters, including spaces.

c. Specific instructions for header card number 2.

(1) *Change Code (card column 1).* Enter the appropriate code to reflect the type of action being reported for the installation header of card number 2, as follows:

(*a*) Enter an "A" when a new installation is reported for the first time.

(*b*) Enter an "M" when changes are being made to data previously reported on card number 2, or when an additional data entry is being made.

(2) *Card Number (cc 2).* Enter a "2".

(3) *Installation Number (cc 3-7).* This is a five-character identifying symbol, and it must be the same as shown cc 3-7 of card number 1 (para *b*(3) above).

(4) *Name of Nearest City (cc 8-22).* Enter the name of the city in which the installation is located. If the installation is not located within a city, name the city generally accepted as the location of the in-

stallation or the nearest sizeable city or town. The entry cannot exceed 15 characters, including spaces.

(5) *Distance (cc 23-25).* Leave this data field blank if the installation is located in or adjacent to the city named in cc 8-22. (If it is located contiguous to the city limits, it is considered within the city.) If it is not located in the city, enter the distance in miles from the installation to the center of the city named in cc 8-22.

(6) *Direction (cc 26-27).* Enter the direction (N, NE, E, SE, S, SW, W, NW) from the city or town named in cc 8-22 to the installation.

(7) *County or Political Subdivision (cc 28-47).* Enter the name(s) of the county or political subdivision in which the installation is located. If more than one county is involved, begin the entry with the name of the county in which the installation headquarters is located. Do not enter the name of a country. Abbreviate as necessary so as not to exceed 20 characters, including spaces.

(8) *Year Acquired (cc 48-51).* Enter the year of initial occupancy by the military (Army, Navy, Air Force) if the installation has remained continuously under military control. If it has been disposed of by the Government or transferred to a non-DOD agency and reacquired, the year of such reacquisition will be shown.

(9) *Rural or Urban Code (cc 52).* Enter "U" (urban) if the installation is located in an incorporated place having population of 2,500 or more, or in a densely settled urban fringe area around cities of 50,000 or more. Enter "R" (rural) for all other installations.

(10) *Operator (cc 53-72).* Make an entry for industrial installations only. The entry cannot exceed 20 characters, including spaces.

(*a*) For active industrial installations, enter "Government" or the name of the contractor-operator.

(*b*) For inactive or excess industrial installations, enter "Government" or the name of the lessee or caretaker.

d. Specific instructions for inventory detail record, card number 3.

(1) *Change Code (card column 1).* Enter the appropriate code to reflect the type of change being made for each line item of a record, as follows:

Code	*Description of change transaction*
A	Adds a new line item to reflect additions to the real property inventory. A card with an "A" change code requires the completion of cc 1-19 and all remaining applicable data fields (leave Ownership Code and Type of Construction—cc 13 and 14—blank when reporting land). Do not use an "A" change code in include capital inprovements made to existing buildings, structures, or utilities that are presently reported in the inventory.
E	Removes a line item from the master file in order to change information contained in the control field. A card with an "E" change code requires the completion of cc 1-19 only (leave Ownership Code and Type of Construction—cc 13 and 14—blank for land entries). Since an "E" change deletes a line item, an "A" change must be submitted to re-enter all applicable data.
M	Modifies cc 20-78 of an existing line item. A card with an "M" change code requires the completion of cc 1-19 and only those particular remaining data fields where information is being added or changed (leave Ownership Code and Type of Construction—cc 13 and 14—blank when reporting land). An "M" change can be also be used to delete data from individual data fields. To do this, complete the control field and then enter a zero in the particular data field where existing entry is to be deleted.
D	Deletes an entire line item from the inventory. A card with a "D" change code requires the completion of cc 1-19 only (leave Ownership Code and Type of Construction—cc 13 and 14—blank for land entries).

(2) *Card Number (cc 2).* Enter a "3".

(3) *Control Field.*

(*a*) Entries covered by paragraphs (4) through (8) below pertain to cc 3-19 of the detail record and are known as the "control field". The control field *must* be punched for each detail record as these columns are the principal means for computer identification of the record in the master file.

(*b*) No two detail records in the master file can have identical control fields. A new line item (an "A" code in cc 1) will not be added to the file if the control field is identical to that of a detail record already present in the master file. The "A" change in that instance will be rejected as an error. Similarly, an existing line item cannot be modified, or deleted from the master file, if the data in cc 3-19 does not match the control field of the line item to be modified or deleted. The change or deletion in that instance will be rejected as an error.

(*c*) The contents of the control field cannot be changed by the submission of a card containing an "M" change code. A change to any data in the control field can only be accomplished by the submission of a card containing an "E" change code with the existing control field data, and the submission of another card containing an "A" change code, the

new control field, and all of the previously reported applicable data for that line item on the report.

(4) *Installation Number (cc 3–7).* Enter the five-character symbol assigned to the installation. It must be the same as shown in the header (para 2-2*b*(3) above).

Cy 2

NUMBER 5305.4

DATE February 15, 1977

ASD(C)

Department of Defense Instruction

SUBJECT Administrative Space Report, National Capital Region (NCR)

Refs.:
(a) Office of Management and Budget Circular A-60, "Criteria for Decentralizing Federal Activities from the National Capital Region," July 18, 1963
(b) Federal Property Management Regulations, General Services Administration
(c) DoD Directive 5305.2, "Decentralization of DoD Activities from the National Capital Region," September 24, 1963
(d) DoD Instruction 7730.1, "Report on Personnel Distribution by Country or Other Specific Areas and by Operating Location in the United States," March 14, 1975
(e) Executive Order 11512, "Planning, Acquisition, and Management of Federal Space," February 27, 1970
(f) DoD Instruction 5305.4, subject as above, May 4, 1966 (hereby cancelled).
(g) DoD Instruction 7730.29, "Report on Number and Location of DoD Direct Hire Civilians Employed by Other than the Military Departments," May 1, 1968
(h) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964
(i) DoD Manual 5000.12-M, "Manual for Standard Data Elements," authorized by DoD Instruction 5000.12, April 27, 1965

I. REISSUANCE AND PURPOSE

A. This Instruction reissues reference (f) to modify instructions on the preparation of key punched card submissions (enclosure 1), to reflect organizational and building changes (enclosures 2 and 3), and to expand the geographical area for reporting purposes. Reference (f) and Report Control Symbol DD-A(Q)691 are hereby superseded and cancelled.

B. This Instruction also prescribes a uniform system for preparing and submitting space data necessary to (1) effect compliance with references (a), (b), and (c); (2) reflect administrative space occupied by personnel included in reports made pursuant to references (d) and (g); and (3) evaluate space utilization, as well as new space requirements, in the National Capital Region in conformance with the policy objectives of reference (e).

II. APPLICABILITY AND SCOPE

The provisions of this Instruction apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the

Joint Chiefs of Staff, and the Defense Agencies (hereinafter referred to collectively as "DoD Components") occupying administrative space in the National Capital Region (NCR) and the Outer Regional Reporting Area, whether in commercial or Government-owned space and whether such space is General Services Administration (GSA) or DoD controlled.

III. DEFINITIONS

A. National Capital Region. Includes the District of Columbia; Montgomery and Prince Georges counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William counties in Virginia, and the cities of Alexandria, Fairfax, and Falls Church in Virginia.

B. Outer Regional Reporting Area. Includes Vint Hill Farms, Quantico Marine Base, Ft. George G. Meade, and DoD occupied facilities at Baltimore-Washington International Airport.

C. Net Useable Square Feet. Computed by measuring from the normal inside finish of the exterior walls to the office side of corridor walls or other permanent partitions, or to the center line of partitions which separate the area being measured from an adjoining area, with no adjustments for columns or projections. Do not include building facilities such as employee restrooms, stair wells, corridors, elevator shafts, janitor closets, space devoted to mechanical equipment, etc. (Area measurement is normally secured from floor plans available from GSA sources, or on military installations from the post or base headquarters.)

D. Administrative Space. Includes all space assigned by GSA, space in Category Code 610 buildings on military installations, and space in other-than-code 610 buildings on military installations where 50% or more of the building is used for administrative purposes. Administrative space consists of the following three types of space:

1. Office Type Space - Space that provides an acceptable environment suitable in its present state for an office operation. This requirement includes but is not limited to, adequate lighting, air-conditioning, heating, ventilation, floor covering, finished walls, and accessibility. The space may consist of a large open area or may be partitioned into rooms. Private corridors, closets, and similar areas which have been created within office-type space through the erection of partititons shall be classified as office space.

2. Storage Type Space - Space generally consisting of concrete, wood-block or unfinished floors, bare block or brick interior walls, unfinished ceiling, and similar construction containing minimal lighting and heating. This type of space would include attics, basements, warehouses, sheds, unimproved areas of loft buildings, unimproved building cores and inside parking.

3. Special Type Space - Space which, because of architectural features or the installation of fixed (built-in) equipment and special utilities, necessitates the expenditure of varying sums to construct, maintain, and/or operate as compared to office and storage space. Included would be laboratories, dark rooms, automatic data processing areas with special architectural features, industrial type operations with installed equipment, private toilets, food service areas, auditoriums, security vaults, conference and training rooms with special architectural features, etc.

E. Additional definitions pertinent to compiling the administrative space data are included in enclosure 1.

IV. RESPONSIBILITIES

A. The Secretaries of the Military Departments and Heads of other DoD Components shall be responsible for compiling, consolidating, and submitting internal space data to the Space Management Division, Office of the Assistant Secretary of Defense (Comptroller). The Assistant Secretary of Defense (Comptroller) shall submit reports for the Office of the Secretary of Defense, other OSD activities, and the Organization of the Joint Chiefs of Staff.

B. The Assistant Secretary of Defense (Comptroller) shall be responsible for evaluating the administrative space data submitted, and for coordination with the Assistant Secretary of Defense (Installations and Logistics). The Assistant Secretary of Defense (Comptroller) shall also provide copies of the semiannual space reports to the General Services Administration.

V. PROCEDURE

A. The Military Departments and other DoD Components shall submit an initial space report by March 31, 1977 using key punched Card Format A or Card Format C, as applicable (enclosure 1). A submission will be made for each organizational entity shown in enclosure 2, for each location and building occupied, enclosure 3.

B. To maintain the currency of the space reporting system appropriate key punch Card Formats shown in enclosure 1 will be used to reflect changes semiannually. All changes will be submitted within 30 days after the close of the fiscal year (October 31) and the midpoint of the fiscal year (April 30). Negative reports will not be required. To maintain the currency of the organization and location listings shown in enclosures 2 and 3, appropriate deletions and additions will be reported to the Assistant Secretary of Defense (Comptroller) as they occur.

C. All administrative space data submitted will be in terms of net useable square feet, as defined above.

D. Available and applicable DoD standard data elements and codes will be used in the attached formats. All other data elements used in the Administrative Space Report are nonstandard and will be subjected to standardization under DoD Directive 5000.11 (reference (h)), and DoD Manual 5000.12-M (reference (i)).

VI. REPORTS REQUIREMENT

The reporting requirement prescribed herein is assigned Report Control Symbol DD-COMP(SA)1459.

VII. EFFECTIVE DATA AND IMPLEMENTATION

This Instruction is effective immediately. Two copies of implementing documents shall be forwarded to the Assistant Secretary of Defense (Comptroller) within 90 days.

Fred P. Wacker

Assistant Secretary of Defense
(Comptroller)

Enclosures-3
1. General Instructions and Card Formats
2. Interim Organization Code
3. Interim Location and Building Code

GENERAL INSTRUCTIONS

1. Header Data - Fields 1, 2 and 3 (card columns 1-11) are mandatory and will be punched in all Card Formats submitted. Header data columns will not be left blank.

2. A new report being submitted will utilize a Card Format "A", with the exception that new reports for those organizations not occupying administrative space will utilize Card Format "C".

3. All changes to existing reports involving card columns 12 through 80 will be made on Card Format "B" for data originally submitted on Card Format "A", or Card Format "D" for data originally submitted on Card Format "C". The change data will be inserted in only those fields requiring updating. Fields not requiring updating will be left blank.

4. To change Header Data previously submitted in card columns 1 through 10, use a Card Format "E" to delete the prior submission and submit a Card Format "A", or a Card Format "C", as for an initial submission.

5. To delete a report, a Card Format "E" will be submitted containing only the Header Data for the report to be deleted with an "E" punched in card column 11.

6. All fields containing data will be punched right justified and zero filled.

7. All card columns (1 through 80) shall be interpreted.

INTERIM LOCATION AND BUILDING CODE

GSA Controlled - District of Columbia

Building Identification	Code
Court of Military Appeals	D36ØG
Forrestal Building	D42ØG
Navy Yard Annex 158	D665G
Navy Yard Annex 159	D666G
Navy Yard Annex 159-E	D667G
Navy Yard Annex 160	D668G
Navy Yard Annex 197	D673G
Navy Yard Annex 213	D678G
Old Executive Office Building	D7ØØG
Old Post Office Building	D715G
Potomac Annex 1	D72ØG
Potomac Annex 2	D721G
Potomac Annex 3	D722G
Potomac Annex 4	D723G
Potomac Annex 5	D724G
Potomac Annex 6	D725G
Potomac Annex 7	D726G
Tempo A	D81ØG
Tempo B	D811G
The White House-East and West Wings	D828G
Georgia Avenue (5700) N.W.	DØ8ØG
Good Hope Road (1205) S.E.	DØ85G
Pennsylvania Avenue (1101) N.W. (Old Star Building)	D185G
Rhode Island Avenue (2024) N.W.	D19ØG
Seventeenth Street (2400) N.W.	D2ØØG
Tamol Building, 4232 Wisconsin Avenue, N.W.	D215G
Wisconsin Building, 4000 Albemarle Street, N.W.	D25ØG

INTERIM LOCATION AND BUILDING CODE

GSA Controlled - Maryland

Building Identification	Code
Butler Hut A, Suitland	M355G
Butler Hut B, Suitland	M356G
Butler Hut C, Suitland	M357G
Butler Hut D, Suitland	M358G
Federal Building and Post Office, Rockville	M465G
Federal Office Building #3, Suitland	M474G
Federal Office Building #4, Suitland	M475G
Naval Intelligence Support Center, Suitland	M68ØG
Oceanographic Building, Suitland	M735G
Suitland Garage and Annex	M845G
Wiscon Building, 7550 Wisconsin Avenue, Bethesda	M9ØØG
Baltimore-Washington International Airport	MØ25G
Federal Center Building #3,(Presidential Building) 6525 Belcrest Road, Hyattsville	MØ71G
Fenton Street (7676), Silver Spring	MØ74G
Forestville Plaza, District Heights	MØ77G
Georgia Avenue (11120), Wheaton	MØ85G
Iverson Mall Office Building, Hillcrest Heights	M1Ø9G
Laurel Shopping Center, Laurel	M145G
National Bank Building, 6917 Arlington Road, Bethesda	M169G
Pershing Drive (927), Silver Spring	M193G
Silver Spring Plaza, 8757 Georgia Avenue, Silver Spring	M229G
Woodmont Complex, Bethesda	M275G

INTERIM LOCATION AND BUILDING CODE

GSA Controlled - Virginia

Building Identification	Code
Federal Office Building #2, Arlington	V37ØG
Franklin Street Annex, Alexandria	V38ØG
Hybla Valley Federal Office Building, 6801 Telegraph Road, Alexandria	V395G
Pentagon, Arlington	V49ØG
AMC Building, Alexandria	VØØ5G
Architect Building, 1400 Wilson Boulevard, Arlington	VØØ8G
Army-Navy Drive (400), Arlington	VØ1ØG
Ballston Centre Tower 1, Arlington	VØ24G
Ballston Centre Tower 2, Arlington	VØ25G
Ballston Centre Tower 3, Arlington	VØ26G
Cafritz Warehouse, 511-17 South 15th Street, Arlington	VØ37G
Century Building (National Center #4), Arlington	VØ39G
Columbia Pike (5600), Falls Church	VØ41G
Commonwealth Building, Arlington	VØ44G
Crystal Mall 2-3-4, Arlington	VØ47G
Crystal Plaza #5, Arlington	VØ5ØG
Crystal Plaza #6, Arlington	VØ51G
Dwyer Building, 3220 Duke Street, Alexandria	VØ55G
Eads Street (1400-1450 South), Arlington	VØ6ØG
Eisenhower Industrial Building III, 5180-84 Eisenhower Avenue, Alexandria	VØ66G
Fairfax Circle Office Building, Fairfax	VØ72G
Falls Church Office Building, 900 South Washington Street, Falls Church	VØ75G
Fern Street (1201-1301 South), Arlington	VØ78G
Four Mile Run Drive (3700 South), Arlington	VØ81G
Glebe Road (1000 North), Arlington	VØ85G
Hoffman Building No. 1, Alexandria	VØ97G
Hoffman Building No. 2, Alexandria	VØ98G
Hyde Park Apartment Building, 4141 N. Henderson Street, Arlington	V1Ø2G
Isaac Newton Square, Reston (N-1 Building)	V1Ø9G
James K. Polk Building (~~National Center~~ #2), Arlington	V121G
Jefferson Plaza 1 and 2, Arlington	V124G
Lee Highway (9653), (Fairfax Circle Shopping Center), Fairfax	
Lynn Building, Arlington	V154G
Martin Van Buren Building (National ~~Center~~ #1), Arlington	V156G

INTERIM LOCATION AND BUILDING CODE

GSA Controlled - Virginia

Building Identification	Code
Melpar Building, Falls Church	V159G
Nassif Building, Falls Church	V168G
Pickett Street (880 South), Alexandria	V192G
Pickett Street (890 South), Alexandria	V193G
Pomponio Building, Arlington	V197G
Pomponio Plaza, Arlington	V200G
VEPCO Building, Alexandria	V264G
Washington Street (207 South), Falls Church	V276G
Webb Building, Arlington	V279G
Wilson Boulevard (1401), Arlington	V282G
Zachary Taylor Building (National Center #3), Arlington	V297G

INTERIM LOCATION AND BUILDING CODE

DoD Controlled - District of Columbia

Building Identification	Code
Anacostia Annex	
Building T-4	C32ØN
Building T-5	C321N
Building T-6	C322N
Building T-7	C323N
Building T-8	C324N
Building T-9	C325N
Building T-10	C326N
Building T-11	C327N
Building T-13	C329N
Building T-28	C331N
Building T-29	C332N
Building T-30	C333N
Building T-42	C336N
Building T-43	C337N
Non-Administrative Buildings	C34ØN
Bolling Air Force Base	
Building 1	C342F
Building 2	C343F
Building 4	C344F
Building 11	C347F
Building 12	C348F
Building 13	C349F
Building 20	C352F
Building 21	C353F
Building 54	C355F
Building 55	C356F
Building 410	C359F
Building 412	C361F
Building 419	C363F
Building 421	C365F
Building 422	C366F
Building 423	C367F
Building 424	C368F
Building 425	C369F
Building 500	C371F
Building 501	C372F
Building 504	C374F
Building 516	C376F

Copy 2

NUMBER 5305.5
DATE May 23, 1966 #

Department of Defense Instruction

ASD(A)

SUBJECT Space Management Procedures, National Capital Region

Refs.: (a) Executive Order 11035, "Management of Federal Office Space," July 9, 1962
(b) Federal Property Management Regulations, GSA
(c) DoD Instruction 5305.3, "Department of Defense Space Occupancy Guide for the National Capital Region," May 23, 1966
(d) DoD Instruction 5305.4, "Administrative Space Report, National Capital Region," May 4, 1966
(e) DoD Directive 5305.2, "Decentralization of Department of Defense Activities from the National Capital Region," September 24, 1963
(f) DoD Instruction 4165.12, "Prior Approval for Real Property Actions," February 6, 1967 *
(g) DoD Directive 4165.6, "Real Property; Acquisition, Management and Disposal," September 15, 1955
(h) DoD 4270.1-M, DoD Construction Criteria Manual, authorized by DoD Instruction 4270.1, November 17, 1967 * * * *
(i) DoD Directive 7040.2, "Program for Improvement in Financial Management in the Area of Appropriations for Acquisition and Construction of Military Real Property," January 18, 1961
(j) DoD Directive 4270.24, "Operations and Maintenance Facilities Program--Minor Construction Program--Programming, Review, and Reporting Procedures," June 30, 1961

PURPOSE

This Instruction sets forth procedures for the acquisition and effective use of Federally-owned and leased administrative space by Department of Defense components located in the National Capital Region in accordance with objectives stated in references (a), (b), and (c).

I. APPLICABILITY

The provisions of this Instruction apply to all DoD components located, or seeking location, in the National Capital Region, regardless of whether the space involved is Government-owned or leased, or whether it is under the control of the General Services Administration or the DoD.

III. DEFINITIONS

A. Washington, D. C. Metropolitan Area: Includes the District of Columbia; Montgomery and Prince Georges counties in Maryland; and Arlington and Fairfax counties, plus the cities of Alexandria, Fairfax, and Falls Church in Virginia.

#First amendment (Ch 1, 12/23/69)

B. National Capital Region (NCR): Includes the Washington, D. C. Metropolitan Area plus Loudoun and Prince William counties in Virginia.

C. Administrative (or General Purpose) Space: Buildings or portions of buildings which are suitable for the use of Federal agencies generally in conducting their assigned programs. The physical characteristics of the space may be of the office, storage, or special types, or a combination thereof.

D. Special Purpose Space: Space which is wholly or predominantly tailored to the special purposes of a Federal agency and is not generally suitable for use by other agencies, e.g., laboratories, manufacturing plants, hospitals, quarters, barracks, mess halls, service clubs, post exchanges, and similar facilities.

E. Office Type Space: This is space which provides an environment suitable for an office operation. This includes, but is not limited to, suitable and adequate lighting, heat and ventilation, appearance, accessibility, circulation, floor covering, and sound control. The space may consist of a large open area or may be partitioned into rooms. Examples of office type space include conventional offices, conference rooms, classrooms, credit unions, and supply rooms (when in office space). For the purpose of detailing space requirements on DD Form 1450 and 1450-1 (Enclosure 1), Office Type space is subdivided into "private work stations," "open work stations," "unit equipment," and "administrative support space," defined below.

F. Private Work Station: A room occupied by one principal, or in some instances, by a principal and his secretary.

G. Open Office Space: Office space occupied by two (2) or more individuals (other than a principal and his secretary), the furnishings and equipment required for their work, plus circulation space.

H. Open Work Station: That portion of an open office space area allocated to an individual to accommodate the furniture and equipment necessary for performing his work, plus a share of the adjacent aisle.

I. Unit Equipment: Those items of furniture and equipment housed in Open Office Type space which are not assigned to any one work station, i.e., bookcases, costumers, office machines, safes, files, tables, etc., not used exclusively by one individual.

J. Administrative Support Space: All office type space not classified either as private or open office space, e.g., conference rooms, mail rooms, training rooms, file rooms, reception rooms, duplication rooms, supply rooms, libraries (except fixed stacks), etc.

K. Storage Type Space: This is space which is suitable for storage of supplies, equipment, records, material, etc., and which does not provide an environment suitable for an office operation. This type would include but not be limited to vaults, closets, and unconverted attic and basement areas, as well as space built for warehousing and records storage. Its interior treatment is such that it cannot be classified as suitable for office space. (In GSA controlled space, GSA will make assignments of storage type space in accordance with this definition.)

L. Special Type Space: This is space which by reason of installed fixed facilities or utilities is adapted for special use. Included would be laboratories, dark rooms, electronic data processing rooms (computer rooms) with special air conditioning, industrial type operations with installed equipment, etc. (In GSA controlled space, GSA will make assignments of special type space in accordance with this definition.)

IV. RESPONSIBILITIES

A. The Assistant Secretary of Defense (Administration) is responsible for overall DoD space planning and management functions, including:

1. Evaluation of DoD space utilization.

2. Obtaining administrative space from GSA, as required, and subsequently assigning, withdrawing, and reassigning such space within the DoD.

3. Coordinating with the Assistant Secretary of Defense (Installations and Logistics) on availability of excess Military Department-controlled space for possible use by other DoD components.

4. Preparing necessary overall DoD space reports for the NCR, based on quarterly reports submitted under the provisions of DoD Instruction 5305.4 (reference (d)), for submission to GSA and other external sources as required.

B. The Secretaries of the Military Departments, the Directors of Defense Agencies, and the Assistant Secretary of Defense (Administration) (for the Office of the Secretary of Defense and Joint Chiefs of Staff), will each designate a NCR Space Coordinator to handle internal administrative space matters, including:

1. Conduct of space requirements and utilization surveys and taking other necessary action to insure full and efficient use of assigned administrative space.

2. Release of GSA-controlled space to ASD (A) promptly when programs are curtailed or discontinued.

3. Preparation and submission of requests for additional space to ASD(A).

4. Preparation and submission of space reports as required by DoD Instruction 5305.4 (reference (d)).

V. PROCEDURES

A. Forms

DD Forms 1450 and 1450-1, attached as enclosure 1, shall be used for (1) estimating space requirements for new activities, (2) analysis of space utilization by existing activities, (3) back-up in connection with the release of space or space requests, and (4) the layout of assigned space. Instructions for use of the forms are printed on the reverse side of DD Form 1450.

B. Release of Space

1. General.

   a. Whenever programs are curtailed, merged, modified, or eliminated, or whenever requirements are reduced for whatever reason, NCR Space Coordinators will take timely steps to recover administrative space which will no longer be required by the occupying DoD Component.

   b. The amount of space no longer required will be determined by deducting from the total space involved the residual requirements, if any, calculated by using DD Forms 1450 and 1450-1, and applying the space allowance criteria shown in DoD Instruction 5305.3 (reference (c)).

2. GSA Controlled Space. NCR Space Coordinators will report all space recovered in GSA buildings to the ASD(A) for reassignment within the DoD or release to GSA.

   a. The NCR Coordinator reporting space recovered may at the same time request retention of the space to meet new requirements, but the request must be accompanied by DD Forms 1450 and 1450-1.

   b. Space requirements then current will be evaluated within OASD(A) and recovered space will be reassigned on a program priority basis, giving first preference to the reporting NCR Space Coordinator whenever possible.

3. Military Controlled Space. Military Department NCR Space Coordinators will be the central points for receiving reports, through normal military channels, of available administrative space under the control of their respective Military Departments. Where suitable, such space will be

used by the appropriate NCR Space Coordinator as the primary resource for meeting pending space requirements within the Military Department concerned. Space excess to the needs of that Military Department will be screened through OASD (I&L) and OASD(A) to satisfy possible requirements of other DoD Components.

C. Requests for Space

1. NCR Space Coordinators will submit requests for administrative space in the NCR to the ASD(A). All requests will be based on application of the space allowance criteria set forth in DoD Instruction 5305.3 (reference (c)), and will be accompanied by DD Forms 1450 and 1450-1, and Standard Form 81, in duplicate. Included in each request for space will be a statement regarding the feasibility of relocating the activity from the NCR, in conformance with DoD Directive 5305.2 (reference (e)). Further, a statement will be included regarding the availability of space to meet the requirement within current space holdings in both GSA-controlled buildings and in Military Department-controlled buildings.

2. Requests for administrative space for activities now located outside the NCR, but which are to be relocated to the NCR, will be accompanied by a copy of the approval required by Section IV, DoD Directive 5305.2, (reference (e))

3. Requests submitted by NCR Space Coordinators will be reviewed within OASD(A) to assure compliance with DoD Instruction 5305.3 (reference (c)). Approved space requirements will be met by assignment of space already allocated to DoD in GSA-controlled buildings or in Military Department-controlled buildings where such space has been reported as available.

   a. If requirements for space in the Washington, D. C. Metropolitan Area cannot be satisfied from current DoD space holdings, the ASD(A) will request GSA to assign the space required. (GSA's first source will be in Government-owned buildings or in space already under lease to the Government. If neither is available, GSA will be requested to acquire new space.)

   b. In the event that leased space is furnished by GSA, reimbursement will be required until GSA can budget for such space, and approvals will be required as outlined in DoD Instruction 4165.12 (reference (f)).

   c. When GSA determines that a particular requirement is "special purpose space," or when a requirement for space in Loudoun and Prince William counties cannot be satisfied from current DoD space holdings, the ASD(A) will notify the NCR Space Coordinator involved that the requested

space may be procured through existing Military Department procedures promulgated in accordance with DoD Directive 4165.6 (reference (g)).

4. Space requests for short-term conference or seminar purposes will be processed in the same manner as long-term space requests, as described in V.C.1. and 3., above.

D. Space Exchanges

Exchanges of space between DoD Components are encouraged. However, OASD(A) approval will be required before consummation.

E. Space Alterations

1. General. Rearrangement and alteration of assigned space will be in consonance with DoD Instruction 5305.3 (reference (c)), future issuances concerning interior treatment of space, and good layout practice.

2. GSA-Controlled Space. To request building alterations in GSA-controlled space, requesting activities will submit Job Orders (GSA Forms 1354), along with detailed plans and specifications, to the DoD building management representatives designated by the ASD(A). Requesting activities will not submit Job Orders direct to GSA representatives. The DoD building management representatives will (a) review the alteration Job Orders to determine necessity, practicality, and conformance to established policies and standards, and (b) transmit approved orders to GSA. However, DoD building management representatives will submit all orders estimated to cost over $25,000 to the ASD(A) for review and approval prior to transmission to GSA.

3. Military Controlled Space. Requests for tenant alterations, building additions, conversions, etc., will be processed in accordance with the provisions of DoD 4270.1-M and DoD Directives 7040.2 and 4270.24 (references (h), (i), and (j)).

4. Temporary, Leased, and Obsolete Buildings. Tenant alterations in temporary, leased, and obsolete buildings will be made on a strictly austere basis. Only minimum necessary alterations will be undertaken consistent with the terms of the leases involved or with the projected life spans of temporary or obsolete buildings. No special type facilities such as auditoriums, briefing rooms, data processing machine rooms, or communications facilities will be constructed or installed without the approval of the OASD(A). (Activities requiring special type facilities will, to the maximum extent possible, be located either in permanent DoD buildings or where such facilities already exist.)

#First amendment (Ch 1, 12/23/69)

5. Plumbing Facilities. Because of the expense involved and the fact that of necessity the character of office space is radically changed, no plumbing facilities will be installed in Department of Defense occupied space except for P-1 category offices. No kitchens or utilities or fixtures associated with the preparation and serving of food will be installed except for P-1 offices. Any of the foregoing installations for P-1 category offices will be subject to the availability of funds authorized for use for such installations and, because it may be necessary to run utility lines through offices occupied by other Defense organizations, no construction will be initiated until necessary clearance with OASD(A) is obtained. This does not preclude the use in DoD occupied space of employee provided coffee pots which meet all applicable fire and safety regulations where adequate electrical power and outlets are already available.

6. Standard Construction. Standard construction methods and materials will be used throughout DoD occupied space except in P-1 category spaces and in special areas where functional requirements require or justify deviation from the standards.

F. Moves

Moving of DoD Components within the NCR is accomplished either by movers under the control of the DoD Components, or GSA employee or contract movers. However, when moves of fifty (50) or more persons are contemplated, either within multi-occupancy buildings or between buildings, verbal notification will be provided to the Space Management Branch, OASD(A), prior to scheduling the moves.

VI. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. Two (2) copies of each implementing document shall be forwarded to the ASD(A) within sixty (60) days.

C. Locke
for
Assistant Secretary of Defense
(Administration)

Enclosure - 1
DD Forms 1450 and 1450-1 (Revised)

#First amendment (Ch 1, 12/23/69)

DOD SPACE REQUIREMENTS DATA

PART I - SUMMARY

(SEE INSTRUCTIONS ON REVERSE SIDE)

DATE	PAGE NO.	NO. OF PAGE

DEPARTMENT OR AGENCY	FIRST SUBDIVISION	PREPARED BY
SECOND SUBDIVISION	THIRD SUBDIVISION	APPROVED

A - SUMMARY

1. PERSONNEL

a	b	c	d	e
AUTHORIZED		TOTAL IN PRIVATE AND OPEN OFFICE TYPE SPACE		
VACANT BILLETS	( )	E 1-7, GS 1-6	( )	
ON BOARD, PAYROLL	( )	E 8 AND 9, WO, O 1 AND 2, GS 7-11, SUPERVISORY	( )	
ON BOARD, NON-PAYROLL		E 8 AND 9, WO, O 1 AND 2, GS 7-11, NONSUPERVISORY	( )	
TOTAL		O 3 AND 4, GS 12-13, SUPERVISORY	( )	
INDEXES (For OSD Use Only)		O 3 AND 4, GS 12-13, NONSUPERVISORY	( )	
PRESENT OFFICE USE INDEX		O 5 AND 6, GS 14-15, SUPERVISORY	( )	
OFFICE USE INDEX, GSA ALLOWANCE		O 5 AND 6, GS 14-15, NONSUPERVISORY	( )	
OFFICE USE INDEX, DOD ALLOWANCE		O 7 AND 8 GS 16-18, P.L.	( )	
ADMINISTRATIVE SUPPORT INDEX		TOTAL IN ADMINISTRATIVE SUPPORT SPACE		
STORAGE INDEX		TOTAL IN STORAGE AND SPECIAL TYPE SPACE		
SPECIAL TYPE INDEX		TOTAL PERSONNEL		

2. SPACE

a	b	c
TYPE OF SPACE	PRESENT SQUARE FEET	REQUIRED SQUARE FEE
OFFICE TYPE SPACE		
PRIVATE WORK STATIONS	( )	(
OPEN WORK STATIONS	( )	(
UNIT EQUIPMENT	( )	(
ADMINISTRATIVE SUPPORT	( )	(
STORAGE AND SPECIAL TYPE SPACE		
TOTAL		

B - GENERAL

1. MISSION - THIS UNIT IS GENERALLY RESPONSIBLE FOR:

2. STATEMENT ON FEASIBILITY OF RELOCATION *(DOD Directive 5305.2)*:

3. ADDITIONAL FACTORS - THE FOLLOWING ADDITIONAL FACTORS SHOULD BE CONSIDERED IN DETERMINING THE SPACE REQUIREMENTS OF THIS UNIT:

DD FORM 1 APR 66 1450 REPLACES EDITION OF 1 OCT 63 WHICH MAY BE USED.

INSTRUCTIONS

A. GENERAL. This form is designed for use with the DoD Space Occupancy Guide for the National Capital Region *(DoD Instruction 5305.3)* to determine new space requirements or to analyze present space utilization. Parts I and II should be completed for each division or comparable unit. In larger organizations, both Parts I and II should be completed for the office(s) at the next supervisory level(s), and a Part I completed to summarize the total requirements listed on all of the Part II's.

B. DEFINITIONS.

1. OFFICE TYPE SPACE: This is space which provides an environment suitable for an office operation. This includes, but is not limited to suitable and adequate lighting, heat and ventilation, appearance, accessibility, circulation, floor covering, and sound control. The space may consist of a large open area or may be partitioned into rooms. Examples of office type space include conventional offices, conference rooms, classrooms, credit unions, and supply rooms *(when in office space)*. For the purpose of detailing space requirements on DD Forms 1450 and 1450-1, Office Type Space is subdivided into "private work stations", "open work stations", "unit equipment", and "administrative support space", defined below.

2. PRIVATE WORK STATION: A room occupied by one principal, or, in some instances, by a principal and his secretary.

3. OPEN OFFICE SPACE: Office space occupied by two or more individuals *(other than a principal and his secretary)*, the furnishings and equipment required for their work, plus circulation space.

4. OPEN WORK STATION: That portion of an open office space area allocated to an individual to accommodate the furniture and equipment necessary for performing his work, plus a share of the adjacent aisle.

5. UNIT EQUIPMENT: Those items of furniture and equipment housed in Open Office Type Space which are not assigned to any one work station, i.e., bookcases, costumers, office machines, safes, files, tables, etc., not used exclusively by one individual.

6. ADMINISTRATIVE SUPPORT SPACE: All office type space not classified either as private or open office space, e.g., conference rooms, mail rooms, training rooms, file rooms, reception rooms, duplication rooms, supply rooms, libraries *(except fixed stacks)*, etc.

7. STORAGE TYPE SPACE: This is space which is suitable for storage of supplies, equipment, records, materials, etc., and which does not provide an environment suitable for an office operation. This type would include but not be limited to vaults, closets, and unconverted attic and basement areas, as well as space built for warehousing and records storage. Its interior treatment is such that it cannot be classified as suitable for office space.

8. SPECIAL TYPE SPACE: This is space which by reason of installed fixed facilities or utilities is adapted for special use. Included would be laboratories, dark rooms, electronic data processing rooms *(computer rooms)* with special air conditioning, industrial type operations with installed equipment, etc.

C. PART I.

1. HEADING. Indicate the activity, e.g., Navy Department, Bureau of Naval Personnel, Assistant Chief for Plans, Policy Division, and the names of the persons who prepared and approved the report. Pages should be numbered consecutively to include all DD Forms 1450 and 1450-1 submitted.

2. SUMMARY.

a. Personnel. Complete columns b and d, leaving column e blank. In column b, the sum of "Vacant Billets" and "On Board, Payroll" should equal the "Authorized" figure. In Column d, the "Total in Private and Open Office Type Space", which is the sum of the figures to be entered in parentheses, when added to the "Total in Administrative Support Space" and the "Total in Storage and Special Type Space" should equal the sum of "Authorized" and "On Board, Non-Payroll" personnel shown in column b.

b. Space. Enter present square feet occupied in column b. Enter totals from Part II, columns e, f, g, l, and p on appropriate lines in column c.

3. GENERAL. Under "Additional Factors", enter requirements for special construction, security, adjacency, etc. Attach pertinent organization charts.

D. PART II.

1. COLUMNS a, b, c, & d. Do not include personnel whose work stations are located in administrative support, special, or storage space. In column d, when the grade or rank of an incumbent differs from what is authorized, list the authorized grade or rank and indicate in remarks the grade or rank of the incumbent.

2. COLUMNS e AND f. Use allowances shown in the current DoD Space Occupancy Guide for the National Capital Region *(DoD Instruction 5305.3)*. Any departure from the guide will be justified in remarks or on the reverse side of the form.

3. COLUMNS g and h. Do not list furniture or equipment included in private offices or open work stations, or in administrative support, storage, or special type space.

E. SPACE REQUIREMENTS FOR UNIT FURNITURE AND EQUIPMENT.

Listed below are common items of unit furniture and equipment and the square footage of floor space they require. Working area is included where appropriate. The space requirements for items not listed may be calculated from actual measurements or by using the items below as a guide.

ITEM	SQUARE FEET
Bookcase, 13 x 33	6
Bookcase, unitized, 22 x 18	4
Cabinet, storage and wardrobe, 18 x 24	6
Cabinet, storage and wardrobe, 18 x 36	9
Cabinet, storage and wardrobe, 24 x 36	11
Cabinet, stationery, 18 x 36	9
Cabinet, filing, letter size, 15 x 25	6
Cabinet, filing, legal size, 18 x 25	7
Cabinet, filing, safe, 19 x 28	8
Cabinet, filing, map and plan, 36 x 48	20
Cabinet, filing, map and plan, 36 x 60	25
Chair, side	4-6
Chair, lounge	10
Costumer	4
Credenza 18 x 66	9
Locker, clothing, 18 x 21	5
Locker, clothing, 36 x 21	9
Safe, one door, 21 x 23	8
Safe, one door, 27 x 27	10
Safe, two door, 42 x 36	18
Sofa	30
Stand, Dictionary	4
Stand, office machine, 18 x 18	3
Stand, office machine, 18 x 34	5
Stand, office machine, 24 x 36	6
Table, 14 x 26	3
Table, 24 x 36	6
Table, 34 x 45	12
Table, 34 x 60	15
Table, 36 x 72	18
Valet Rack, 30 x 20	6
Valet Rack, 51 x 20	8

DOD SPACE REQUIREMENTS DATA
PART II - DETAILED SPACE REQUIREMENTS
(SEE INSTRUCTIONS ON REVERSE OF DD FORM 1450)

DATE	PAGE NO.	NO. OF PAGES

OFFICE TYPE SPACE

PRIVATE AND OPEN WORK STATIONS						UNIT EQUIPMENT	
LINE ITEM	JOB TITLE (Including Vacancies)	NAME OF EMPLOYEE	GRADE OR RANK	SQUARE FEET REQUIRED		SQUARE FEET REQUIRED	DESCRIPTION
				PRIVATE	OPEN		
a	b	c	d	e	f	g	h
		TOTALS					

ADMINISTRATIVE SUPPORT SPACE			
DESCRIPTION	PERSONNEL	PRESENT SQUARE FEET	SQUARE FEET REQUIRED
i	j	k	l
TOTALS			

STORAGE AND SPECIAL TYPE SPACE			
DESCRIPTION	PERSONNEL	PRESENT SQUARE FEET	SQUARE FEET REQUIRED
m	n	o	p
TOTALS			

REMARKS (Continue on reverse)

DD FORM 1 APR 66 1450-1 REPLACES EDITION OF 1 OCT 63 WHICH MAY BE USED.

Document Separator

Sept 93

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION,** Defendants.	Civil Action No. 93-844-A

AFFIDAVIT OF KENNETH L. MCVEARRY

Kenneth L. McVearry, being duly sworn, deposes and says:

1. I am Group Senior Vice President (Commercial Leasing) of Charles E. Smith Management Inc. ("Smith Management"), and respectfully submit this affidavit in support of the plaintiff's motion for summary judgment and in opposition to defendant's motion to dismiss.

2. Smith Management is agent for various partnerships which own office buildings leased by the General Services Administration ("GSA") and occupied by various components of the Naval Systems Commands ("NSC"). Smith Management also manages these office

buildings.

Smith Management earns revenues of at least 5 percent of the lease cost for each office building. Approximately 1.2 million square feet of GSA-leased office space managed by Smith Management will be closed if the Defense Base Closure and Realignment Commission's recommendations and the President's approval of those recommendations are implemented.

Smith Management also serves as agent to various partnerships which own numerous buildings and facilities leased to private parties in Crystal City. These facilities are also affected by the decision.

3. Buildings managed by Smith Management which are leased in whole or in part to GSA and occupied by the Navy and which would be vacated pursuant to the challenged order are: Crystal Mall 2, Crystal Mall 3, Crystal Mall 4, Crystal Plaza 5, Crystal Plaza 6, Crystal Square 2, Crystal Square 3, Crystal Square 4, Crystal Gateway 1, Crystal Gateway 2, Crystal Gateway 3, Crystal Gateway 4, Crystal Gateway North, Crystal Park 1, Crystal Park 3, Crystal Park 5, 1919 Eads Street.

4. The decision to realign and relocate the NSC, currently located in GSA-leased space in Crystal City, has had a direct and detrimental impact on current lease negotiations between Smith Management and tenants of Smith facilities in Crystal City.

One tenant, currently located in 7,291 square feet of leased space at 2231 Crystal Drive (Three Crystal Park), is involved in

lease negotiations with Smith. It has insisted on the inclusion of a cancellation provision in its new 5-year lease, which begins November 1, 1993, allowing the tenant to escape the lease with six months prior notice if the Naval Sea Systems Command moves more than five miles from its current location in Crystal City. This request was in direct response to the Secretary of Defense's recommendation on March 12, 1993, to realign the Naval Systems Commands, which now has been approved and is to be implemented. Attached at Appendix A is a copy of this tenant's lease extension agreement.

Another tenant, currently located in 9,333 square feet of space at 2231 Crystal Drive (Three Crystal Park) renewed its lease on April 1, 1993, and because of the Secretary's March recommendation, insisted during lease negotiations of inclusion in the lease of an annual cancellation option if the Navy were to relocate.

These cancellation provisions diminish the value of the property, and therefore the earnings of Smith Management. Inclusion of such provisions also injures the company by injecting a substantial level of uncertainty about the length of its existing tenants.

5. The decision to close this Crystal City office space as the home of the Naval Systems Commands has also had a detrimental impact on the ability of Smith Management to attract and retain current retail tenants. Further, it has curtailed the plans by

several retail tenants to expand their operations.

For example, a tenant located in retail space in the Crystal City Underground Mall, is now delaying signing its lease renewal and has indicated a desire to enter into a shorter-term lease, if it enters into any lease at all.

Two other retail firms were negotiating leases for new, remodeled stores in Crystal City and have now indicated those plans have been shelved. It is our belief that the decision to close the Crystal City offices of the Navy was a substantial factor in those decisions.

Other retail tenants that originally had indicated a desire to renew their leases early are now expressing reluctance or demanding to renegotiate the terms of their leases.

Also, two financial institutions located in Crystal City retail space have expressed serious concern over the impending closure of the offices for use by the Naval Systems Commands, and have stated they in fact may not renew their leases.

6. Four GSA leases for office space occupied by the NSC contain cancellation clauses that allow GSA to cancel the leases after a certain date. Attached at Appendicies B - E are copies of the cancellation provisions in these leases. These leases are:

Lease No.	Building	Cancellation Clause Date	Lease Expiration
GS-11B-00074	Gateway Three	on or after 12/5/94	12/04/96

GS-11B-20689	Gateway Four	on or after 11/1/94	10/31/98
GS-11B-10268	Plaza 6	on or after 12/1/96	11/30/98
GS-11B-20816	Plaza 5	on or after 3/1/97	2/28/99

The decision to realign and relocate the facilities covered by these leases and the statutory mandate in the Base Closure Act to begin implementation of Base Closure Commission recommendations within 2 years mean that GSA will lose the tenants occupying these buildings. As a result of this loss, GSA may exercise the cancellation clauses. That would, of course, deprive Smith Management substantial revenue that it would have received absent the decision to relocate these facilities. At a minimum, the possibility that these clauses will be used raises a substantial level of uncertainty into the operations of our company.

Upon vacancy by the Navy of the office buildings, an unavoidable period of downtime will occur while the buildings are restored to condition for re-rental and while new tenants are sought. Based on previous experience, this period of downtime will range between 9 months and 1 year. Assuming 9 months and an average rental rate of $23 per square foot, the unavoidable direct cost to Smith is at least $1.24 million (1.2 million square feet x $23 per square foot average rental rate x .06 management fee x .75 year) and could be as high as $1.65 million (1.2 million square feet x $23 per square foot average rental

rate x .06 management fee x 1 year).

7. In at least one instance, following enactment of the Base Closure Act in November 1990, far in excess of 1,000 Navy employees were moved from one GSA-leased facility whose lease had expired to another GSA-leased facility under a new lease. The Navy did not use the process codified in the Base Closure Act to effect this move.

Upon expiration of the GSA lease for space in the Van Buren Building (now known as Presidential Towers) on or about July 31, 1991, between 1,700 and 2,100 employees of the Navy's Space and Naval Warfare Systems Command (SPAWARS) were moved into approximately 295,117 net useable space in the Crystal Park 5 building, a Smith Management managed building located in Crystal City. The lease for Crystal Park 5 was effective August 1, 1991 and expires July 31, 1998. The number of employees involved in this move is estimated by using an allotment of between 135 and 165 square foot per employee which is standard for this type of office space.

Further Affiant sayeth naught.

Kenneth T. McLean

Subscribed and Sworn
Before me on
this 17th day of September, 1993

Vicki L Lilly
Notary Public
Arlington County Virginia
Commission Expires 7/31/94

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1D16.601

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE: Dec. 21, 1992

LEASE NO.: GS-11B-20816 "Negotiated"

THIS LEASE, made and entered into this date by and between

Plaza Associates Limited Partnership
c/o Charles E. Smith Management
2345 Crystal Drive
Arlington, Virginia 22202

whose address is

and whose interest in the property hereinafter described is that of owner

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

The entire first through eleventh floors and 1,276 square feet on G-1 level being a total of 120,677 net usable square feet in Crystal Plaza 5, 2211 Jefferson Davis Highway, Arlington, Virginia 22202.

to be used for such purposes as will be designated by the General Services Administration.

INITIALS: Lessor Govt.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on March 1, 1992 through February ~~28~~ 8, 1999, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $ 2,756,840.95

at the rate of $ 229,736.74 per month in arrears. Rent for a lesser period shall be prorated. Rent checks shall be made payable to: Charles E. Smith Management, Inc., 2345 Crystal Drive, Arlington, VA 22202

after the 5th year of the lease

4. The Government may terminate this lease at any time by giving at least 120 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

~~5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:~~

INITIALS

~~provided notice be given in writing to the Lessor at least _____ days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term. Said notice shall be computed commencing with the day after the date of mailing.~~

EXCEPTION TO SF2 APPROVED BY GSA / IRMS 12D89

6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:

A. The Lessor shall provide all services, utilities and maintenance in accordance with SFO No. 91-120, as amended, and its attachments.

B. Certain items or conditions in the Lease have been "Accepted as Existing". The intent of this qualification is to give proper recognition to the fact that this lease is a succeeding lease and that the Government has found such items to be at least minimally acceptable with regard to the Government's continued occupancy of the space. However, Lessor is not relieved from compliance with the basic provisions and specifications as contained in this lease for future alterations, construction and/or improvements unless the Contracting Officer determines that the proposed alterations, construction and/or improvements are acceptable.* ~~said acceptance~~ will be required to maintain his responsibilities, as identified in the Lease, and any attachments, in the condition as specified at the time of award.

INITIALS

Lessor	Govt.

*Additionally, the Lessor

7. The following are attached and made a part hereof:

A. SFO No. 91-188 (33 pages)
B. GSA Form 3517 (23 pages)
C. GSA Form 3518 (8 pages)
D. GSA Form 1217 (1 page)
E. Rider No. 1 (2 pages)
F. Rider No. 2 (2 pages)
G. Rider No. 3 (1 page)
H. Rider No. 4 (1 page)
I. Rider No. 5 (1 page)
J. Amendment to SFO #91-188 dated 7/1/92
K. Operations and Maintenance Program
L. Small Business Plan

8. The following changes were made to this Lease prior to its execution: Paragraph 4 of this SF-2 has been amended and Paragraph 5 has been deleted in its entirety.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR Plaza Associates ~~L.P.~~ Limited Partnership

INITIALS

Lessor	Govt.

BY _____ (Signature) Robert H. Smith

_____ (Signature)

IN PRESENCE OF Michelle Moore (Signature)

2345 Crystal Drive Arlington VA (Address)

UNITED STATES OF AMERICA

BY _____ (Signature)

Contracting Officer, RED, NCR
General Services Administration (Official Title)

STANDARD FORM 2
FEBRUARY 1965 EDITION

EXCEPTION TO SF2
APPROVED BY GSA / IRMS 12D89

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. LES ASPIN In His Official Capacity As SECRETARY OF DEFENSE and THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, Defendants.	Civil Action No. 93-844-A

AFFIDAVIT OF EDWARD J. NEWBERRY

Edward J. Newberry, being duly sworn, deposes and states as follows:

1. I am one of the counsel in this case for plaintiffs. I have been counsel for the Smith Management Company during the Commission's deliberations leading to the President's decision to order the closure of the Crystal City offices as the home for the Naval Systems Commands.

2. Attached to this affidavit is a letter written on behalf of Smith Management from Thomas Hale Boggs, Jr., a partner in this firm, to James Courter, Chairman of the Base Closing Commission. The letter is dated June 7, 1993, and addresses the

lack of authority under the Base Closure Act for the Commission to recommend or implement a closure or realignment of GSA-leased space.

3. I attended a hearing of the Commission on June 18, 1993, during which the Commission rejected the position of the Smith Management Company that the Crystal City buildings are not subject to the Base Closure Act.

4. I also attended a Commission session on June 27, 1993, during which the Commission announced that it would accept the Secretary of Defense's recommendation to move the Naval Systems Commands from the GSA-leased buildings in Crystal City.

5. Further, affiant sayeth not.

Edward J. Newberry

Subscribed To and Sworn To
Before Me This 17th day of September, 1993

Bonnie Lynn O'Malley
Notary Public

My Commission Expires August 31, 1994

PATTON, BOGGS & BLOW
2550 M STREET, N.W.
WASHINGTON, D.C. 20037
(202) 457-6000

TRT TELEX: 197780
TELECOPIER: 457-6315

WRITER'S DIRECT DIAL

(202) 457-6040

June 7, 1993

The Honorable James A. Courter
Chairman
Base Closure and Realignment
Commission
1625 K Street, N.W.
Washington, D.C. 20006

Re: Realignment of Naval Systems Commands, Arlington, Virginia

Dear Chairman Courter:

I appreciated the opportunity to meet with you last week, and wanted to follow up on several of the points which were made during our meeting.

As you know, Arthur Anderson & Company is developing an analysis which demonstrates that the Navy is unlikely to achieve any cost savings, and may incur substantial costs, from the proposed realignment of Navy facilities in Crystal City. At the same time, the Crystal City property owners are developing Navy ownership alternatives that could provide substantial savings to the Navy. These issues deserve careful consideration, and we will continue to work with your staff on these ideas.

We also believe the Navy recommendations raise serious questions about whether the Base Closure and Realignment Commission (the "Commission") has jurisdiction over the proposed Naval Systems Commands realignment. Ed Newberry, of my firm, has spoken briefly with Mary Ann Hook of your staff about our concerns, and I wanted to take this opportunity to explain them more fully for your consideration.

BACKGROUND

On March 12, 1993, the Secretary of Defense recommended to the Commission that various Naval Systems Commands move from General Services Administration ("GSA")-leased space in Arlington to government-owned space in various locations throughout the country. GSA-leased space is general purpose, or generic office space that GSA leases under the Federal Property and Administrative Services Act ("FPASA") for use by other federal

agencies. Implicit in the Secretary's recommendation is the legal conclusion that GSA-leased space occupied by a DOD component is a "military installation" for purposes of the Defense Base Closure and Realignment Act of 1990 (the "Base Closure Act" or the "Act"). A closer examination, however, raises serious questions about this legal conclusion because GSA-leased space is not a military installation as it is not "under the jurisdiction of the Department of Defense." Consequently, the Naval Systems Commands would not be a military installation and a proper subject for realignment under the Base Closure Act.

The Navy -- and presumably DOD -- reached this conclusion just a short time ago. From 1990 through 1992, well after enactment of the Base Closure Act, the Navy attempted to relocate the systems commands from their current location to an alternate site in northern Virginia. In the various environmental assessment documents that the Navy and GSA released for public review discussing the planned relocation, the Navy made it clear that the move would be accomplished under the FPASA -- the statute that governs generally the assignment and reassignment of general purpose space among federal agencies. But for reasons not relevant here, the Navy did not do so. Instead, it now has chosen to pursue an alternate course: close the facilities in Arlington pursuant to the Base Closure Act, and relocate the commands to other locations. For the reasons described below, we question whether the Act authorizes this action.[1/]

DISCUSSION

Section 2910 of the Base Closure Act defines a "military installation" as either an identified class of federal enclaves or any other property under the "jurisdiction of the Department of Defense." This definition necessarily limits the Base Closure Act to federal facilities under DOD's jurisdiction. In addition, although a "leased facility" may constitute a "military installation," it does not do so unless it is under the jurisdiction of DOD.

DOD has "jurisdiction" under the Base Closure Act only when it serves as the landholding agency for a particular enclave and

---

1/ Under the recent decision of the U.S. Court of Appeals for the Third Circuit, issues pertaining to the extent of the Commission's authority under the Act are subject to judicial review. Specter v. Garrett, 1993 U.S. App. LEXIS 11488 (May 18, 1993).

is charged with the property's administration. That entails maintaining accountability for the property and keeping it in its custody and control. DOD, however, does not have jurisdiction over every piece of federal property that it occupies. For example, when the Army uses National Forest lands to conduct training, like it does at the DeSoto National Forest in Mississippi, the lands do not thereby become a military installation under the Act. The property remains under the jurisdiction of the Department of Agriculture because it, rather than DOD, is charged with the property's accountability, custody, and control. Any other interpretation would lead to the absurd result that the Base Closure Act could be used as a vehicle to sell National Forest, as well as other public, lands.

The same reasoning applies to the property that the Naval Systems Commands occupy through GSA. GSA does not divest itself of responsibility for this property when DOD uses it. To the contrary, the Federal Property and Administrative Services Act ("FPASA"), 40 U.S.C. § 490, and its implementing regulations, 41 C.F.R. § 101 et seq., charge GSA with the exclusive authority to lease and manage general purpose space in designated urban areas, such as Arlington, Virginia. Any agency that has a requirement for general purpose space, like the Navy with respect to its systems commands, must obtain the space from GSA. In accordance with the FPASA, GSA will lease the space from private lessors, purchase an existing facility, or build a new one to satisfy the requirement. GSA's regulations make clear that the space remains under the jurisdiction of GSA, not the occupying agency. See 41 C.F.R. § 101-20.003(u). The regulations further specify that GSA is responsible for maintaining the property, keeping it on GSA's inventory of real property holdings, and listing the property in annual real property reports to Congress.[2/]

Neither the Base Closure Act nor its history indicates that Congress intended this statute to repeal the provisions of the

---

2/ DOD's internal regulations also recognize that GSA has jurisdiction over GSA-leased space. For example, the Navy's data base of real property holdings excludes GSA-leased space. Shore Facilities Planning Manual, Naval Facilities Engineering Command Instruction 11010.44D, at II-7 (1981) (Tab 1). In addition, the Navy's Real Estate Procedural Manual states explicitly that GSA-leased space is under the control of GSA, not the Navy. Real Estate Procedural Manual, Naval Facilities Engineering Command P-73, at 13-14 (1987) (Tab 2).

FPASA authorizing GSA to lease, assign, and reassign general purpose space for DOD. Congress expressly limited the scope of the Act to closure and realignment actions involving activities over which DOD has jurisdiction. Thus, GSA's principal role in the area of government-leased space remained unaffected by the enactment of the Base Closure Act.

The statutory language "including any leased facility" in the definition of military installation does not alter this conclusion. Under accepted principles of statutory construction, this language simply modifies "under the jurisdiction of the Department of Defense." Any other construction would require the conclusion that these words effected significant changes in the FPASA, but there is no indication of such broad sweeping intent in the legislative history. Rather, the correct reading of the statutes is that "any leased facility" covers only those facilities DOD directly leases. This includes DOD leases of "special purpose" space and general purpose space located outside of designated urban areas, as well as space under DOD's jurisdiction that it leases to private entities, such as government-owned, contractor-operated ("GOCO") facilities. It, however, does not cover general purpose space in urban areas which is under GSA's jurisdiction in which DOD is but an occupant.

We are also looking at one other legal issue. The analysis by Arthur Anderson shows that a very substantial portion of the savings claimed by the Navy would result from reductions in personnel. This raises the question whether the proposed realignment is actually a reduction in force and, therefore, excluded from the definition of "realignment" under the Base Closure Act.

I appreciate your consideration of these issues. We stand ready to work with you or your staff should you have any questions or need additional information. Please call me or my partner, John Oberdorfer, if you or your staff wish to discuss these issues further.

Sincerely yours,

Thomas Hale Boggs, Jr.

Enclosures
cc: Mary Ann Hook, Esq.

NAVFAC INST 10040

SHORE FACILITIES PLANNING MANUAL

DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

200 STOVALL STREET

ALEXANDRIA, VA 22332

b. NAVFAC P-72 (Category Code Directory for Navy Facilities Assets)

(1). The CATEGORY CODE DIRECTORY (CCD) is an automated file containing the Department of the Navy facility category codes, category code names and units of measure. The file also contains the Investment Category and Maintenance Cost Account Numbers for each category code. The CCD file is maintained at FACSO. Maintenance and operation of the CCD is as follows:

(a). Recommendations for CCD modifications are forwarded to NAVFACENGCOMHQ (Code 2013) for review. After approval, changes and additions are processed by NAVFACENGCOMHQ via CRT to the CCD file.

(b). NAVFAC P-72 is ~~computer-generated~~ developed from the CCD file. Tape extracts of the file are used by the other systems described herein.

c. NFADB (Navy Facility Assets Data Base)

(1). The NAVY FACILITY ASSETS DATA BASE is an automated file of data on each existing facility owned by or leased to the Navy and Marine Corps. Included in the NFADB are Class I (land) and Class II (buildings, structures, utilities) facilities. Data is provided on location, type of acquisition, type of construction, cost, size, utilization and condition. The SFPS uses the NFADB as the source for existing assets data. The NFADB file is maintained at FACSO. Maintenance and operation of the NFADB are described in detail in the NFADB Manual, NAVFAC P-78, and are summarized as follows:

(a). The EFD inputs facility utilization and condition data via the CRT, for those data elements addressed by SFPS. All other data is submitted by the NFADB reporting activities to the EFD as changes occur. These changes are also processed via CRT to FACSO.

(b). To confirm NFADB transactions, computer-generated PROPERTY RECORDS (PR's), OUTGRANT RECORDS (OR's) and DISPOSAL RECORDS (DR's) are returned by mail to reporting activities, with copies of these provided to the EFD for Navy activities and the Headquarters Marine Corps for Marine Corps activities.

(2). The following annual reports are generated from the NFADB:

(a). NAVFAC P-77, Inventory of Military Real Property, Navy

(b). NAVFAC P-164, Detailed Inventory of Naval Shore Facilities

(c). NAVFAC P-319, Statistical Tables of Real Property, Navy

d. MILCON RL (Military Construction Requirements List)

(1). The data contained in the MILCON RL is initiated at the activity level by means of the OPNAV Form 11000/4, "Project for Correction of Facility Deficiency".

(2). These projects are developed to satisfy deficiencies identified by the SFPS that cannot be solved by other means. The MILCON RL also uses the MAGIC and the CCD to describe the projects shown. Upon completion of a project, those facilities acquired are entered into the NFADB.

REAL ESTATE PROCEDURAL MANUAL

NAVFAC P-73

MAY 31 1983
NAVY OGC
LIBRARY

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA. 22332

20. MARKET SURVEYS.

Market surveys shall be made for all lease acquisitions of space and shall include:

a. Information on the availability of space as indicated in circulars or newspaper advertisements and consultations with realtors, brokers, owners and others as appropriate.

b. Inspections of all offered and other available locations which meet minimum requirements regarding quantity, quality, availability, and probable cost.

c. Documentation of survey findings for each location inspected.

21. DIRECT LEASING OF GENERAL PURPOSE SPACE.

a. Limitations. General purpose space located in urban centers which are listed in Subpart 101-18.102 of reference (c) is under the control of the General Services Administration and as indicated in paragraph 4.b, such space is normally obtained by GSA space assignment. General purpose space outside of urban centers can be leased directly by the Navy. Procedures set forth in paragraph 22 should be followed. In addition, general purpose space may be acquired by direct leasing if either of the following conditions exist:

(1) The space may be leased for no rental, or a nominal consideration of $1.00 per annum; or

(2) When authority has been requested by an executive agency and a specific delegation of authority has been granted by the Administrator of General Services.

b. Leasing Procedures.

(1) No Rental or Nominal Rental of $1.00. Where general purpose space in urban centers can be obtained at no rental or a nominal rental of $1.00 per annum, direct leasing procedures shall be utilized as set forth in paragraph 22 of this Chapter.

(2) Specific Delegation of Authority from Administrator of General Services. Situations occur where it is considered more advantageous to the Government for the Navy to directly lease general purpose space in an urban center than to obtain such space by GSA space assignment. In that case all facts and circumstances including the quantity and location of the proposed space, ownership thereof, estimated cost of direct leasing and for SLOC under a GSA space assignment along with complete justification for the proposed leasing action will be submitted to NAVFACENGCOM via the major claimant and the Chief of Naval Operations or the Commandant of the Marine Corps as appropriate. Upon obtaining all requisite additional approvals NAVFACENGCOM will submit a request to the Administrator of General Services for the indicated specific delegation of authority. No leasing action shall be undertaken until specific authorization is obtained. Upon receipt of specific authority, direct leasing action, as indicated in paragraph 22 shall be initiated subject to the specific delegation of authority.

22. DIRECT LEASING OF SPECIAL PURPOSE SPACE AND OTHER REQUIRED REAL PROPERTY.

a. Determination of Requirement. The requirement for temporary use of real property is determined by activities and commands based on an approved military mission. The determination to pursue leasing action should include consideration of DOD criteria, Navy policy, limitations and prohibition as set forth in paragraphs 5, 6, 7, 8, 9 and 10 hereof. The cost of obtaining an appraisal and title evidence, in addition to annual rental must be funded by the activity or major claimant. Upon determining that leasing is the appropriate method of satisfying the requirement and necessary funds are available, the appropriate EFD shall be requested to take the indicated action to acquire the proposed lease.

Document Separator

UNITED STATES CODE ANNOTATED

Title 10

Armed Forces

§§ 1121 to 3000

1993

Supplementary Pamphlet

Covering Years 1984 to 1992

Replacing 1992 Supplementary Pamphlet

Includes the Laws of the
102nd CONGRESS, SECOND SESSION (1992)

For close of Notes of Decisions
See page III

For Later Laws and Cases
Consult
USCA
Interim Pamphlet Service

WEST PUBLISHING CO.
ST. PAUL, MINN.

NOTES OF DECISIONS

Discretion of Secretary 1
Scope of review 2

1. Discretion of Secretary

Secretary of Defense may not contract out services to private company as a matter of discretion, nor may that decision rest on whether the Secretary deems the contract or the in house service to cost less; governing statute requires a measurable, objective comparison of costs. Diebold v. U.S., C.A.6 (Ky.) 1991, 947 F.2d 787.

2. Scope of review

Army is not entitled to sweeping deference with respect to its determination to privatize certain operations. Diebold v. U.S., C.A.6 (Ky.) 1991, 947 F.2d 787.

§ 2463. Reports on savings or costs from increased use of DOD civilian personnel

(a) In general.—Whenever during a fiscal year to which this section applies the performance of a commercial or industrial type activity of the Department of Defense that is being performed by 50 or more employees of a private contractor is changed to performance by civilian employees of the Department of Defense, the Secretary of Defense shall maintain data in which a comparison is made of the estimated costs of (1) continued performance of such activity by private contractor employees, and (2) performance of such activity by civilian employees of the Department of Defense.

(b) Applicability of section.—This section applies only with respect to a fiscal year during which there is no statutory limit (commonly known as an "end strength") on the number of civilian employees that may be employed by the Department of Defense as of the last day of that fiscal year.

(Added Pub.L. 100-370, § 2(a)(1), July 19, 1988, 102 Stat. 853, and amended Pub.L. 101-189, Div. A, Title XVI, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub.L. 101-510, Div. A, Title XIII, § 1301(14), Nov. 5, 1990, 104 Stat. 1668.)

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Subsec. (b). Pub.L. 101-510, § 1301(14)(A), struck out former subsec. (b), which required semiannual reports showing savings or losses to House and Senate Committees on Armed Services and Appropriations.

Pub.L. 101-510, § 1301(14)(B), redesignated former subsec. (c) as (b).

Subsec. (c). Pub.L. 101-510, § 1301(14)(B), redesignated former subsec. (c) as (b).

1989 Amendment

Subsec. (b). Pub.L. 101-189, § 1622(c)(7), substituted "Committees on Appropriations" for "Committee on Appropriations".

Subsec. (b)(3)(A). Pub.L. 101-189, § 1622(c)(7), substituted "Committees on Appropriations" for "Committee on Appropriations".

Legislative History

For legislative history and purpose of Pub.L. 100-370, see 1988 U.S.Code Cong. and Adm. News, p. 1077. See, also, Pub.L. 101-189, 1989 U.S.Code Cong. and Adm.News, p. 838; Pub.L. 101-510, 1990 U.S.Code Cong. and Adm.News, p. 2931.

§ 2464. Core logistics functions

(a) Necessity for core logistics capability.—(1) It is essential for the national defense that Department of Defense activities maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify those logistics activities that are necessary to maintain the logistics capability described in paragraph (1).

(b) Limitation on contracting.—(1) Except as provided in paragraph (2), performance of a logistics activity identified by the Secretary under subsection (a)(2), and performance of a function of the Department of Defense described in section 1231(b) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 731), may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A-76).

NOTES OF DECISIONS

cost less; governing statute requires a measurable, objective comparison of costs. Diebold v. U.S., C.A.6 (Ky.) 1991, 947 F.2d 787.

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Army is not entitled to sweeping deference with respect to its determination to privatize certain operations. Diebold v. U.S., C.A.6 (Ky.) 1991, 947 F.2d 787.

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2(a)(1), July 19, 1988, 102 Stat. 853, and amended Pub.L. 101-189, Div.
, Nov. 29, 1989, 103 Stat. 1604; Pub.L. 101-510, Div. A, Title XIII,
104 Stat. 1668.)

HISTORICAL AND STATUTORY NOTES

-510, § 1301(14)(A),
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01-189, § 1622(c)(7),
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Subsec. (b)(3)(A). Pub.L. 101-189, § 1622(c)(7), substituted "Committees on Appropriations" for "Committee on Appropriations".

Legislative History

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Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat.
racted for performance by non-Government personnel under
quirements of Office of Management and Budget Circular
administrative regulation or policy (hereinafter in this section
rcular A-76).

(2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics activity or function and provide that performance of such activity or function shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the activity or function is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such activity or function is no longer required for national defense reasons.

(3) A waiver under paragraph (2) may not take effect until—

(A) the Secretary submits a report on the waiver to the Committees on Armed Services and the committees on Appropriations of the Senate and House of Representatives; and

(B) a period of 20 days of continuous session of Congress or 40 calendar days has passed after the receipt of the report by those committees.

(4) For purposes of paragraph (3)(B), the continuity of a session of Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such 20-day period.

(Added Pub.L. 100-370, § 2(a)(1), July 19, 1988, 102 Stat. 853, and amended Pub.L. 101-189, Div. A, Title XVI, § 1622(c)(7), Nov. 29, 1989, 103 Stat.1604.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 1231(b) of the Department of Defense Authorization Act, 1986, referred to subsec. (b)(1), is section 1231(b) of Pub.L. 99-145, Title XII, Nov. 8, 1985, 99 Stat. 731, and is classified as a note under section 2304 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100-370, see 1988 U.S.Code Cong. and Adm. News, p. 1077. See, also, Pub.L. 101-189, 1989 U.S.Code Cong. and Adm.News, p. 838.

§ 2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply—

(1) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness;

(2) to a contract to be carried out on a Government-owned but privately operated installation; or

(3) to a contract (or the renewal of a contract) for the performance of a function under contract or September 24, 1983.

(Added Pub.L. 99-661, Div. A, Title XII, § 1222(a)(1), Nov. 14, 1986, 100 Stat. 3976, § 2693, and amended Pub.L. 100-180, Div. A, Title XI, § 1112(a), (b)(1), (2), Dec. 4, 1987, 101 Stat. 1147, and renumbered § 2465, Pub.L. 100-370, § 2(b)(1), July 19, 1988, 102 Stat. 854.)

HISTORICAL AND STATUTORY NOTES

1987 Amendment

Heading. Pub.L. 100-180, § 1112(b)(2), inserted reference to security-guard functions.

Subsec. (a). Pub.L. 100-180, § 1112(a), substituted "firefighting or security-guard functions" for "firefighting functions".

Subsec. (b)(1). Pub.L. 100-180, § 1112(b)(1), substituted "a function" for "the function".

Savings Provisions

Reference to law replaced by Pub.L. 100-370 to refer to corresponding provision enacted by such public law; regulation, rule, or order in effect under law so replaced to continue in effect under provision enacted until repealed, amended, or superseded; and action taken or offense committed under law replaced treated as taken or committed under provision enacted, see section 4 of Pub.L. 100-370, set out as a note under section 101 of this title.

Legislative History

For legislative history and purpose of Pub.L. 99-661, see 1986 U.S.Code Cong. and Adm.News,

p. 6413. See, also, Pub.L. 100-180, 1987 U.S.Code Cong. and Adm.News, p. 1018; Pub.L. 100-370, 1988 U.S.Code Cong. and Adm.News, p. 1077.

LIBRARY REFERENCES

United States ⇐59 et seq.
C.J.S. United States § 81 et seq.

§ 2466. Limitations on the performance of depot-level maintenance of materiel

(a) Percentage limitation.—(1) Except as provided in paragraph (2), the Secretary of a military department and, with respect to a Defense Agency, the Secretary of Defense, may not contract for the performance by non-Federal Government personnel of more than 40 percent of the depot-level maintenance workload for the military department or the Defense Agency.

(2) The Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than the following percentages of Army aviation depot-level maintenance workload:

(A) For fiscal year 1993, 50 percent.

(B) For fiscal year 1994, 55 percent.

(C) For fiscal year 1995, 60 percent.

(b) Prohibition on management by end strength.—The civilian employees of the Department of Defense involved in the depot-level maintenance of materiel may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance.

(c) Waiver of limitation.—The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense may waive the applicability of subsection (a) for a fiscal year, to a particular workload, or to a particular depot-level activity if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(d) Exception.—Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California.

(e) Reports.—(1) Not later than January 15, 1992, and January 15, 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to subsection (a).

(2) Not later than January 15, 1994, the Secretary of each military department and the Secretary of Defense, with respect to the Defense Agencies, shall jointly submit to Congress a report described in paragraph (1).

(Added Pub.L. 100-456, Div. A, Title III, § 326(a), Sept. 29, 1988, 102 Stat. 1955, and amended Pub.L. 101-189, Div. A, Title III, § 313, Nov. 29, 1989, 103 Stat. 1412; Pub.L. 102-190, Div. A, Title III, § 314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub.L. 102-484, Div. A, Title III, § 352(a)-(c), Oct. 23, 1992, 106 Stat. 2378.)

HISTORICAL AND STATUTORY NOTES

1991 Amendment

Pub.L. 102-190 in catchline and in text substituted provisions relating to limitations on performance of depot-level maintenance of materiel, for provisions prohibiting certain depot maintenance workload competitions.

1989 Amendment

Pub.L. 101-189, § 313, substituted "The Secretary of Defense shall prohibit the Secretary of the Army and the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, from carrying out a competition for such selection—" for "The Secretary of Defense may not require the Secretary of the Army or the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, to carry out a competition for such selection—" in provisions preceding par. (1).

Effect of Amendments on Existing Contracts

Section 352(d) of Pub.L. 102-484 provided that: "The Secretary of a military department and the Secretary of Defense, with respect to the Defense Agencies, may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Oct. 23, 1992] in order to comply with the requirements of section 2466(a) of title 10, United States Code [this section], as amended by subsection (a)."

.L. 100-180, 1987 ews, p. 1018; Pub.L. 100-370, 1988 U.S.Code Cong. and Adm.News, p. 1077.

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et seq.

on the performance of depot-level maintenance of materiel

ation.—(1) Except as provided in paragraph (2), the Secre- rtment and, with respect to a Defense Agency, the Secretary contract for the performance by non-Federal Government 40 percent of the depot-level maintenance workload for the the Defense Agency.

the Army shall provide for the performance by employees of fense of not less than the following percentages of Army intenance workload:

ar 1993, 50 percent.

ar 1994, 55 percent.

ar 1995, 60 percent.

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tion.—The Secretary of the military department concerned Defense Agency, the Secretary of Defense may waive the ion (a) for a fiscal year, to a particular workload, or to a ctivity if the Secretary determines that the waiver is neces- onal security and notifies Congress regarding the reasons for

section (a) shall not apply with respect to the Sacramento to, California.

t later than January 15, 1992, and January 15, 1993, the and the Secretary of the Air Force shall jointly submit to scribing the progress during the preceding fiscal year to the percentage of depot-level maintenance required to be s of the Department of Defense pursuant to subsection (a).

anuary 15, 1994, the Secretary of each military department Defense, with respect to the Defense Agencies, shall jointly eport described in paragraph (1).

v. A, Title III, § 326(a), Sept. 29, 1988, 102 Stat. 1955, and amended tle III, § 313, Nov. 29, 1989, 108 Stat. 1412; Pub.L. 102-190, Div. A, 5, 1991, 105 Stat. 1336; Pub.L. 102-484, Div. A, Title III, § 352(a)-(c), 78.)

HISTORICAL AND STATUTORY NOTES

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bstituted "The Secre- the Secretary of the f the Air Force, in n any depot mainte- ng out a competition he Secretary of De- cretary of the Army or the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, to carry out a competition for such selection—" in provisions preceding par. (1).

Effect of Amendments on Existing Contracts

Section 352(d) of Pub.L. 102-484 provided that: "The Secretary of a military department and the Secretary of Defense, with respect to the Defense Agencies, may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Oct. 23, 1992] in order to comply with the requirements of section 2466(a) of title 10, United States Code [this section], as amended by subsection (a)."

Cancellation of Contracts in Effect Dec. 5, 1991

Section 314(a)(3) of Pub.L. 102-190 provided that:

"(3) The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Dec. 5, 1991] in order to comply with the requirements of section 2466(a) of such title, as amended by subsection (a) [subsec. (a) of this section]."

Competition Pilot Program for Depot-Level Maintenance of Materiel

Section 314(b)-(d) of Pub.L. 102-190, amended Pub.L. 102-484, Div. A, Title III, § 354, Oct. 23, 1992, 106 Stat. 2379, provided that:

[(b). Repealed. Pub.L. 102-484, Div. A, Title III, § 354, Oct. 23, 1992, 106 Stat. 2379]

"(c) Review by Comptroller General.—Not later than February 1, 1994, the Comptroller General shall submit to Congress an evaluation of all depot maintenance workloads of the Department of Defense, including Navy depot maintenance workloads, that are performed by an entity selected pursuant to competitive procedures.

"(d) Report by Secretary of Defense.—Not later than December 1, 1993, the Secretary of Defense shall submit to Congress a report—

"(1) containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads; and

"(2) describing the cost savings anticipated through the use of those procedures."

Pilot Program for Depot Maintenance Workload Competition

Pub.L. 101-510, Div. A, Title IX, § 922, Nov. 5, 1990, 104 Stat. 1627, which authorized a depot maintenance workload competition pilot program during fiscal year 1991, was repealed by Pub.L. 102-190, Div. A, Title III, § 314(b)(2), Dec. 5, 1991, 105 Stat. 1337.

Legislative History

For legislative history and purpose of Pub.L. 100-456, see 1988 U.S.Code Cong. and Adm. News, p. 2503. See also, Pub.L. 101-189, 1989 U.S.Code Cong. and Adm. News, p. 838; Pub.L. 102-190, see 1991 U.S.Code Cong. and Adm. News, p. 918; Pub.L. 102-484, see 1992 U.S. Code Cong. and Adm. News, p. 1636.

LIBRARY REFERENCES

United States ⇐64.10.
WESTLAW Topic No. 393.
C.J.S. United States § 87.

§ 2467. Cost comparisons: requirements with respect to retirement costs and consultation with employees

(a) Requirement to include retirement costs.—(1) In any comparison conducted by the Department of Defense under Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy) of the cost of performing commercial activities by Department of Defense personnel and the cost of performing such activities by contractor personnel, the Secretary of Defense shall include retirement system costs (as described in paragraphs (2) and (3)) of both the Department of Defense and the contractor.

(2) The retirement system costs of the Department of Defense shall include (to the extent applicable) the following:

(A) The cost of the Federal Employees' Retirement System, valued by using the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code).

(B) The cost of the Civil Service Retirement System under subchapter III of chapter 83 of such title 5.

(C) The cost of the thrift savings plan under subchapter III of chapter 84 of such title 5.

(D) The cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986.

(3) The retirement system costs of the contractor shall include the cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986, the cost of thrift or other retirement savings plans, and other relevant retirement costs.

(b) Requirement to consult DOD employees.—(1) Each officer or employee of the Department of Defense responsible for determining under Office of Management and Budget Circular A-76 whether to convert to contractor performance any commercial activity of the Department—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected

n and consider the views of such employees on the develop-
n of that statement and that study; and

with such employees on other matters relating to that

employees represented by a labor organization accorded
der section 7111 of title 5, United States Code, consultation
hat labor organization shall satisfy the consultation require-

ployees other than employees referred to in subparagraph
propriate representatives of those employees shall satisfy
nent in paragraph (1).

Defense shall prescribe regulations to carry out this subsec-
hall include provisions for the selection or designation of
ves of employees referred to in paragraph (2)(B) for pur-
quired by paragraph (1).

A, Title III, § 331(a), Sept. 29, 1988, 102 Stat. 1957.)

ISTORICAL AND STATUTORY NOTES

purpose of Pub.L.
Cong. and Adm.

LIBRARY REFERENCES

llations: authority of base commanders over contracting
al activities

e commander.—The Secretary of Defense shall direct that
h military installation shall have the authority and the
nto contracts in accordance with this section for the perfor-
activity on the military installation.

ase commander.—To enter into a contract under subsection
commander of a military installation shall—

ventory for that fiscal year of commercial activities carried
personnel on the military installation;

commercial activities shall be reviewed under the procedures
f Office of Management and Budget Circular A-76 (or any
ative regulation or policy); and

icitation for contracts for the performance of those commer-
cted for conversion to contractor performance under the
ess.

The Secretary of Defense shall prescribe regulations under
of each military installation may exercise the authority and
under subsection (a).

d responsibility provided under subsection (a) are subject to
and control of the Secretary.

placed employees.— If the commander of a military installa-
ntract under subsection (a), the commander shall, to the
cable, assist in finding suitable employment for any employee
Defense who is displaced because of that contract.

ion defined.—In this section, the term "military installation"
ost, station, yard, center, or other activity under the jurisdic-
of a military department which is located within the United
alth of Puerto Rico, or Guam.

(f) Termination of authority.—The authority provided to commanders of military installations by subsection (a) shall terminate on September 30, 1993.

(Added Pub.L. 101-189, Div. A, Title XI, § 1131(a)(1), Nov. 29, 1989, 103 Stat. 1560, and amended Pub.L. 101-510, Div. A, Title IX, § 921, Nov. 5, 1990, 104 Stat. 1627; Pub.L. 102-190, Div. A, Title III, § 315(a), Dec. 5, 1991, 105 Stat. 1337.)

HISTORICAL AND STATUTORY NOTES

1991 Amendment

Subsec. (f). Pub.L. 102-190 extended date on which authority shall terminate from Sept. 30, 1991 to Sept. 30, 1993.

1990 Amendment

Subsec. (f). Pub.L. 101-510, § 921, substituted "September 30, 1991" for "September 30, 1990".

Effective Date of 1991 Amendment

Section 315(b) of Pub.L. 102-190 provided that: "The amendment made by subsection (a) [amending subsec. (f) of this section] shall take effect as of September 30, 1991."

Effective Date

Section 1131(b) of Pub.L. 101-189 provided that: "Section 2468 of title 10, United States Code [this section] (as added by subsection (a)), shall take effect as of October 1, 1989."

Legislative History

For legislative history and purpose of Pub.L. 101-189, see 1989 U.S.Code Cong. and Adm. News, p. 838. See, also, Pub.L. 101-510, 1990 U.S.Code Cong. and Adm.News, p. 2931; Pub.L. 102-190, 1991 U.S.Code Cong. and Adm.News, p. 918.

LIBRARY REFERENCES

Armed Services ⇐28.
WESTLAW Topic No. 34.
C.J.S. Armed Services §§ 21, 22.

§ 2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition

The Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a threshold value of not less than $3,000,000 and is being performed by a depot-level activity of the Department of Defense unless, prior to any such change, the Secretary uses competitive procedures to make the change.

(Added Pub.L. 102-484, Div. A, Title III, § 353(a), Oct. 23, 1992, 106 Stat. 2379.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102-484, see 1992 U.S. Code Cong. and Adm. News, p. 1636.

CHAPTER 147—UTILITIES AND SERVICES

Sec.
2483. Sale of electricity from alternate energy and cogeneration production facilities.
2484. Commissary stores: expenses.
2485. Donation of unusable food: commissary stores and other activities.
2486. Commissary stores: merchandise that may be sold; uniform surcharges and pricing.
2487. Commissary stores: limitations on release of sales information.
2488. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.
2489. Overseas package stores: treatment of United States wines.
2490. Utility services: furnishing for certain buildings.
2490a. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds.

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Pub.L. 101-510, Div. A, Title III, § 324(b)(2), Nov. 5, 1990, 104 Stat. 1531, substituted "Donation of unusable food: commissary stores and other activities" for "Commissary stores: donation of unmarketable food in item 2485."

1988 Amendment

Pub.L. 100-370, § 1(j)(2), July 19, 1988, 102 Stat. 848, added item 2490.

1987 Amendment

Pub.L. 100-180, Div. A, Title III, § 311(a)(2), Dec. 4, 1987, 101 Stat. 1073, added item 2489.

by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(B) may consult with such employees on other matters relating to that determination.

(2)(A) In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, United States Code, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) The Secretary of Defense shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(Added Pub.L. 100-456, Div. A, Title III, § 831(a), Sept. 29, 1988, 102 Stat. 1957.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 100-456, see 1988 U.S.Code Cong. and Adm. News, p. 2503.

LIBRARY REFERENCES

United States ⇐60.
WESTLAW Topic No. 393.
C.J.S. United States § 83.

§ 2468. Military installations: authority of base commanders over contracting for commercial activities

(a) **Authority of base commander.**—The Secretary of Defense shall direct that the commander of each military installation shall have the authority and the responsibility to enter into contracts in accordance with this section for the performance of a commercial activity on the military installation.

(b) **Yearly duties of base commander.**—To enter into a contract under subsection (a) for a fiscal year, the commander of a military installation shall—

(1) prepare an inventory for that fiscal year of commercial activities carried out by Government personnel on the military installation;

(2) decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy); and

(3) conduct a solicitation for contracts for the performance of those commercial activities selected for conversion to contractor performance under the Circular A-76 process.

(c) **Limitations.**—(1) The Secretary of Defense shall prescribe regulations under which the commander of each military installation may exercise the authority and responsibility provided under subsection (a).

(2) The authority and responsibility provided under subsection (a) are subject to the authority, direction, and control of the Secretary.

(d) **Assistance to displaced employees.**— If the commander of a military installation enters into a contract under subsection (a), the commander shall, to the maximum extent practicable, assist in finding suitable employment for any employee of the Department of Defense who is displaced because of that contract.

(e) **Military installation defined.**—In this section, the term "military installation" means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located within the United States, the Commonwealth of Puerto Rico, or Guam.

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United States General Accounting Office

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Testimony

Before the Subcommittee on Readiness, Committee on Armed Services
House of Representatives

For Release on Delivery
Expected at
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May 6, 1993

DEPOT MAINTENANCE

Issues in Management and Restructuring to Support a Downsized Military

Statement of Donna M. Heivilin, Director, Defense Management and NASA Issues, National Security and International Affairs Division

GAO/T-NSIAD-93-13

GAO Form 160 (12/91)
OPP:OIMC/PCC

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss defense depot maintenance issues. My testimony today will address several important questions, including:

-- To what extent does the current Department of Defense (DOD) depot maintenance system have excess capacity?

-- What is the basis for current DOD allocations of depot work between the public and private sectors?

-- Is the private sector's role changing in the performance of depot maintenance activities?

-- What is the status of the public-private competition initiative?

-- What needs to be done to ensure that future defense maintenance requirements can be managed more cost-effectively?

Before I discuss specifics, I'd like to summarize our observations with the caveat that the information we are presenting today represents the preliminary results of our ongoing review of the management of DOD's depot maintenance system.

First, our work shows that substantial excess capacity exists within DOD's depot maintenance system. Although we do not yet have a precise estimate, we believe the recent Joint Chiefs of Staff (JCS) Depot Consolidation Study's estimate of 25 to 50 percent is conservative. Because depot maintenance costs are significantly influenced by overhead, elimination of this excess capacity will be critical to reducing future depot maintenance costs.

Given the continued need to reduce additional excess capacity, we would caution DOD to closely review its capital equipment acquisitions before acquiring new or replacement capability for work load that may be allocated to the private sector or to enhance /depot capability for facilities that could be identified for closure during the next round of base closures. Congress may also wish to critically examine the Department's request for fiscal year 1994 funding for new capital investments at the government depots.

Second, cost-effective future management of the defense depot maintenance system is first dependent on determining what work load capability must be retained within DOD--commonly referred to as core requirements--and what can or should be contracted out to the private sector. While there has been a requirement that the services define their minimum essential core requirements for a number of years, the services have not yet done so. In effect, core requirements are currently defined by statute.

Third, in the past, the private sector's role in depot maintenance remained relatively consistent at about 33 percent of the annual

depot maintenance budget. With the end of the cold war and reduction in new procurements, commercial contractors have been increasingly interested in and are aggressively seeking additional work load. However, DOD does not have a comprehensive strategy for determining what depot maintenance work should be performed by the private sector.

Fourth, while public-private competition initiatives are underway, they have been implemented at varying degrees among the services. The Navy sea community has been the most active, accounting for 82 percent of DOD's competitions since the program's inception. The Army, Air Force, and Navy air community have done relatively few public-private competitions, but plan to increase their participation significantly during fiscal year 1993. The private sector has raised questions about the fairness of these competitions, and DOD has taken steps to address these concerns. Further, anticipated savings from public-private competition--projected to be about $1.79 billion--are not being achieved.

Lastly, the current DOD depot management structure does not appear to be conducive to making interservicing decisions that are essential to developing a more effective and efficient depot maintenance system. The failure to achieve interservicing goals during DOD's recent base closure and realignment process illustrates this problem.

BACKGROUND

With that as a summary, let me turn to my detailed remarks. Depot maintenance is a key part of the total DOD logistics effort and is a vast undertaking, supporting over 700,000 pieces of equipment, 36,000 combat vehicles, 660,000 wheeled vehicles, 450 ships, and 20,200 aircraft of over 100 different models. Depot maintenance requires extensive shop facilities, specialized equipment, and highly skilled technical and engineering personnel to perform major overhaul of parts, to completely rebuild parts and end items, or to modify systems and equipment by applying new or improved components.

DOD annually spends about $13 billion--or 5 percent of DOD's budget--on depot maintenance activities. About 67 percent of depot maintenance funds go to work accomplished in DOD facilities and the balance to work done by contractors. Table 1 provides a breakout of the fiscal year 1992 depot maintenance budget by military service, showing the estimated value of work within each military service that is performed by that service's own depots, the amount

that is interserviced[1] to the depots of another service, and the amount that is contracted to the private sector.

Table 1: Fiscal Year 1992 Depot Maintenance Program
(Dollars in millions)

Service	Inhouse		Interserviced		Contracted	
	Amount	Pct.	Amount	Pct.	Amount	Pct.
Army	$1,332	63	$ 7	1	$ 769	36
Navy aviation	1,252	64	74	4	626	32
Navy ships	2,257	62	0	0	1,409	38
Navy C3I	39	98	[a]	1	[a]	1
Air Force	2,848	68	125	3	1,201	29
Marine Corps	206	91	19	8	3	1
Total	$7,934	65	$225	2	$4,008	33

[a]While work load was interserviced and contracted to the private sector, the value of each was less than $1 million.

About 47 percent of the budget was for Navy systems and equipment, 34 percent Air Force, 17 percent Army, and 2 percent Marines. About 45 percent is associated with the repair of aircraft, 33 percent ships, 5 percent combat vehicles, 4 percent missiles, and 13 percent for other types of equipment.

[1]Interservicing involves transferring work on comparable systems to the depot of another service to take advantage of economies of scale and to avoid the cost of maintaining unnecessary duplicative capabilities.

The DOD depot maintenance system, which is actually comprised of four systems,[2] employs about 120,000 DOD civilian personnel and nearly 2,000 military personnel. This is a 23-percent reduction in the number of civilians relative to when the military depot system was at its peak in 1987. Currently, there are 30 major DOD depot maintenance facilities--Army depots, Air Force logistics centers, naval aviation depots, naval shipyards, naval electronic systems engineering centers, and Marine Corps logistics bases--that perform depot maintenance work.[3] Thousands of commercial contractors also perform depot maintenance activities, and many intermediate-level activities in the military services also have some depot maintenance capability.

Since the early 1960s--long before changed world conditions pointed to the huge excesses currently recognized in the defense depot maintenance system--the Congress, GAO, DOD, and others have documented problems and recommended numerous ways of improving depot maintenance effectiveness and economies of operation. Appendix I highlights selected management actions and study recommendations relating to DOD's depot maintenance activities.

SUBSTANTIAL EXCESS DEPOT MAINTENANCE CAPACITY CONTINUES TO EXIST

You asked that we address the issue of excess capacity in existing DOD depot facilities. The DOD depot system is now sized and organized to support a cold war threat. Sizing the depot system to accommodate this scenario has created excess capacity and unnecessary duplication. For example, this requirement resulted in the development of an Air Force depot system sized to support a sustained wartime or emergency surge to 160 percent of the peacetime work load. The long-standing excess capacity in the DOD depot system has been exacerbated by the end of the cold war, reduction of defense systems and equipment, retirement of less reliable and more maintenance-intensive systems, and the private sector's push for a greater share of the depot maintenance work load. It is important that the Department reduce excess capacity and eliminate duplication to the maximum extent practicable since

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[2]DOD Directive 5100.1, " Functions of the Department of Defense and Its Major Components," assigns the Army, Navy, Air Force, and Marine Corps, under their respective Secretaries, the responsibility for "providing logistic support for Service forces, including procurement, distribution, supply, equipment, and maintenance, unless otherwise directed by the Secretary of Defense." To meet the responsibility to maintain its equipment, each service operates a depot maintenance system.

[3]There are also 16 Army and 9 Navy facilities in the continental United States for weapons and munitions depot maintenance.

these excesses significantly increase the cost of the depot maintenance program.

The recently completed JCS depot consolidation study and DOD's depot evaluation during the base closure and realignment (BRAC) process have independently highlighted the large amounts of excess capacity. Table 2 highlights the excess depot capacity identified by the JCS study and by the services in the BRAC review. Our analysis indicates that with future maintenance work load reductions in combination with the availability of more depot capacity in the public sector and the private sectors, the JCS projections of excess capacity were conservative. We did not independently analyze the excess capacity projections identified by the services in the BRAC review.

Table 2: Estimated Excess Depot Capacity Compared to the Capacity in the Depots Recommended for Closure During 1993 BRAC Review

(Direct labor hours in millions)

Service	JCS estimate of excess capacity FY 87 Capacity	Service estimates of excess capacity (BRAC)	Total capacity of depots DOD proposed for closure
Army depots	10.2	9.4	4.8
Navy aviation depots	11.7	17.9	15.8
Navy shipyards	25.3	30.4	21.6
Air Force logistics centers	19.1	8.7	1.7[a]
Marine Corps logistics bases	0	0	0

[a]Although the Air Force recommended closing McClellan Air Force Base, California, DOD deleted the base from the list transmitted to the commission. McClellan has a total capacity of 6.3 million direct labor hours.

Source: JCS data from Depot Consolidation Study Report. BRAC data from service BRAC inputs.

JCS Study Results

The JCS analysis pointed out that consolidation could only be maximized by interservicing maintenance of similar work load and

eliminating duplicative capability. Principally because the Office of the Secretary of Defense (OSD) did not provide strong leadership, the services were not able to achieve this goal. Despite previous initiatives implemented within DOD to address recognized excess capacity and inefficiencies in the DOD depot system, the Chairman of the Joint Chiefs of Staff Report on Roles, Missions, and Functions[4] concluded the following:

-- The current DOD depot management structure has not substantially reduced depot capabilities or capacity. There is currently 25 to 50 percent more depot capacity[5] than will be needed in the future.

-- Unnecessary duplication exists throughout the individual service depots, especially when viewed across service boundaries.

-- Closure of 7 or 8 of the 30 military depots is the first step in reducing long-term costs.

-- The most effective way to consolidate and close depots is through the base realignment and closure process.

The Chairman's Depot Maintenance Study Group reviewed past, present, and projected DOD maintenance work load requirements by nine major commodity groups, such as aircraft, ships, and combat vehicles. Excess capacity was identified by subtracting the projected fiscal year 1995 work load from the fiscal year 1987 capacity at each depot.

The JCS study group examined seven ways in which the maintenance depots could be managed. They labeled these alternatives "A" through "G." The group viewed the alternatives simply as frameworks upon which to base comparative analyses. The following is a description of the seven alternative forms of depot management:

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[4]Title 10 U.S.C. requires the Chairman of the Joint Chiefs of Staff to report to the Secretary of Defense on the roles, missions, and functions of the armed forces. The Chairman convened a study group to evaluate the depot maintenance system and identify the best way to scale down excess capacity and reduce costs.

[5]DOD defines capacity as "the amount of work expressed in direct labor hours that a facility can effectively produce annually on a single shift, 40 hour week basis while producing the product mix that a facility is designed to accommodate." It is more a measure of a level of employment rather than of physical plant capacity.

1. Alternative A: The present system. Each service would retain its own depot operations. Some savings would be realized through current plans to increase interservicing, reduce management staffs, and increase competition.

2. Alternative B: Each service would retain its own depot operations, but repair of certain equipment would be consolidated into "Centers of Excellence" within the using service.

3. Alternative C: One service with "Centers of Excellence" would repair common or similar weapon system platforms, such as ships, fixed wing aircraft, and rotary wing aircraft.

4. Alternative D: Each service would retain "Centers of Excellence" for repairing weapon systems platforms. The repair of similar components and non-weapon system equipment would be consolidated in a single service's "Centers of Excellence."

5. Alternative E: A single executive agent would be responsible for the maintenance of common platforms and their components. For example, the Air Force might be designated the executive agent for all fixed wing aircraft.

6. Alternative F: All depot maintenance would be consolidated under a single organization external to the services. This could be a defense maintenance agency or a joint depot maintenance command.

7. Alternative G: All depot maintenance would be contracted to the private sector.

Alternatives C, D, and E provided varying degrees of single-service management in which the dominant service for a major weapon system would be responsible for depot maintenance for that system. Alternatives F and G would remove depot maintenance from direct service control and place all depot maintenance responsibilities under an organization external to the services, resulting in the maximum degree of interservicing and eliminating unnecessary duplication. The JCS study found Alternatives E and F to be the most cost-effective, but did not do a cost analysis of Alternative G. The results of the alternative analyses are shown in table 3.

Table 3: Alternative Depot Closures, Utilization Rates, and Savings

Alternative	Number of depots closed[a]	Utilization rate (Percentage)		Total savings after 10 years (Dollars in billions)	
		Before	After	Minimum	Maximum
B	7	64	82	$1.6	$6.7
C	6	64	88	1.3	5.1
D	6	64	87	1.5	8.1
E&F	10	64	95	1.8	9.2

[a]Does not include the consolidation of nine Navy ordnance depots into three under each alternative.

Source: Depot Maintenance Consolidation Study, January 1993.

Although the JCS used a different process in determining excess depot capacity than was used by the services in identifying their recommended closures as a part of the base closure process, the two independent processes reached similar conclusions. Table 4 shows the number of depots in each military service that were identified for closure as a result of the JCS within-service consolidation analysis (Alt. B), JCS cross-service analysis (Alt. E), and service base closure analyses.

Table 4: Depots the JCS Study and the Services Recommended for Closure

Service	Total number of maintenance depots[a]	Number the JCS study recommended for consolidation		Number the services proposed for closure or realignment in the 1993 BRAC process
		Alt.B	Alt.E	
Army depots	6	1	1	2
Navy aviation depots	6	2	4	3
Navy shipyards and other facilities	9	2	2	2
Air Force logistics centers (ALC) and other depot facilities	5 ALCs and 2 other facilities	1 ALC	1 ALC	1 ALC[b] 1 other[c]
Marine Corps logistics bases	2	1	2	0
Total	30	7	10	9

[a]These figures do not include the nine naval ordnance centers.

[b]McClellan Air Logistics Center.

[c]The Air Force recommended closing the Aerospace Guidance and Metrology Center at Newark Air Force Base, Ohio, a small specialized repair facility.

The JCS study group concluded that significantly greater savings would be possible if work load consolidations were done across service boundaries. However, despite the recommendations of the Chairman of the Joint Chiefs of Staff and the Deputy Secretary of Defense that the military services go beyond service boundaries, consider opportunities for interservicing, and submit integrated base closure proposals, the services prepared separate input that did not incorporate interservicing opportunities--foregoing the opportunity to garner the additional savings that could have been achieved by increased consolidation and further elimination of excess capacity and unnecessary duplication. In our recent report

on the BRAC recommendations and process,[6] we noted that while the services attempted to include some cross-servicing, these efforts ended in disarray. We reported that officials from all services stated that consideration of cross-servicing possibilities among the depots was impeded by the lack of strong OSD leadership and direction.

JCS Estimates Conservative

Our review of the JCS study indicates that the underlying analysis was limited by the quality and availability of data, which made it necessary to make many assumptions. Because of these limitations, the study was unable to precisely identify excess capacity or determine how much could be saved by depot closures. However, the study's conclusions were sound and properly highlighted the excess capacity and unnecessary duplication in the defense depot maintenance system.

In fact, the report's projections of excess capacity are conservative and understate the opportunity to consolidate similar work load within the military departments. For example, DOD work load projections for fiscal year 1995 are now lower than those used in the JCS study. In April 1993, Army officials told us their latest projections for 1995 work load show a reduction of 1.8 million direct labor hours--an 11-percent reduction from the number of projected work load hours used in the JCS analyses. Navy officials said they currently project a reduction of 1.7 million direct labor hours--12 percent less than the work load factor used in the JCS analysis. All services except the Marine Corps indicated they anticipate the future depot work load estimates will continue to decline.

The JCS study group's excess capacity projections were also conservative since the depot capacity estimates used in the analysis greatly understated the Department's ability to more cost-effectively use existing facilities and equipment to generate maintenance output. For example, the methodology used to define capacity (1) considered only the capability to conduct a single, 40-hour-per-week operation; (2) understated the ability of the gaining depots to absorb additional work load, given the movement of equipment from losing depots and potential productivity gains achievable by increasing available manpower; and (3) did not consider existing depot maintenance capacity in the private sector or in military units.

Additionally, after querying the services about increases in depot facilities and plant equipment since 1987, we found that overall

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[6]Military Bases: Analysis of DOD's Recommendations and Selection Process for Closures and Realignments (GAO/NSIAD-93-173, Apr. 15, 1993).

depot industrial capacity has increased. For example, based on information provided by the services, since 1987 DOD has added 5.6 million square feet in industrial maintenance square footage valued at $606 million and 31,563 pieces of equipment valued at $1.5 billion.

PRIVATE SECTOR SEEKS GREATER ROLE IN DEPOT MAINTENANCE

Now let me turn to the private sector's role in the DOD depot maintenance program. The private sector currently has about one-third of the Department's overall depot maintenance program--with the percentages varying among the services. Table 5 provides a historical comparison by military service of the depot-level maintenance work that is contracted to the private sector.

Table 5: Percentage of Depot Maintenance Budget Contracted With the Private Sector

Service	1985	1986	1987	1988	1989	1990	1991	1992
Army	N/A	39.2	42.0	42.0	41.1	38.7	41.8	36.5
Navy aviation	30.0	35.2	37.4	38.5	36.3	31.3	28.2	32.1
Navy ships	34.1	35.9	33.0	33.6	41.9	37.3	37.0	38.0
Navy C3I	N/A	1.9	2.0	1.7	1.0	1.4	1.7	1.4
Air Force	39.9	31.6	34.8	37.4	35.3	34.3	32.6	28.8
Marine Corps	1.5	30.7	3.2	5.7	3.5	5.7	2.4	1.2
DOD average	34.8	34.8	35.1	36.5	38.4	34.8	34.5	32.9

With the end of the cold war and reduction in new defense procurements, commercial contractors would like more of the depot maintenance business. Advocates of more private sector involvement argue that the private sector can provide depot maintenance at lower cost than the public sector and that a shift toward the private sector would help keep the production base healthy during a period of reduced new weapon procurement. There are, however, concerns within the military departments about the long-term implications of increasing the private sector's share of depot maintenance to support manufacturing skills. Additionally, the military believes that it must continue to maintain a core maintenance capability in government depots to ensure the ability

to surge quickly to meet immediate contingency requirements and to maintain long-term availability of essential repair capability.

The dominant role of the public sector in the conduct of depot maintenance stems from the U.S. experience in World War II, when private sector industrial capacity was fully employed for defense production purposes. At that time, a multi-level public depot maintenance system was created to provide support for a huge volume of materiel that was, by modern standards, maintenance-intensive and subject to considerable amounts of stress and battle damage. The resulting allocation of production work to the private sector and maintenance work to the public sector persisted throughout the cold war. The private sector showed less interest in depot maintenance work as long as there was sufficient demand for new production. But as procurement budgets have begun to decline and relatively few new systems are predicted in the near future, the private sector is now asking for an increased share of the DOD depot maintenance program.

Nonetheless, private sector involvement in depot maintenance activities is not new. Equipment manufacturers have traditionally performed depot maintenance for a number of years after a new weapon system was fielded--generally until the design was stabilized, depot plant equipment and technical drawings procured, spare and repair parts inventories established, maintenance manuals developed, and maintenance personnel trained. While the underlying premise of "interim contractor support" is that such contractor maintenance is to be temporary, for some systems it has been continued for many years. For example, on the B-1B, interim contractor support is expected to be continued for 17 or more years. For some systems such as for the C-9 and KC-10 aircraft, contractor maintenance was planned throughout the life of the system. Commercial contractors also perform other depot maintenance activities such as modifying and upgrading systems and equipment and repairing components of very complex systems and systems for which the equipment manufacturer owns proprietary rights to the technical data. Foreign contractors also perform depot maintenance and repair on some U.S. military systems and equipment overseas.

The defense industry points out that there has been a significant drop in major procurement programs, production in various industry sectors is shutting down, subcontractors are exiting the industry or going out of business, and these departures will escalate as defense cutbacks further affect production. Concurrently, industry groups noted, government maintenance facilities are investing in new capabilities even as industry downsizing eliminates these capabilities in the private sector, and that by allowing duplicative and excess capacity to continue to exist or to be expanded, costs are driven up.

As noted in table 5, in general, DOD has been relatively consistent in the amount of their depot maintenance program that has been contracted out in recent years. When questioned about their rationale for not contracting out more to the private sector, DOD officials noted that the Department is limited by law as to the amount of depot-level work that can be performed by nonfederal government personnel. They also expressed concern about how well the private sector can respond to short-notice crises and conflict requirements, and whether private contractors can indeed provide depot maintenance at a lower cost. These officials noted that there is not a significant amount of overlap between maintenance and manufacturing skills, and they are skeptical whether performing maintenance can support relevant manufacturing skills without significantly increasing the cost of repair. DOD officials also pointed out that equipment manufacturers who have been successful in the past competing with the public sector for depot maintenance work have often done so by establishing separate cost centers for their repair work to reduce the cost of overhead. They noted that contracting out more now when the government has large amounts of excess capacity will inhibit efficient downsizing efforts and increase depot maintenance costs.

Legal and Policy Requirements for Core Depot Maintenance Capability

Clearly defining core requirements is essential to making key decisions on the future of the depot maintenance system.[7] Our work shows that, despite DOD direction, the services have not yet made such a determination. However, there have been numerous legislative actions mandating specific criteria relating to the allocation of work load between the public and private sectors. Of particular importance among these is the requirement that not more than 40 percent of the depot-level maintenance work load be contracted out to private sector companies.

Legislative Requirements

An understanding of evolving legal and policy requirements--including the concept that DOD should maintain a core logistics capability, including repair--is essential to understanding the

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[7]The Defense Depot Maintenance Council Corporate Business Plan defines core requirements as an integral part of a depot maintenance skill and resource base that shall be maintained within depot activities to meet contingency requirements. It will comprise only a minimum level of mission-essential capability either under the control of an assigned or jointly determined DOD component where economic and strategic considerations warrant. Only the Navy's logistics core for sea systems includes private as well as government facilities and people.

roles of the public and private sectors in depot maintenance activities. Chapter 146 of title 10 of the U.S. Code limits the extent to which DOD can contract for commercial services under Office of Management and Budget (OMB) Circular A-76. It includes restrictions on DOD's contracting out for activities it has identified as necessary to maintain a core logistics capability and sets forth specific limits on depot-level maintenance activities.

10 U.S.C. 2464 provides that DOD activities maintain a logistics capability sufficient to ensure technical competence and resources necessary for an effective and timely response to a mobilization or other national defense emergency. Although the Secretary of Defense is required to identify the logistics activities necessary to maintain that capability, this has not yet been accomplished. The section further provides that those activities, as well as the depot-level maintenance of mission-essential material performed at the Defense depot activities identified in section 1231(b) of Public Law 99-145, may not be contracted out under OMB Circular A-76 procedures. The Secretary may, however, waive that prohibition when he determines that performance is no longer required for national defense reasons. Such a waiver does not take effect until 20 days after a report has been submitted to the congressional defense committees.

As early as 1974, Congress established legislative requirements regarding the allocation of depot work load between the public and private sectors. The Defense Appropriations Act of 1974 provided that of the total amount of the appropriation made available for the alteration, overhaul, and repair of naval vessels, not less than $851,672,000 should be conducted in naval shipyards and not less than $359,919,000 in private shipyards. Prior to 1982, DOD Directive 4151.1, "Use of Contractor and DOD Resources for Maintenance of Materiel," directed the services to normally plan for not more than 70 percent of their depot maintenance to be conducted in service depots in order to maintain a private sector industrial base. Revisions to this directive in 1982 continued the requirement that in-house work should be kept to the minimum necessary to meet military contingencies. It also stated that to the extent possible, a competitive commercial depot maintenance industrial base should be established. More specifically, it provided that prime consideration should be given to use of contractor support when such support would (1) improve the industrial base, (2) improve peacetime readiness and combat sustainability, (3) be cost-effective, or (4) promote contract incentives for reliability and maintainability. To some extent, this directive also retained the previously established 70/30 ratio.

In effect, this directive was superseded by a 1992 amendment to title 10 U.S.C. 2466 that prohibited the military departments from contracting out more than 40 percent of their respective depot

maintenance work for performance by the private sector.[8] Section 2466 provides that the respective military department secretaries and the Secretary of Defense may waive this restriction if the Secretary determines the waiver is necessary for national security reasons and notifies the Congress of the reasons for the waiver.

DOD Efforts to Develop Core Capacity Requirements

The implementation of current DOD and military service policies for maintaining a "core" in-service logistics capability will also affect the amount of depot maintenance that can be undertaken by the private sector. DOD Directive 4151.18, published August 12, 1992, establishes policy and assigns responsibilities for the performance of DOD materiel maintenance, including:

-- An integral part of a depot maintenance skill and resource base shall be maintained within depot activities to meet military contingency requirements.

-- A core maintenance capability shall comprise only a minimum level of mission-essential capability.

-- The head of each military component should (1) annually determine (using an approved methodology) the core capability necessary to perform mission-essential depot maintenance to meet the full range of military contingency and statutory requirements and (2) improve efficiency and effectiveness of DOD depot maintenance operations through depot maintenance interservicing of similar equipment and competition between depot maintenance activities and private entities.

While the military services indicate they are working on this issue, none has yet sought approval of a methodology for defining its core requirement. Although current statute does not specifically refer to a "core" capability, DOD's core work load is defined by the statutory requirement that no more than 40 percent of the depot-level maintenance work load be contracted out for performance by the private sector. Thus, any private sector

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[8]The fiscal year 1993 Defense Authorization Bill amended section 2466 by changing the prior requirement that not less than 60 percent of the funds available for depot-level maintenance in the Army and Air Force shall be used to perform maintenance by DOD employees. This was changed to state that no more than 40 percent of the depot-level maintenance work load could be performed by nonfederal personnel and added the Navy to this limitation. The 40-percent limitation applies to DOD with the following exception: the Secretary of the Army is required to provide Army aviation depot work to DOD employees of not less than 50 percent in fiscal year 1993, 55 percent in fiscal year 1994, and 60 percent in fiscal year 1995.

initiative to appreciably increase its current share of the depot maintenance work load could require a change to the statutory limitation. Nonetheless, we noted that based on the current allocation of about 33 percent of the depot work to the private sector, there are still opportunities to shift work to the private sector and still remain within the current legislated guideline.

Each of the military departments is currently involved in developing an assessment methodology and identifying core requirements. Only the naval aviation community is far enough along in this process to have developed a draft strategy. Based on our preliminary analysis, the Navy's evolving strategy appears to be a step forward in establishing an overall policy that may lead to (1) quantifying "minimum essential" core capability; (2) closing excess depots; and (3) sizing the remaining depots to perform core-related work. However, this strategy provides no mention of the potential to interservice core capability when appropriate as is provided for by current DOD guidance. For example, it may be that the Navy could achieve its operational objectives even if all depot-level engine repair were interserviced to the Air Force. Additionally, the naval aviation strategy provides for offering non-core work for private-private competition, but does not provide for using public-private competition. This strategy is being supported by the private sector, which generally believes that competition between private industry and government depots is unfair. However, it does not appear compatible with current legislative direction and DOD policy promoting public-private competition.

DOD PUBLIC-PRIVATE COMPETITION PROGRAM HAS HAD LIMITED SUCCESS

In recent years, DOD has placed increasingly greater reliance on the use of public-private competitions as a tool to allocate non-core work loads between the public and private sectors and reduce depot maintenance costs. However, while the military services have reported substantial savings from the competitions conducted thus far and are projecting even larger savings for the future, our preliminary review of their public-private competition programs indicates that

-- the military services have made overly optimistic assumptions about how rapidly they will be able to expand their programs;

-- these programs have achieved very little actual savings thus far and are unlikely to result in the savings that are being projected; and

-- private industry believes public-private competitions are not, and cannot be, conducted on a "level playing field."

Since we are still reviewing industry's concerns and evaluating the military services' competition programs, we have not reached any conclusions about whether the competitions are being conducted fairly. However, thus far we have noted that (1) based on congressional direction, DOD has taken action to ensure that these competitions are conducted on a level playing field; (2) the private sector has won 60 percent of the competitions for which there has been both a public and private bidder;[9] and (3) public-private competitions have caused only one work load to shift from the private to the public sector, and eight from the public to the private sector.

Origin and Status of Competition Initiative

The impetus for public-private competitions can be traced back to a 1984 study of the Navy's industrial activities. This study concluded that (1) the Navy's industrial activities, which include shipyards, aviation depots, and other shore installations vital to supporting the fleet, were not being run as efficiently as their counterparts in the private sector and (2) a lack of competition was a major contributor to the industrial activities' historical indifference to cost.

The 1985 DOD Appropriations Act[10] directed the Navy to test the feasibility of using competition between public and private shipyards as the basis for awarding a portion of the ship overhaul and repair work load. Additional competitions were authorized in subsequent legislation and, by the end of fiscal year 1987, public shipyards had won competitions for about $656.1 million worth of work on 16 vessels, while private shipyards had been awarded about $166.4 million worth of work on 15 vessels. In testimony before the Congress, the Navy indicated that its initial competitions had encouraged public shipyards to adopt a more businesslike approach to their work, and it reported that the competitions had reduced ship repair costs by about $200 million.

Because of the successes reported by the Navy on its ship competitions, the fiscal year 1987 Defense Appropriations Act[11] directed the Navy to expand the scope of its public-private competition program to include competitions between U.S. Navy aviation depots and private aircraft maintenance facilities. The

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[9]A total of 223 public-private competitions had been completed as of March 31, 1993, but a proposal was received from both the public and private sectors for only 107 of these.

[10]Public Law 98-473 (98 Stat. 1904, 1907).

[11]Public Law 99-591 (99 Stat. 3341-83, 334-86).

Navy's first public-private competition for an aircraft work load was completed in 1988.

The Defense Appropriations Subcommittees attempted to expand the public-private competition program to include the Army and Air Force as far back as fiscal year 1988, but this expansion was initially opposed by the Authorization Committees. However, the National Defense Authorization Act for Fiscal Year 1991[12] authorized the Army and Air Force to conduct a pilot program for fiscal year 1991. Section 314 (b) of the National Defense Authorization Act for fiscal years 1992 and 1993[13] authorized a new pilot program through fiscal year 1993, but this provision was subsequently repealed by section 354 of the National Defense Authorization Act for fiscal year 1993.[14]

The military services' current competition programs are being carried out under the authority and direction of various sections of the fiscal year 1993 National Defense Authorization Act, and the Defense Appropriations Act for fiscal year 1993. Basic authority for conducting the competitions is contained in section 9095 of the Appropriations Act. It states that, notwithstanding any other provision of law, the Secretary of Defense may use competition between DOD depot maintenance activities and private firms to acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels, as well as the production of components and other Defense-related articles.

The fiscal year 1993 Authorization Act[15] (1) prohibits the military services from contracting out for the performance of more than 40 percent of the depot-level maintenance work load by nonfederal employees and (2) prohibits the services from changing the performance of a depot-level work load of $3 million or more that is being performed by a depot-level activity unless competitive procedures are used to make the change. While the legislative history of these provisions indicates that this requirement should only be applied in consideration of work load moving to the private sector, the statutory language is not so limited. This difference between the statute and the legislative history may warrant clarification, particularly in light of anticipated work load shifts required to implement base closure recommendations.

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[12]Public Law 101-510 (Sec. 922, 104 Stat. 1485, 1627).

[13]Public Law 102-190, (105 Stat. 1290, 1336).

[14]Public Law 102-396 (106 Stat. 1922, 1924).

[15]Public Law 102-484 (Sec. 351 through 354, 106 Stat. 2315, 2377).

As of March 31, 1993, the military services had completed 223 public-private competitions. As shown in table 6, competitions between public and private shipyards accounted for 183, or 82 percent, of the total.

Table 6: Completed Competitions for Fiscal Years 1985 Through 1993

Service	Fiscal year									
	1985	1986	1987	1988	1989	1990	1991	1992	1993	Total
Navy--shipyards	1	12	15	19	21	38	29	31	17	183
Navy--aircraft rework	0	0	0	2	0	2	0	0	0	4
Navy--component parts	0	0	0	0	0	0	0	2	0	2
Army	0	0	0	0	0	0	7	10	1	18
Air Force	0	0	0	0	0	0	5	3	2	10
Marine Corps	0	0	0	0	0	0	2	4	0	6
Total	1	12	15	21	21	40	43	50	20	223

Note: Through March 31, 1993.

It should be noted that while the Navy has been authorized to conduct public-private competitions for its aircraft work load since 1987, as of March 31, 1993, it had completed only four competitions. A 1992 Naval Audit Service report[16] (1) noted that these four competitions accounted for less than 2 percent of the funds potentially available for public versus private competition during fiscal years 1987-91, (2) concluded that the Naval Air System Command (NAVAIR) was not obtaining the full potential benefit of the competition program, and (3) attributed this condition to several factors, including a lack of NAVAIR guidance.

NAVAIR has subsequently initiated action that is expected to substantially increase the amount of work that is awarded through public versus private competitions. For example, NAVAIR initiated revised procedures for selecting work for public-private competition. Under these procedures, program managers are required to justify why their programs should not be considered for public-private competition whereas, in the past, NAVAIR relied on program managers to recommend their programs for such competitions. However, if NAVAIR implements its proposed new industrial strategy, public-private competitions may be eliminated.

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[16]Implementation of Competition for Aircraft Rework (044-C-92, Mar. 25, 1992).

Also noteworthy is the fact that, with the exception of Marine Corps and shipyard work loads, the number of competitions completed during fiscal year 1992 was considerably less than the number the services had hoped to complete. As shown in table 7, 21 of the 85 competitions initially planned for fiscal year 1992 were subsequently canceled, and 17 additional competitions had not been completed by the end of the fiscal year.

Table 7: Comparison of Planned and Actual Public-Private Competitions for Fiscal Year 1992

		Status as of October 1, 1992		
Service	Planned	Completed	Not completed	Canceled
Navy--shipyards	31	31	-	-
Navy--aircraft rework	5	-	3[a]	2
Navy--component parts	6	2	2	2
Army	28	10[b]	6	13
Air Force	12	3[b]	6[a]	4
Marine Corps	3	4b[b]	-	-
Total	85	50	17	21

[a]Includes one competition that was deferred.

[b]One of the competitions completed in fiscal year 1992 was not included in the initial plan.

Although our analysis of these competitions is not yet complete, our preliminary work indicates that (1) declining work loads are one of the primary reasons that competitions have been canceled and (2) delays in awarding work loads have been caused by such things as bid protests, difficulties in developing statements of work, and problems unique to public-private competitions (such as the need to ensure that competitions are conducted on a "level playing field").

As shown in table 8, with the exception of Marine Corps and Navy shipyard work, the military services plan to substantially expand the scope of their public-private competition programs during fiscal year 1993; however, we question whether these expansion plans are realistic, especially in view of the difficulties the services experienced with their competition programs during fiscal year 1992.

Table 8: Public-Private Competitions Completed During Fiscal Years 1991 Through 1993 (Dollars in millions)

Service	Fiscal year 1991		Fiscal year 1992		Fiscal year 1993	
	Number completed	Annual work load value	Number completed	Annual work load value	Number planned	Annual work load value
Navy--shipyards	29	$289	31	$375	22	$183
Navy-aircraft rework	-	-	-	-	7	$53
Navy--component parts	-	-	2	5	74	206
Army	7	27	10	20	24	101
Air Force	5	7	3	6	29	209
Marine Corps	2	2	4	5	1	2
Total	43	$325	50	$411	157	$853

[a]Data is actual for fiscal years 1991 and 1992 and planned for fiscal year 1993.

Competition Savings Have Been Less Than Expected

As part of their strategy to achieve the $6.3-billion reduction in fiscal year 1991-97 depot maintenance costs that was mandated by Defense Management Report Decision 908C, "Consolidating Depot Maintenance," the military services have developed plans to save about $1.7 billion by implementing a comprehensive public-private competition program. However, DOD audit agencies and we have not been able to substantiate much of the competition savings reported in the past. Furthermore, we question the services' ability to achieve future cost reduction goals, in part because actual events have not supported DOD's assumption that competitions between the public and private sectors will reduce depot maintenance costs by an average of 20 percent for each work load that is competed.

For example, in March 1987, the Navy estimated that it would save about $200 million as a result of its initial public-private shipyard competitions; however, in September 1990, we reported[17] that the Navy had overestimated the actual savings on these competitions because (1) the $200-million savings that were

[17]Navy Maintenance: Status of the Public and Private Shipyard Competition Program (GAO/NSIAD-90-161, Sept. 26, 1990).

initially reported had subsequently been partially offset by $145.5 million in cost increases, (2) some of the savings could have been due to other cost reduction efforts the Navy had underway at the time, and (3) the Navy's savings estimates improperly excluded some of the costs associated with implementing the program, such as the cost to develop and evaluate bid proposals.

Similarly, GAO and the Army Audit Agency have reported that the savings the Air Force and Army achieved from their fiscal year 1991 pilot competition programs were considerably less than the 20 percent savings that were expected. For example, in February 1992, the Army Audit Agency reported[18] that, instead of saving an average of 20 percent, the competitions in the Army's fiscal year 1991 pilot program were likely to result in a net cost increase of about 10 percent, or $1.9 million.

While we are still analyzing the results of the competitions that have been conducted to date, our preliminary work indicates that the military services' lower-than-expected savings can be attributed, to a large extent, to (1) declining work loads that have not only caused work loads to be eliminated from the program but also limited the amount of savings that were achieved on the work loads that remained in the program; (2) unanticipated cost increases; and (3) a certain amount of fixed costs that must be shifted to noncompeted work loads when a competition results in the transfer of a work load from the public to the private sector.

Private Sector Questions Whether the Playing Field Is Level

Structuring competition and developing a level playing field agreed to by both the private and the public sectors have been very contentious. In general, commercial contractors contend that because of inherent differences in the structure, processes, accounting systems, and regulatory requirements of both sectors, it is not possible to achieve cost comparability and make public-private competition fair. The private sector asserts that DOD should identify minimum essential core requirements and contract out the remainder of the depot maintenance work load to private industry through private-private competition.

Section 9095 of the Defense Appropriations Act for 1993[19] attempted to address the comparability issue by requiring that when DOD competes depot maintenance and the production of components between DOD activities and private firms, the Defense Contract Audit Agency

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[18]Review of Defense Management Report Decision 908 (Consolidation of Depot maintenance) (Information Memorandum Number 92-R3, Feb. 7, 1992).

[19]Public Law 102-396 (106 Stat. 1922, 1924).

must certify that successful bids include comparable estimates of all direct and indirect costs.

As implemented by the Department, certification is defined as an audit opinion that a proposal complies with the Cost Comparability Handbook issued by the Defense Depot Maintenance Council. The Handbook, which must be used by all depots when preparing proposals, requires the inclusion of all costs associated with proposed work. The objective of these audits is to detect material understatements as a result of noncompliance with the Handbook. The Handbook requires compliance with the DOD Accounting Manual, the cost accounting standards, and generally accepted accounting principles.

We are currently evaluating DOD's efforts to establish cost comparability through these procedures. It is too early in our work to have reached any conclusions. However, we have made some general observations about work load allocations as a result of the completed competitions. First, the private sector has won 64 of 107 competitions, or 60 percent, where both a public and private sector bid were received. The percentage of awards to the private sector varied by service--from 20 percent in the Marine Corps, 29 percent in the Army, and 38 in the Air Force, to 50 percent for Navy aircraft, 70 percent for Navy ships, and 100 percent for Navy component parts. Second, generally speaking, the public-private competitions have not resulted in any significant shift in work load from one sector to another. For example, of the 39 completed non-ship competitions, the work load moved from one sector to another nine times. However, eight of the nine work loads have shifted from the public sector to the private sector.

We have also noted that there is some question by the naval sea community as to whether or not public shipyards must prepare their bids in accordance with the Cost Comparability Handbook. Our analysis of the existing law and implementing procedures by the department indicates that since the 1993 Appropriations Act's provision on cost comparability applies to vessels as well as other equipment and the Department has chosen to use the handbook to achieve comparability, the same policies and procedures applied to other public-private competitions should be applied to Navy ship competitions.

CHANGES NEEDED IN MANAGING DEPOT MAINTENANCE

As noted in the JCS Depot Maintenance Consolidation Study, the current depot management structure in DOD and the services has not resulted in substantial competition, interservicing, or reduction of excess capacity and duplication of effort. There is nothing to indicate that continuing the current way of doing business will result in any significant departure from past performance.

The study group analyzed three alternative structures that might be used for organizing the Department's depot management structure in the future. The first is the establishment of executive agents for major commodity groups. For example, it might designate the Air Force as the executive agent for aircraft, the Navy for ships, and the Army for combat vehicles. The other two alternatives would remove direct control of depot maintenance from the services and place it in an organization external to the services. One centralization option is to create a defense maintenance agency, reporting to the Office of the Secretary of Defense, and the other is to create a joint depot maintenance command, reporting to the National Command Authority through the Chairman of the Joint Chiefs of Staff.

The JCS Depot Consolidation Study concluded that a joint depot maintenance command would produce the greatest opportunities for efficiency and matching depot capacity with future requirements. However, no decision has yet been made regarding how the Department's depot maintenance structure will be organized and managed in the future. The JCS Roles and Missions Report noted that the concept contained within the study group's recommendation--that of having a joint military command providing combat support to all military services and warfighting commanders-in-chief--would be explored in more depth in the next report to the Congress on combat support agencies due in 1993. In a letter forwarding this report to the Senate Armed Services Committee, the Secretary of Defense noted that the Office of the Secretary of Defense, assisted by the Joint Staff, will assess the merits of establishing an executive agent, joint command or defense agency for depot maintenance activities. He noted that the study will also examine possible further consolidation of depot activities and competitive bidding.

We are currently analyzing advantages and disadvantages to each of the proposed alternative structures. Our preliminary observation is that the historical difficulties in achieving cross-service cooperation suggest that the executive agency approach may not achieve the desired results. The services have had many opportunities to work cooperatively over the past 35 years, but have failed to do so. Thus, some form of centralized management external to the military services appears to be needed if the Department is to eliminate additional excess capacity and unnecessary duplication and more cost-effectively manage its depot maintenance operations. Additionally, strong, effective leadership will also be particularly critical as the department goes about making decisions on core requirements and work load transfers from depots that may be closed as a result of the 1993 base closure process.

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In conclusion, in light of the significant issues facing the DOD depot maintenance program over the next few years, there are a number of questions you may wish to consider during your deliberations on the DOD authorization bill:

-- Can DOD make sound depot maintenance budget plans without first defining its minimum essential core requirements?

-- Will changes in legislation be required to enable the optimal decisions to be made regarding minimum essential core requirements and work load allocation between the public and private sectors?

-- What is the most appropriate DOD depot management structure for making required capacity, core workload, and work allocation decisions to provide required depot maintenance at the least cost?

-- Should DOD postpone depot capital investments until after decisions are made on consolidation, closure, and public/private work load allocation?

As we continue our work on depot maintenance, we look forward to assisting you on these issues.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer questions at this time.

(709023)

CHRONOLOGY OF SELECTED KEY DEPOT MAINTENANCE DOD ACTIONS AND STUDY RECOMMENDATIONS 1958 THROUGH 1993

Date	Organization	Actions
1958	Department of Defense	Issued DODD 4000.19, Basic Policies and Principles for Interservice, Interdepartmental, and Interagency Support, which called on service commanders and directors to seek increased economies and effectiveness by cooperating with other services needing support, including maintenance and repair.
1963	Joint Logistics Commanders	Established the General Interservice Depot Maintenance Group to review depot maintenance work loads to ensure the highest possible degree of interservicing.
1969	Department of Defense	Published the Standard Integrated Support Management System manual, providing policies and procedures to standardize support management for multi-service aeronautical depot maintenance systems.
1970	Blue Ribbon Defense Panel	Recommended that DOD consolidate logistics services under a unified logistics command.
1973	General Accounting Office	Reported that each of the services had overemphasized developing its depot maintenance capability, rather than use the capability of the other services. Recommended that DOD establish a defense maintenance agency or single managers for specific commodities to increase interservicing. Potential for Greater Consolidation of the Maintenance Workload in the Military Services (B-178736, July 6, 1973).

ATTACHMENT I

Date	Organization	Actions
1974	Joint Logistics Commanders	Determined that an organization was needed in each service to serve as an advocate for interservicing. Established a Joint Technical Coordinating Group to develop an interservicing policy and implementation plan. Created a Maintenance Interservice Support Management Office in each of the services.
1978	General Accounting Office	Reported that DOD and service efforts to improve efficiency and eliminate duplication in aircraft depot maintenance had not been effective because depot maintenance was managed by each of the services and not at the DOD level. Recommended that DOD establish a single manager over aircraft depot maintenance that would be responsible for developing a master plan for eliminating unnecessary duplication. Aircraft Depot Maintenance: A Single Manager is Needed to Stop Waste (LCD-78-406, July 12, 1978).
1980	Joint Logistics Commanders	Established the Joint Aeronautical Depot Maintenance Action Group (JADMAG) to provide cross-service coordination and other advantages of a single manager, while retaining service control of the depots. Directed the JADMAG to resolve interservicing problems, analyze service work load capacity using standard procedures, and develop a DOD master plan for aircraft depot maintenance patterned after the GAO recommendation.

Date	Organization	Actions
1982	Joint Logistics Commanders	Established the Joint Depot Maintenance Analysis Group (JDMAG) from the merger of JADMAG and the Maintenance Interservice Support Group. Expanded JDMAG's charter to include commodities other than aircraft in its interservicing studies and master plan.
1983 March	General Accounting Office	Testified that DOD had not moved quickly to eliminate duplicate capability and excess capacity because of the (1) parochial interests of the services, (2) lack of central authority, and (3) absence of DOD wide planning. Recommended that DOD establish a single manager over aircraft depot maintenance that would be responsible for determining resource needs, sizing the depot complex, workloading the depots efficiently, and developing a master plan. Statement of Werner Grosshans, Deputy Director, GAO/PLRD, before the Subcommittee on Legislation and National Security, House Government Operations Committee (March 8, 1983).
1983 September	Joint Logistics Commanders	Reorganized JDMAG in an attempt to reduce the influence and constraints placed on the organization by the services.
1983 November	House Government Operations Committee	Recommended that DOD establish a single manager for aviation depot maintenance.

Date	Organization	Actions
1984	DepAstSecDef /Logistics Systems Analysis Office	Concluded that 67 percent of JDMAG's interservicing decisions had no cost avoidance; more than 50 percent of the items considered for interservicing were not interserviced; and cost avoidance claimed from interservicing could not be verified.
1989	Deputy Secretary of Defense	Deferred issuing Defense Management Review Decisions (DMRD) 908 and 909, which would have (1) established single managers for aircraft, ground vehicles, and ships; (2) closed several depots; and (3) claimed $1.8 billion in savings over 5 years. Directed services to study the DMRDs along with other consolidation initiatives.
1990	Deputy Secretary of Defense	Directed the services to save $3.9 billion over the next 5 years through streamlining, increased interservicing, improved capacity utilization, and competition between and among DOD depots and private firms. These initiatives were included in DMRD 908. Established the Defense Depot Maintenance Council to provide the joint service strategy for achieving DMRD 908 savings.
1991	Deputy Secretary of Defense	Increased DMRD 908 savings to $6.4 billion to be achieved in fiscal years 1991 through 1997.

Date	Organization	Actions
1992	Deputy Secretary of Defense	Directed services to prepare integrated Base Realignment and Closure Commission proposals with cross-service inputs that support the following service leads for defense-wide depot maintenance: Army--ground weapon systems, Navy--ships, and Air Force--aircraft.
1993	Joint Chiefs of Staff	Concluded that DOD had 25 to 50 percent excess depot capacity, duplication existed throughout the services, closure of a significant number of depots would be necessary to reduce excess capacity, and the greatest cost savings would come from consolidating depot work load across service boundaries. Recommended that DOD establish a unified command for depot maintenance with authority to organize the current service depots as determined by the command, and as approved by the Joint Chiefs of Staff.
1993	Services	Submitted base closure proposals that fell short of the Deputy Secretary of Defense's directive by downsizing within services boundaries, rather than across the services.

[a]The Joint Logistics Commanders meet to discuss priorities for joint initiatives and efforts to improve depot maintenance. Current membership is the Commander, U.S. Army Materiel Command; the Commander, Air Force Materiel Command; the Deputy Chief of Naval Operations (Logistics); the Deputy Chief of Staff for Installations and Logistics, Headquarters, U.S. Marine Corps; and the Director, Defense Logistics Agency.

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(1) by striking out "department, (2)" and inserting in lieu thereof "department and (2)"; and

(2) by striking out ", and (3)" and all that follows through "fiscal year" in the first sentence.

SEC. 313. LIMITATION RELATING TO CONSOLIDATION OF SUPPLY DEPOTS.

(a) LIMITATION.—The Secretary of Defense may not proceed with the consolidation of supply depots under decision 902 of the Defense Management Review (or any successor of that decision) until the Secretary—

(1) completes an analysis of the results of the supply depot consolidations referred to in subsection (c);

(2) makes a determination that an automatic data processing system in the Department of Defense for the consolidation of supply depots is developed and operational and meets the requirements of the military departments; and

Reports.

(3) submits to Congress a report describing the basis and results of the analysis under paragraph (1) and the determination under paragraph (2).

(b) ELEMENTS OF ANALYSIS.—The analysis required by subsection (a)(1) shall include—

(1) a determination of the cost savings associated with the supply depot consolidations referred to in subsection (c); and

(2) an assessment of the effect of those consolidations on the ability of the military departments to provide mission support.

(c) EXCEPTION.—Notwithstanding subsection (a), the Secretary of Defense may proceed with—

(1) the consolidation of the Mechanicsburg, New Cumberland, Ogden, and Red River supply depots; and

(2) any consolidation of the supply depots made as part of the Bay Area regional prototype and initiated before the date of the enactment of this Act.

SEC. 314. LIMITATION ON THE PERFORMANCE OF DEPOT-LEVEL MAINTENANCE OF MATERIEL.

(a) PERCENTAGE LIMITATION.—(1) Section 2466 of title 10, United States Code, is amended to read as follows:

"§ 2466. Limitations on the performance of depot-level maintenance of materiel

"(a) PERCENTAGE LIMITATION.—Not less than 60 percent of the funds available for each fiscal year for depot-level maintenance of materiel managed for the Department of the Army and the Department of the Air Force shall be used for the performance of such depot-level maintenance by employees of the Department of Defense.

"(b) PROHIBITION ON MANAGEMENT BY END STRENGTH.—The civilian employees of the Department of Defense involved in the depot-level maintenance of materiel may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance.

"(c) WAIVER OF LIMITATION.—The Secretary of the Army, with respect to the Department of the Army, and the Secretary of the Air

Force, with respect to the Department of the Air Force, may waive the applicability of subsection (a) for a fiscal year, to a particular workload, or to a particular depot-level activity if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

"(d) EXCEPTION.—Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California.

"(e) REPORTS.—Not later than January 15, 1992, and January 15, 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to subsection (a).".

(2) The item relating to section 2466 of title 10, United States Code, in the table of sections at the beginning of chapter 146 of such title is amended to read as follows:

"2466. Limitations on the performance of depot-level maintenance of materiel.".

(3) The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act in order to comply with the requirements of section 2466(a) of such title, as amended by subsection (a). 10 USC 2466 note.

(b) COMPETITION PILOT PROGRAM.—(1) During fiscal years 1992 and 1993, the Secretary of Defense shall conduct a pilot program under which competitive procedures are used to select entities to perform depot-level maintenance of materiel for the Department of the Army and the Department of the Air Force. Entities eligible for selection shall include depot-level activities of the Department of Defense. The program may not involve more than 10 percent of all depot-level maintenance of materiel that is not required to be performed by employees of the Department of Defense pursuant to the limitations contained in section 2466 of title 10, United States Code. 10 USC 2466 note.

(2) Section 922 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1627) is repealed.

(c) REVIEW BY COMPTROLLER GENERAL.—Not later than February 1, 1994, the Comptroller General shall submit to Congress an evaluation of all depot maintenance workloads of the Department of Defense, including Navy depot maintenance workloads, that are performed by an entity selected pursuant to competitive procedures. 10 USC 2466 note.

(d) REPORT BY SECRETARY OF DEFENSE.—Not later than December 1, 1993, the Secretary of Defense shall submit to Congress a report— 10 USC 2466 note.

(1) containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads; and

(2) describing the cost savings anticipated through the use of those procedures.

SEC. 315. TWO-YEAR EXTENSION OF AUTHORITY OF BASE COMMANDERS OVER CONTRACTING FOR COMMERCIAL ACTIVITIES.

(a) EXTENSION.—Section 2468(f) of title 10, United States Code, is amended by striking "September 30, 1991" and inserting in lieu thereof "September 30, 1993".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of September 30, 1991. 10 USC 2468 note.

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[H.A.S.C. No. 102–45]

HEARINGS

ON

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993—H.R. 5006

AND

OVERSIGHT OF PREVIOUSLY AUTHORIZED PROGRAMS

BEFORE THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
ONE HUNDRED SECOND CONGRESS

SECOND SESSION

READINESS SUBCOMMITTEE HEARINGS

AND

ENVIRONMENTAL RESTORATION PANEL HEARING

ON

TITLE III—OPERATION AND MAINTENANCE

HEARINGS HELD

MARCH 17, 18, 26, 31, APRIL 2, 8, 30, AND MAY 5, 1992

Ms. HEIVILIN. What the mix should be?

Mr. ORTIZ. Public and private.

Ms. HEIVILIN. Or what are the results?

Mr. ORTIZ. It says many studies need to be answered. What are they?

Ms. KINGSBURY. There is——

Mr. ORTIZ. What is the main concern there?

Ms. KINGSBURY. There is a concern about what the appropriate organic infrastructure needs to be to maintain the capability to do what DOD is about, which is maintaining our national defense. This committee has, in fact, charged GAO with looking at the overall private-sector debate over the next 3 or 4 years, and we plan to do that.

But this is a very early stage of that. I think we have to get into it later.

Mr. ORTIZ. Thank you, Mr. Chairman.

Mr. HUTTO. Thank you, Mr. Ortiz.

Mr. Pickett.

Mr. PICKETT. Thank you, Mr. Chairman.

Ms. Kingsbury, in the review of the depot activities, did the GAO make any assessments of the base work concept required to enable the depots to continue in existence?

Ms. KINGSBURY. You mean the core requirement? We haven't actually looked at that. Each service is required to do an analysis of what that core requirement would be, and some services are further along in that process than others. We have not yet looked at that.

Mr. PICKETT. At the present time there is a limitation in the law about how much of the work in the depots has to be competed by the Army and Air Force.

Ms. KINGSBURY. In the public/private program.

Mr. PICKETT. There is no such limitation as far as the Navy is concerned. Do you think there is any need to continue this limitation?

Ms. KINGSBURY. This process is still somewhat experimental. The kinds of issues I think Mr. Ortiz is referring to, whether there are level playing fields on both sides of that competition, need to be explored.

I think that continuing such a limitation for purposes of exploring these issues certainly seems warranted. We need to understand what the dimensions of the issues are.

Mr. PICKETT. Don't you think it should be uniform for all the services? Is there any objective data we can look to to determine why the Navy should be subject to one kind of limitation and the Army and Air Force to another?

Ms. KINGSBURY. The Navy has more experience in doing this. They started this kind of thing back in 1988, and I am not sure there is a basis for saying there needs to be an artificial level that applies to all services or not. I think each one ought to be doing it at a level they can manage.

To go back to a point Mr. Ortiz made earlier, leaping immediately to trying to manage this kind of process in a whole bunch of things for one facility does put a workload and a burden on people that may not be manageable. If you look at the Navy experi-

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ence, the thing we are saying is that the contract management—contract administration process needs to be improved. If you lay a whole bunch of competitions on them in a hurry, there may be a problem.

Donna, do you want to add something?

Ms. HEIVILIN. I was going to say, I think one of the other factors is how much commercial infrastructure is there out there that is able to take on some of these activities. That would have to be factored in. It might be different for tanks than for trucks.

Mr. PICKETT. Secretary Flinn, who testified before our committee a few days ago, said that in his opinion there was no justification for this artificial limitation on the amount of contracting out except to protect the core capability. I am surprised you have a different view of this issue after making the analysis that you apparently have made here.

Ms. KINGSBURY. We haven't analyzed whether 10 percent is the right number. Our concern, however, is, if you go into a contracting process without adequate financial systems to support it, without adequate contract administration systems to support it, you will end up in many cases spending more money than if you have adequate support systems.

We would encourage the management infrastructure to be in place before we proceed too far with that; 10 percent or 5 percent or some other number is not what we have come to.

Mr. PICKETT. I don't disagree. I think we are all looking for a way to do the work most efficiently, primarily preserving our military. As Mr. Ortiz observed, I think the issue of contracting out—in many cases, the commercial provider or commercial contractor may low-ball for a while to cause the Government to lose its capability in an area; and once that capability is lost and you don't have the alternative of going back and doing it yourself, then the price begins to go up and up.

Ms. KINGSBURY. I think that is a real concern.

Mr. PICKETT. That is something I personally observed in an A-76 contracting out.

Ms. KINGSBURY. The capability to continue to compete would be really important.

Mr. PICKETT. Has your office made any review of the level of work required to enable the Government depot facilities to remain viable?

Ms. KINGSBURY. No, sir.

Mr. PICKETT. Do you think this is something that needs to be done in trying to make a decision of what the core level of work needs to be?

Ms. KINGSBURY. Absolutely. The services are doing that. We may go back and look at what they have done and whether or not we agree with it.

Mr. PICKETT. What have you detected as the main difficulty in retraining the depots and moving forward with their contracting out activities?

Ms. KINGSBURY. Are you talking about the contracting out they are already doing or this public/private competition?

Mr. PICKETT. The public/private competition. The depots would compete against private contractors.

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is a sevenfold increase from the disposals that were made during the 1986 through 1991 period. Additionally, we terminated over $700 million in contracts when it made sense to do so.

In the midst of all of this, we are implementing the Defense Management Report Initiatives. As best I can tell, the impact on my business is about $12 billion due to cost assistance. We have reduced our manpower in expectation of improved efficiencies in our operations. Clearly the Air Force, as well as the DOD, must become smaller, must be more efficient, and we must be more competitive. The most challenging issue at this time is how much can be saved by becoming more competitive.

The average savings was 18 percent below the previous cost for the 5 contracted cost-impacted items. When I factored in the cost of competition, the actual net savings is 18.3 percent. However, the real benefit is that it helps us identify ways to increase efficiency elsewhere in our operations. We believe that if we compete about 10 to 15 percent of our organic workload, we can achieve the targeted savings without adversely affecting our operation.

So as we downsize, we need to maintain that crucial element of our industrial base called the Air Force Logistics Center. I think we need to remember the lessons of Desert Storm and Desert Shield, and to preserve the capability to quickly transition systems from peace to war. We need to maintain a weapons system perspective in the midst of all these changes.

Finally, again, in my judgement, we must avoid further attempts to centralize based on the optimistic forecast of future savings.

In summary, our depots are ready to respond, but they need your continued support, and I have seen that support expressed here this morning. This is, indeed, an unprecedented time of change. We are working within the constraints of the limited resource base that we have, and the changing domestic priorities.

I look forward to your questions. Thank you.

Prepared Statement of Gen. Charles C. McDonald

Mr. Chairman and members of the Subcommittee on Readiness, thank you for the opportunity to testify before you on the current status of the Air Force's depot operations and Defense Management Report (DMR) initiatives.

Last year when I testified, the Nation had just successfully completed fighting a war in the Gulf. At the same time, the initial indicators signaling the breakup of the Soviet Union were beginning to appear. Since then, Saddam Hussein has regained a portion of his previous power. The Soviet Union has disintegrated. The peoples who were once part of the Soviet Union are now in the process of creating their own nation-states. Control of the nuclear weapons that once belonged to the Soviet Union is uncertain. The Mid-East peace talks have stalled. Weapons proliferation is, unfortunately, on the increase. These changes in many ways increase, not decrease, the degree of instability in the international arena.

This new global security environment is filled with the unexpected and the unknown. Our national strategy of regional defense means we will have to address conflicts with less time for preparation than in the past. Desert Storm characterized the conflicts of the future; short-notice regional conflicts requiring rapid response. Being prepared in this new environment is the Air Force's primary challenge. Meeting the unknown threat will require the ability to mobilize our industrial capability on short notice. *Global Reach—Global Power* is not possible without the organic industrial base capability that provides a rapid repair and production response in times of crisis; these are the key elements of our Air Logistic Centers' (ALCs) missions.

At home, domestic demands are forcing us to take a hard look at how much defense is sufficient to meet this evolving threat. Readiness levels are an easy target. Sustainability of the force structure—regardless of its size—is an even easier target

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N. CHARLES C. MCDONALD

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since the likelihood of an extended conflict seems remote. However, like any "insurance policy," the cost of the Nation's defense always seems high when it is not needed. When it is required, only then do we appreciate the value of our investment.

Clearly, in this changing environment, the Air Force of the future will be dramatically different. As the Air Force restructures to meet tomorrow's threat, AFLC is changing also. Two years ago, AFLC transitioned from a functionally-oriented management approach to a product directorate management concept. This change streamlined many of our depot operations and aligned functional expertise with individual weapon systems. This restructuring permitted AFLC to provide one face to the user as it pertained to logistics support for a fielded system.

Over the last year, we have taken this concept one step further. As we move closer to the formation of the Air Force Materiel Command (AFMC) on 1 July 1992, we have begun to implement an integrated weapon systems management concept which will provide cradle-to-grave support to the operational community. The product directorate which provided a single face to the user for logistics issues is being linked to the system program office responsible for the research, development, and acquisition of the weapon system. The result is a seamless organization able to integrate all the processes required to acquire and support an aircraft, missile, or munition.

The integration of the two commands is facilitated by the increased level of advanced technology common to both cultures. Over the last several years, the nature of sustaining and maintaining our weapon systems has changed. As older systems are retired, there is a decreasing requirement for traditional aircraft maintenance skills such as sheet metal and hydraulics. Beginning with the F–15 and F–16 weapon systems and continuing into the future with the B–2, the C–17 and the F–22, we are seeing an exponential growth in skills for software development, composites, and other high tech fields. As we approach the next century, the use of robotics, artificial intelligence and automated test equipment reduce our need for manpower intensive depot operations.

Instrumental to our current and future operations is a commitment to total quality management. In 1991, AFLC was awarded the President's Award for Quality by the Federal Quality Institute. Emphasis throughout the Command is placed on empowering our personnel while making them accountable for their work. This cultural change is instrumental in providing our customers with the best support possible. We have found that by permitting our employees to identify areas for improvement and by giving them the authority to implement the changes they have recommended, we are increasing efficiency and effectiveness. In a period of declining resources, this change in culture results in cost savings enabling us to sustain greater levels of support than would otherwise be possible.

We are also pioneering the practical application of the Theory of Constraints (TOC) in an effort to resolve our most challenging management problems. TOC leverages our Total Quality initiatives by focusing resources on improvement projects with the greatest potential for significant pay back. For example, at WR–ALC, one technical order distribution center made improvements which increased output by 40 percent, eliminated an 8-day (and increasing) backlog and started satisfying customer requests on a 1-day turnaround. Similarly, a landing gear line at 00– ALC reduced processing time for wheel remanufacture from 30 to 10 days. These examples are early indicators of the potential benefits to be realized from further application of TOC, benefits derived without any additional investment.

It is critical that our depots realistically address the issue of operating efficiently in a fiscally constrained environment because that is today's—and tomorrow's—reality. One of the issues affecting the health of our depots and impacting our work force is the continued downward trend in O&M funding (Chart 1). The DMR discussed later has continued to impact our operating budget. The DMR savings are being taken up front in the budgeting process. To achieve these savings, we are taking action to reduce costs and increase productivity.

In fiscal year 1992, funds for depot maintenance comprise 52 percent of my O&M budget and are protected by a congressionally-mandated floor. Another 43 percent of the O&M program consists of basically fixed costs, e.g., civilian pay, environmental compliance, utilities, and shipping and transportation to our customers. While the remaining 5 percent is flexible to a limited degree, infrastructure costs such as service contracts, travel, supplies and equipment must be supported. This leaves few funds for discretionary use to accommodate unexpected requirements (Chart 2).

Looking toward the future, our concern shifts to the fiscal year 1993 O&M program which is substantially less than fiscal year 1992 levels. The civilian O&M work force of AFMC is programmed to decrease by 5,600 authorizations or 18.5 percent between fiscal year 1992 and fiscal year 1997. Our fiscal year 1993 infrastruc-

ture account also continues its downward trend. The Air Force has maintained adequate funding for direct mission support but at the expense of infrastructure. Any additional cuts taken due to deliberations on the authorization or appropriation bills will further exacerbate an already "out of balance" program. For example, I do not have any funding for real property maintenance by contract. We must not neglect the basic support needed to meet our customers' requirements and to support our people.

Our efforts at the Command level to "do more with less" are also reflected in DOD's review of defense management processes. Out of the 1989 Defense Management Report, numerous initiatives are being implemented to improve business practices while decreasing our fiscal requirements. For example, the Defense Business Operating Fund (DBOF) has incorporated our existing revolving funds. The implementation of this concept is phased over the next several years. This approach gives the customer control of the funds necessary to meet mission requirements.

Although roughly 50 percent of AFLC's work force is now funded by the DBOF, this change so far has had little practical impact on our daily operations. This is because the same rules are being used today to operate the DBOF as were used in fiscal year 1991 when the Air Force operated the revolving funds.

However, beginning in fiscal year 1993, we expect a major impact on the funding available for our daily operations. In fiscal year 1993, our logistical support activities will be required to "sell" goods/services to our customers and receive a "fee" for our services. The funds received from the "sale" of goods and services will be used to fund our daily operations.

For example, the funds to procure most spares, to pay for the repair of depot level exchangeables, to fund transportation costs or to pay for the people who manage our inventory are no longer funded directly through congressional appropriations but are financed through the stock fund. This means that the operational commands have the appropriated money to buy the spares/repair in their budgets, AFLC no longer receives the funds in our annual O&M budget. The operational user now has an incentive to locally repair more items that previously were sent to the depot. If depot costs are considered too high or our service is too slow, then the user may choose to locally repair an item instead of "buying" a repaired item from us. The DMR initiative concerning ADP allocated a 10-percent savings in the total cost to repair exchangeables due to expected efficiencies from repairing more items at base level versus at depot level. Through this pricing mechanism, the base is also motivated to return an asset to supply that is serviceable, thereby decreasing the depot's workload.

The eventual size and composition of the Air Force and the operating tempo of our customers will effect the level of support provided by AFLC and the amount of obligation authority provided for our operations. As you are already aware, force reductions begun in fiscal year 1990 are programmed to continue. Since 1991, the Air Force's active aircraft inventory has decreased by 21 percent. During the same period, flying hours are down 544,000 from 2,184,000, or 25 percent. Because of this downsizing, and because older systems (e.g., F–111, F–4, B–52) which in the past have generated much of our work will be retired, our depot workload is also declining.

Another factor in determining our workload will be the "fees" charged to our customer. Under the DBOF, the operating commands will have the authority to accomplish work in-house, contract it out, devise an innovative alternative, not do the task at all, or buy their service/goods from us. If we are not efficient providing the goods/services at a reasonable price, we will not be "awarded" the contract. Therefore, it is imperative that we continue and intensify our efficiency improvements and operate in a "business-like" manner.

In an effort to decrease our operating costs while responding to lower levels of depot workload, AFLC has set installation downsizing goals in the 15- to 30-percent range for the period, fiscal year 1992–1997. We plan to reduce the net facility square footage at our installations through facility disposals, preserve facilities for possible future use and transfer facilities to other agencies. In addition, we are reviewing all Air Force bases including AFLC depots for potential closure under the next Base Realignment and Closure Commission. This is a complex issue which must balance current and future workloads against the costs to close an ALC. In my judgment, it is fiscally prohibitive to close an ALC at this time. Additionally, this approach allows us to retain some capability for future requirements in case this infrastructure is needed.

Due to the decline in the force structure and the subsequent downturn in depot workload, our work force has and will continue to decrease. Because of the changes in force structure and because the savings outlined in the DMR initiatives have been taken from our outyear budgets, our manpower levels will decline (Chart 3).

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Based on the fiscal year 1993 President's Budget, AFMC stock-funded manpower will decrease by over 2,900 positions and direct O&M funded manpower will decline by over 8,300 positions between fiscal year 1992 and fiscal year 1997. Managing a decline of this magnitude solely through attrition will be difficult. Because we have no flexibility in our budget, any significant congressional reduction to our requested O&M budget will result in adverse action.

In the industrially funded area, our work force has declined by over 7,600 positions during the last 3 years. However, we are on track with our 5-year depot maintenance workload plan (Chart 4). Unless further cuts to the force structure occur, we should not need to RIF industrially-funded personnel to stay within customer funding levels.

In addition to the DBOF, other Department-wide efforts are being implemented in an effort to improve efficiency. For example, the Defense Management Report initiative on Supply Depot management directs the consolidation of 30 Department of Defense (DOD) supply depots under a single manager, the Defense Logistics Agency (DLA).

The first Air Force depot to be consolidated under DLA management was Sacramento ALC on 21 April 1991. Subsequently, Ogden ALC's distribution operations were merged with the Defense Depot Ogden Utah (DDOU) in October 1991. The remaining three Air Force supply depot operations were scheduled to be consolidated in June, July and August of this year. However, this schedule was changed on 27 February 1992 when the Services were directed to consolidate all remaining general distribution functions in the continental U.S. by 16 March 1992.

Because DLA now owns the ALC's storage functions, there is a need for a direct interface between DLA and the Air Force in order to support our supply customers. To facilitate this interface, we have completed a Master Memorandum of Agreement (MMOA) with DLA detailing the responsibilities and working relationships between parties. The MMOA covers the entire gamut of topics including personnel issues, funding, equipment transfers, facility use, joint tenancy, base support requirements, reimbursement of services provided or received by either party, distribution workload breakdown, and an amalgam of other issues essential to a successful consolidation at the ALC level.

In addition to this "umbrella" MOA, the ALCs have been in the process of negotiating local Interservice Support Agreements (ISAs) with DLA. The purpose of these ISAs is to ensure that the transition of operations from the Air Force to DLA has minimal impact on mission support. In the cases of Sacramento and Ogden, these negotiations have been completed and were instrumental in achieving a smooth transition of distribution activities from the Air Force to DLA. Because the same people once assigned to the Air Force's distribution activities are now supporting us as part of the DLA depots, we have not observed any measurable degradation in service.

In addition to transferring distribution activities from the Services to DLA, we are also in the process of turning over the management responsibility for approximately 436,000 Air Force items to DLA. This process began in October 1991 and will take place over a 3-year period. Because of problems in interfacing the Air Force's supply and procurement data processing systems with DLA's system, the transfer of items has slowed. Resolution of these difficulties is expected this month and continuation of the transfer actions should resume in April. This transfer was classified as a workload transfer rather than a functional transfer which would have moved people with the work. The result was a reduction of 1,057 manpower authorizations and the deletion of $218M from the Air Force's budget. Reducing the authorizations but leaving the people at AFLC exacerbates our ability to manage our manpower without adverse action.

In past years, I've discussed the benefits being realized from AFLC's Logistics Management Systems (LMS) modernization program. This effort's primary objective was to reorient AFLC's information systems from a mercantile focus to one of weapon systems supportability. However, during the past year, OSD has decided to develop standardized logistics data systems Department-wide. In February 1992, the Joint Logistics Systems Center (JLSC) was created with the purpose of managing systems development, integration and implementation within the material management and depot maintenance arenas. Under the ADP initiative, the series of discrete programs we had been developing in support of these functions will not be incorporated into an integrated logistics data management system as we had previously envisioned. Funding for these LMS modernization programs has been transferred to the JLSC and completion of the programs will be contingent on their successful competition against other component data processing systems.

Regionalization of the Air Force's ADP operations and consolidation of the Service's software design centers are also being implemented and will affect our wholesale logistics system.

This regionalization consolidates 44 wholesale logistics platforms into eight platforms at six sites. It also closes the Information Processing Centers at three of our installations. As with the other DMR initiatives, $113M in Air Force O&M was taken as savings and 83 authorizations were deleted from our manpower rolls for fiscal year 1992. Unfortunately, the required investment funding needed to realize the projected savings has consistently been delayed due to uncertainty in DOD's budget projection. In some cases, this will reduce the savings that could have been generated. Additionally, manpower to operate the regional processing centers has not been adequately protected from other DMR-driven manpower reductions. We are working to minimize the adverse effect on our operations.

Beyond the initiatives discussed previously, additional changes in our depot operations are being driven by the depot maintenance DMR initiative. This DMR initiative seeks to improve efficiency at our depot maintenance activities while decreasing their cost of operation. The Air Force's budget from fiscal year 1991 through fiscal year 1997 has been adjusted by $1.7B due to the projected cost savings from this initiative. This goal is an enormous challenge exacerbated by current and pending changes in the force structure. These perturbations obviously inhibit effective planning thereby making the achievement of this level of savings difficult.

In fiscal year 1991, our savings goal was $5.9M. By decreasing personnel levels, improving material management, reducing supply/equipment requirements, reducing contractor engineering technical services, and competing workload, we achieved $58.3M in savings. In fiscal year 1992, our goal is $150M. By terminating operations at our maintenance depot in England, competing $125M in workload, applying lessons learned from last year's competitions to current operations and divesting unneeded facilities, we believe we can attain this year's goal.

There are many aspects to achieving this savings goal, but competition of workload is the primary source for generating the necessary level of savings. Obviously, some direct cost savings can be realized due to the nature of the public-public and public-private competitions. For example, during last year's pilot program, each of our five depots competed a single workload; command-wide these totaled an annual value of $11M. Of the five efforts, two were awarded to an ALC and three were won by the private sector. Because of competition, we realized contractual savings of over $6M.

However, the real benefit of competition is that it helps us identify ways to improve our processes and lower our operating costs. If we were to achieve the savings required by the DMR initiative only through competitive procedures, it would require us to place 60 percent of our current workload up for bid. This would be expensive due to the costs to prepare and evaluate competitive packages. Additionally, it would not be prudent since it would adversely impact support to our customers. However, by competing 10 to 15 percent of our organic workload and then incorporating the lessons learned from those competitions into our daily operations, we believe we can achieve the necessary savings.

Despite the many challenges associated with competition, we are developing the processes and skills to succeed in this endeavor. During last year's pilot program, SM–ALC and WR–ALC won two of the Air Force's contracts. Additionally, OC–ALC was competitively awarded a NATO Maintenance and Supply Agency contract for C–130 maintenance. Based on previous streamlining and the lessons learned from the fiscal year 1991 competitions, we are in a better position to win future workloads, thereby ensuring the continued viability of our depots.

Clearly, our depots are in a period of unprecedented change. Improvements to our processes will assure that these key elements of the national industrial base become more efficient and cost effective. However, it is also imperative that as DOD streamlines, reorganizes and prepares for the future, careful consideration be given to maintaining these valuable national assets. Unless careful consideration is given to sustaining these unique facilities, we risk reducing our organic capabilities to the extent that the defense "insurance policy" may not be effective when needed.

The impact of the DMR initiatives also needs to be considered in this regard. Clearly, the DMR driven efficiencies and cost saving measures are necessary. However, it is imperative that the implementation of these initiatives be considered in the aggregate to ensure that our ability to respond to future conflicts is not adversely affected. Increased utilization rates at our depots combined with the sophisticated nature of projected workloads may diminish our ability to respond in surge scenarios. Reductions in our work force, increased consolidations, and decreased levels of funding will also affect our responsiveness. As has already been demonstrated by competition claims that the private sector can perform maintenance activities

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more cheaply than the public sector are not always valid. Your continued support of our depot operations is not only appreciated but necessary to assure America's future security. Thank you very much for this opportunity to testify before the subcommittee.

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[H.A.S.C. No. 102-10]

HEARINGS

ON

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1992 AND 1993—H.R. 2100

AND

OVERSIGHT OF PREVIOUSLY AUTHORIZED PROGRAMS

BEFORE THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
ONE HUNDRED SECOND CONGRESS

FIRST SESSION

READINESS SUBCOMMITTEE HEARINGS

ON

TITLE III—OPERATION AND MAINTENANCE

HEARINGS HELD

MARCH 13, 14, 20, APRIL 9, 16, 18, 23, 24, 25, AND 30, 1991

PREPARED STATEMENT OF COLIN MCMILLAN

INTRODUCTION

Mr. Chairman and members of the committee. It is a pleasure for me to appear before you today to discuss the Department of Defense Supply and Maintenance consolidations and efficiency initiatives derived from analyses and studies in support of the Defense Management Report. I am joined this morning by Mr. Jim Reay, Director of Supply Management Policy and Mr. Bob Mason, Director of Maintenance Policy. I will provide an overview of the Department's progress in implementing management improvements to our operations, beginning with Depot Maintenance.

DEPOT MAINTENANCE AND READINESS

Depot Maintenance supports the overhaul and repair of aircraft, missiles, ships, combat vehicles, engines, and exchangeable components, including operational and diagnostic software maintenance, sustaining the operational safety and readiness of our combat forces. Depot programs also support lower categories of maintenance performed at the organizational or intermediate level, providing maintenance beyond their capability and technical assistance. The exceptional talent and dedicated effort of the more than 150,000 civilian personnel employed at our 36 major organic depot facilities (such as the Naval Aviation Depots, Naval Shipyards, Air Logistic Centers, and Army and Marine Corps Depots) were clearly demonstrated throughout the Desert Shield and Desert Storm

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operations. They will continue to play a significant role in supporting our operating forces as they overhaul and repair the Desert Storm assets returned from the theater of operations. It is this tradition of dedication to the mission and superb responsiveness to force readiness requirements, that we are committed to maintain as we redefine depot maintenance resources to accommodate diminishing maintenance workload from force reductions and equipment reliability improvement. Additionally, it is our goal to judiciously increase efficiency and reduce the cost of the department's depot maintenance operations.

DEFENSE MANAGEMENT REPORT INITIATIVES

Over the past year, one of our most challenging assignments in depot maintenance has been to structure and execute a strategy for streamlining the operations and reducing the size of the maintenance depot infrastructure. It was clear, that substantial opportunities existed to increase efficiency in depot maintenance and accrue cost savings. As a result of studies performed by my staff and the Services, we jointly agreed upon an ambitious program to enhance depot efficiency and reduce the cost of maintenance by $3.9 billion during the period of fiscal years 1991-1995. In June of 1990, the Deputy Secretary of Defense outlined in a memorandum to the Service Secretaries, several initiatives to strengthen and streamline depot

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Department of Defense
DIRECTIVE

August 12, 1992
NUMBER 4151.18

ASD(P&L)

SUBJECT: Maintenance of Military Materiel

References: (a) DoD Directive 4151.1, "Use of Contractor and DoD Resources for Maintenance of Materiel," July 15, 1982 (hereby canceled)
(b) DoD Instruction 4151.15, "Depot Maintenance Support Programming Policies," November 22, 1976 (hereby canceled)
(c) DoD Directive 4151.16, "DoD Equipment Maintenance Program," August 23, 1984 (hereby canceled)
(d) DoD Instruction 4151.17, "Overseas Depot Maintenance," July 16, 1985 (hereby canceled)
(e) through (g), see enclosure 1

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A. PURPOSE

This Directive:

1. Replaces references (a) through (d).

2. Establishes policy and assigns responsibilities for the performance of DoD materiel maintenance, including maintenance of hardware, equipment, software, or any combination thereof, at all levels (organizational, intermediate, and depot), and for both organic and contract.

3. Authorizes the publication of DoD 4151.18-H, "Depot Maintenance Capacity and Utilization Measurement Handbook," in accordance with DoD 5025.1-M (reference (e)).

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy that:

1. The DoD Components shall provide an adequate program for maintenance of assigned materiel (at all maintenance levels) to:

a. Meet peacetime readiness and combat sustainability objectives.

b. Provide for applicable mobilization and surge requirements.

2. Maintenance of equipment and materiel shall be performed at the lowest level of maintenance that ensures optimum readiness and economic use of resources.

3. Depot maintenance source-of-repair assignments shall be made by the acquiring DoD Component logistics head using the depot source-of-repair assignment decision logic process. This decision shall be made within 90 days of the engineering and manufacturing development contract award. Such assignments shall be consistent with the depot maintenance policy in DoD Instruction 5000.2 (reference (f)).

4. Maintenance tooling, equipment, test measurement and diagnostic equipment, including automatic test systems and their associated software programs, and skills for similar-type workloads shall be standardized among the DoD Components.

5. Competition between and among depot level maintenance activities of the Department of Defense and private entities shall be used as a means to achieve economies and efficiencies in maintenance of military materiel.

6. Inter-Service, intra-Service, and joint contracting maintenance support arrangements shall be established and executed to achieve the most cost-effective depot maintenance possible, consistent with readiness requirements of the Services.

7. An integral part of a depot maintenance skill and resource base shall be maintained within depot activities to meet military contingency requirements. A core maintenance capability shall comprise only a minimum level of mission-essential capability and may be under the control of the Military Department assigned as the weapon system manager. Such core maintenance capability may be

assigned by the Assistant Secretary of Defense for Production and Logistics to another DoD Component or a consolidated capability under the control of a DoD Component when economic and strategic conditions warrant. That core capability shall also be used to satisfy a portion of peacetime requirements.

8. Depot maintenance in support of deployed weapon systems and equipment may be performed within the theater of deployment when necessary to meet peacetime readiness and combat sustainability objectives. Depot maintenance performed overseas shall be cost-effective, and shall not adversely impact the U.S. industrial base including organic depot maintenance capability. Performance of workload overseas shall be in compliance with existing statutes.

9. The use, generation, and storage of hazardous materiel at maintenance locations shall be minimized or eliminated.

10. Contractor maintenance support to equipment and weapon systems for deployed forces shall be coordinated with other DoD Components operating the same or similar equipment and weapon systems in the same operational area, when practical.

E. RESPONSIBILITIES

1. The Under Secretary of Defense (Acquisition) shall monitor compliance with this Directive and shall:

a. Review the adequacy of DoD Component maintenance funding and maintenance support programs.

b. Review and approve the methodologies used by the DoD Components to determine and quantify core capabilities necessary to perform mission-essential depot maintenance to meet the full range of military contingencies and statutory requirements.

c. Review and approve the DoD Components annual organic depot maintenance workloads for Service core maintenance capabilities to maintain the core capability necessary to perform mission-essential depot maintenance to meet the full range of military contingencies.

2. The Heads of the DoD Components shall:

a. Annually determine and quantify (using a USD(A)-approved methodology) the core capability necessary to perform mission-essential depot maintenance to meet the full range of military contingencies and statutory requirements.

b. Improve efficiency and effectiveness of DoD depot maintenance operations through depot maintenance interservicing of similar equipment and competition between depot maintenance activities and private entities.

F. EFFECTIVE DATE

This Directive is effective immediately.

Donald J. Atwood
Deputy Secretary of Defense

Enclosures - 2
1. References
2. Definitions

REFERENCES, continued

(e) DoD 5025.1-M, "DoD Directives System Procedures," December 1990, authorized by DoD Directive 5025.1, December 23, 1988
(f) DoD Instruction 5000.2, "Defense Acquisition Management Policies and Procedures," February 23, 1991
(g) DoD Directive 5128.32, "Defense Depot Maintenance Council," November 7, 1990

DEFINITIONS

1. Capacity. The amount of workload, expressed in actual direct labor hours, that a facility can effectively produce annually in a single shift, 40-hour week, while producing the product mix that the facility is designed to accommodate.

2. Competition. The process of soliciting, evaluating, and selecting among proposals from maintenance, repair, and manufacturing activities, acting independently, to secure the business of the procuring Agency. In appropriate circumstances, competition may occur between depot maintenance activities, between private entities, or between depot maintenance activities and private entities.

3. Core Maintenance. An integral part of a depot maintenance skill and resource base that shall be maintained within depot activities to meet contingency requirements. Core will comprise only a minimum level of mission-essential capability and must be under the control of an assigned individual DoD Component or may be a consolidated capability under the control of an assigned or jointly determined DoD Component where economic and strategic considerations warrant.

4. Decision Logic Process. A mobilization and combat support-based decision methodology that is applied and used by the DoD Components as the basis for determining the following:

a. The minimum resources (facilities, plant equipment, and skilled labor) required in support of the mobilization scenario.

b. The organic capabilities and physical capacities to be established and retained as a core organic peacetime base for a DoD Component.

5. Depot Maintenance. That materiel maintenance requiring major overhaul or a complete rebuilding of parts, assemblies, subassemblies, and end items, including the manufacture of parts, modifications, testing, and reclamation as required. Depot maintenance serves to support lower categories of maintenance by providing technical assistance and performing that maintenance beyond their responsibility. Depot maintenance provides stocks of serviceable equipment because it has available more extensive facilities for repair than are available in lower maintenance activities. Depot maintenance includes all aspects of software maintenance.

6. Depot Maintenance Activity. An industrial-type facility designated by the Department of Defense to perform depot-level maintenance on weapon systems, equipment, and components.

7. Depot Maintenance Requirements. For budgeting and programming purposes, depot maintenance requirements include the following subcategories:

a. Executable Requirements. The total requirement that could be executed if funds were available. That does not include work that cannot be performed due to operational commitments, capacity constraints, or any other constraints except funding.

b. Funded Requirements. Requirements for which funding is programmed to be available.

c. Unfunded Deferred Requirements. Requirements that are deferred only because of a lack of funding. That should equal the difference between executable requirement and funded requirements.

d. Unexecutable Deferred Requirements. Requirements that are deferred because of operational commitments of assets; lack of organic or contractor facilities, equipment, manpower, or parts; or other constraints.

8. Intermediate-Level Maintenance. That materiel maintenance that is the responsibility of, and performed by, designated maintenance activities in support of using organizations. The intermediate-level maintenance mission is to enhance and sustain the combat readiness and mission capability of supported activities by providing quality and timely materiel support at the nearest location with the lowest practical resource expenditure. Intermediate-level maintenance includes limited repair of commodity-oriented components and end items; job shop, bay, and production line operations for special mission requirements; repair of printed circuit boards, software maintenance, and fabrication or manufacture of repair parts, assemblies, components, jigs and fixtures, when approved by higher levels.

9. Interoperability. The ability of systems, units, or forces to provide services to, or accept services from, other systems, units, or forces and to use the services so exchanged to operate effectively together.

10. Inter-Service Maintenance Support. Maintenance either recurring or nonrecurring, performed by the organic capability of one Military

Service, or element of it, in support of another Military Service or element.

11. Joint Contracting. Maintenance performed by a contractor for more than one DoD Component under one contract that is administered by one Component.

12. Maintenance Engineering. The application of techniques, engineering skills, and effort organized to ensure that the design and development of weapon systems and equipment provide adequately for their effective and economical maintenance.

13. Materiel. Hardware, equipment, software, or any combination thereof, associated with DoD weapon systems (aircraft, spacecraft, automotive equipment, combat vehicles, construction equipment, electronics, communications systems, missiles, ships, ordnance, weapons, munitions, and general purpose equipment) and their related spares, repair parts, and support necessary to equip, operate, maintain, and support military activities for administrative, support, or combat purposes.

14. Mission-Essential Maintenance. Maintenance of items designated by the military branches for combat, combat support, combat service support, and combat readiness training forces and activities, including Reserve and National Guard activities. This involves items that are required to support approved emergency or war plans, and that are used to destroy the enemy or its capacity to continue war; provide battlefield protection of personnel; communicate under war conditions; detect, locate, or maintain surveillance over the enemy; provide combat transportation and support of men and materiel; and support training functions.

15. Mobilization. The act of assembling and organizing national resources to support national objectives during war or other emergencies. The process by which the Armed Forces, or part of them, are brought to a state of readiness for war or other national emergency. That includes activating all or part of the Reserve components as well as assembling and organizing personnel, supplies, and materiel.

16. Organizational-Level Maintenance. Maintenance normally performed by an operating unit on a day-to-day basis in support of its own operations. The organizational-level maintenance mission is to maintain assigned equipment in a full mission-capable status while continually improving the process. Organizational-level maintenance

can be grouped under the categories of "inspections," "servicing," "handling," and "preventive maintenance."

17. Reliability-Centered Maintenance. A logical discipline for developing a scheduled-maintenance program that will realize the inherent reliability levels of complex equipment at minimum cost.

18. Software. A set of computer instructions and data, structured into programs and into associated documentation on the design, implementation, test, support, and operation of those programs.

19. Software Maintenance. Those activities necessary to correct errors in the software; add system capabilities through software changes; delete features; and modify software to be compatible with hardware changes.

20. Surge. The act of expanding an existing depot maintenance repair capability to meet increased requirements by adjusting shifts; adding skilled personnel, equipment, spares, and repair parts to increase the flow of repaired or manufactured materiel to the using activity; or for serviceable storage.

21. Test, Measurement, and Diagnostic Equipment (TMDE). Any system or device used to evaluate the operating condition of a system or equipment to identify or isolate any actual or potential malfunction. The TMDE also includes the following:

a. Automatic Test Equipment (ATE). Equipment designed to automatically evaluate the degree of unit under test (UUT) performance degradation, and may be used to perform fault isolation of UUT malfunctions.

b. Test Program Set (TPS). The combination of interface devices, software test programs, operational test program instructions, and documentation that allows the ATE and/or TMDE operator to perform the testing and/or diagnosis action on the UUT.

Document Separator

[H.A.S.C. No. 102-43]

HEARINGS

ON

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993—H.R. 5006

AND

OVERSIGHT OF PREVIOUSLY AUTHORIZED PROGRAMS

BEFORE THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
ONE HUNDRED SECOND CONGRESS

SECOND SESSION

SEAPOWER AND STRATEGIC AND CRITICAL MATERIALS SUBCOMMITTEE HEARINGS

ON

SEAPOWER

HEARINGS HELD

FEBRUARY 5, MARCH 17, 24, APRIL 2, 9, AND 30, 1992

Mr. BENNETT. Admiral Lang.

STATEMENT OF REAR ADM. JAMES R. LANG, DIRECTOR, SUPPORTABILITY, MAINTENANCE, AND MODERNIZATION DIVISION, DEPARTMENT OF THE NAVY

Admiral LANG. Good afternoon, Chairman Bennett, distinguished members of the subcommittee. It is my pleasure to provide an update of the U.S. Navy ship maintenance and modernization program and our growing inactive Navy ship program. With your permission, I would like to provide my prepared statement for the record and give you a short summary.

The Navy ship maintenance and modernization program maintains our ships, maximizes their operational availability and incorporates new technologies, safety and environmental requirements. Each of our three levels of maintenance—organizational, intermediate and depot—contributes to the Navy's high state of readiness. Information supplied in my prepared statement confirms our material readiness as stabilized below our peak in 1987 but well above that which we experienced in the late 1970s and early 1980s.

We use reliability-centered maintenance with its condition directed repair philosophy to limit work packages to necessary repairs. For many ship classes, our maintenance strategies have reduced lengthy overhauls and increased the shorter, more frequent repair periods. In fact, nearly 75 percent of our surface ship classes do not require overhauls. Not only do our maintenance policies increase operational availability and readiness, but they also ensure the most efficient use of our scarce dollars.

Our ships maintenance policies prepare us for the future. Budgets are declining commensurable with force structure reduction. That decline is already evident as reflected in the current President's budget request.

The Navy's overseas repair policies are of increasing concern. Part of the reason for this concern relates to the 20 ships that are based in the Western Pacific under the Overseas Family Residency Program. Required depot level repairs are made on these ships overseas to minimize family separations. The time required for transit to and from a U.S. port would keep these ships from accomplishing their assigned missions.

I want to emphasize that we do only the repairs that maintain a ship's material condition while it is stationed overseas. We perform major repairs in the United States either prior to departure for or upon return from the Pacific Region. Examples include U.S.S. *Oldendorf* and *Sterrett* which returned from Japan last year and are currently undergoing overhauls at U.S. shipyards. U.S.S. *Reeves* just completed an overhaul last week at a U.S. shipyard.

The majority of overseas repairs are done at U.S. naval ship repair facilities in Japan and Guam. Occasionally a deployed ship does require immediate unscheduled maintenance, known as voyage repairs. We do these emergency repairs at the nearest suitable repair facility. We conduct scheduled ship depot repairs on U.S. homeported ships in U.S. naval shipyards in accordance with title 10, U.S. Code.

Our inactive ship program has grown significantly over the last few years. During fiscal year 1991 we inactivated 35 ships and sub-

AMES R. LANG, DIRECTOR,
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marines. We have inactivated or will begin inactivating 69 additional ships and submarines in fiscal year 1992. We expect more inactivations in the future as we continue to downsize our active fleet.

Our inactive fleet maintenance facilities are receiving ships on a weekly basis. The ships are either mothballed for future mobilization or are prepared for disposal. Combatants not retained for mobilization usually are sold for scrap through the Defense Reutilization Marketing Region with profits returned to the U.S. Treasury. Recent sales included the cruiser *Chicago*, which was sold for $370,000; the aircraft carrier *Bonhomme Richard*, which was sold for $528,726.

Mr. Chairman, the Navy faces many pressures in our ship maintenance and modernization programs. However, our fundamental goal remains to provide ships to the fleet that are ready to sail in harm's way. I appreciate your past strong support for our fleet maintenance programs, and I ask for your continued support as we face the future.

Thank you very much for the opportunity to appear before you. I will be happy to reply to your questions.

I will be followed by Rear Adm. John Claman.

PREPARED STATEMENT OF ADM. JAMES R. LANG

Good afternoon, Chairman Bennett, and distinguished members of the subcommittee, I am Rear Adm. Rich Lang, Director of the Supportability, Maintenance, and Modernization Division in the Office of the Deputy Chief of Naval Operations (Logistics). I am pleased once again for the opportunity to discuss the maintenance of U.S. Navy ships. This subject is of utmost importance to the Navy's overall strength and ability to support our national military strategy.

My statement will provide an update of our ship maintenance and modernization programs and policies which are designed to maintain the material condition of our fleet and are critical to sustaining and improving the war-fighting capability of our ships. I will also discuss the Navy's inactive ship program which is an area of increasing interest during our current downsizing.

SHIP MAINTENANCE AND MODERNIZATION POLICY

The two basic objectives of the Navy's ship maintenance and modernization policy are (1) to maintain the fleet in an adequate material condition, thereby providing the maximum number of ships available for operations at sea, and (2) to modernize our existing ships, not only to keep pace with changing technologies but also to address safety and legislated environmental requirements.

Ship maintenance is accomplished at the lowest practical and effective level throughout a ship's life cycle. Efficient execution of our ship maintenance and modernization policy requires balanced contributions from three levels: organizational, intermediate, and depot. By a balanced program we mean the implementation of an appropriate balance between the workload and capacity at each level. The organizational level consists of the ship and the sailors on board who operate and maintain their equipment. The intermediate level consists of tenders and repair ships, shore intermediate maintenance activities, and *Trident* refit facilities. Depot-level maintenance is the highest level which requires the industrial capabilities of public and private shipyards.

INTERMEDIATE MAINTENANCE

By the end of fiscal year 1992, the Navy's ship intermediate maintenance level will consist of 18 shore intermediate maintenance facilities, 20 tenders and repair ships afloat, and two *Trident* refit facilities. Intermediate maintenance activities perform work which is beyond the capability or the capacity of a ship's crew but which does not require the industrial facilities of a depot-level shipyard.

Tenders and repair ships are mobile and provide maintenance to deployed forces in peacetime and wartime, including repair and restoration of damaged ships.

Shore Intermediate Maintenance Activities (SIMAs) are located in most ships' home ports and provide essential shore duty for sea-intensive ratings. The peacetime mission of a SIMA is to enhance ship self-sufficiency and fleet readiness by broadening and extending the professionalism of maintenance technicians. SIMAs are especially important for frigate class ships and the Naval Reserve Force, which rely heavily on intermediate maintenance because of the low manning of these ships.

DEPOT–LEVEL MAINTENANCE

The Navy's ship depot maintenance capability is an essential part of fleet maintenance. Depot maintenance is conducted at both public (naval) and private shipyards. These facilities contribute to our need for a reliable, responsive industrial base to support our national security. The Navy tries to optimize the distribution of work to preserve that base. In the early 1960s, Congress directed a 70/30 percent public/private "split" of the ship maintenance budget. Over time the Navy has sought to maintain that distribution as a matter of policy.

Depot-level ship work is accomplished as long-term scheduled maintenance or corrective maintenance. Scheduled maintenance is planned well in advance in consideration of such factors as ships' operating schedules and crew maintenance capability. Voyage or emergent repairs are required when a deployed ship may need the expertise of an industrial facility to restore a mission degrading casualty.

Our ship maintenance strategies are engineered to take full advantage of reliability-centered maintenance, with its condition-directed repair philosophy. This approach limits work packages to necessary repairs and essential modernization.

This management policy has resulted in a migration of many ship types from conventional overhauls to shorter, but more frequent, availabilities. Nearly 75 percent of surface ship classes are in a maintenance strategy which does not require lengthy overhauls. By pursuing this strategy for appropriate ship classes, the Navy is able to increase operational availability and ship readiness. In addition, it offers advantages that help contain costs: only essential work is performed; we are able to address many problems before they become serious; and more work can be performed in the ship's home port, thus avoiding personnel relocation.

OVERSEAS SHIP REPAIRS

Of the approximately 500 ships in the Navy, 20 are homeported in the Western Pacific. Ship repairs accomplished overseas consist of depot repairs to ships homeported in Japan as part of the Overseas Family Residency Program (OFRP), as well as voyage repairs to ships deployed from the United States. We conduct regularly scheduled depot maintenance on these overseas-based ships in foreign ports in order to minimize family separations. It is not feasible to return ships to the United States for this work. These ships would be unavailable to accomplish their primary missions due to the length of time necessary for transit to and from a U.S. port and time spent undergoing repairs.

Long-term scheduled maintenance availabilities of Navy ships based in the United States are conducted in U.S. shipyards. Section 7309(c), title 10 U.S. Code, prohibits ships homeported in the United States from being overhauled, repaired, or maintained overseas except for voyage repairs. The Navy fully complies with this provision of law. In addition, our policy is to perform major repairs in the United States either prior to departure for or upon return from overseas when ship overseas homeport assignments are changed. For example, U.S.S. *Reeves* (CG 24) and U.S.S. *Oldendorf* (DD 972) rotated out of Japan and U.S.S. *Sterrett* (CG 31) rotated out of the Philippines during fiscal year 1991. U.S.S. *Reeves* just completed an overhaul at a U.S. shipyard last week, and *Oldendorf* and *Sterrett* are currently undergoing regular overhauls at U.S. shipyards. Similarly, U.S.S. *Independence* (CV 62) completed a service life extension at Philadelphia Naval Shipyard in 1988 and an additional scheduled maintenance period this year in the San Diego area prior to its current overseas assignment.

Depot-level maintenance of Japan-based ships is conducted at U.S. Navy Ship Repair Facilities (SRFs) in Yokosuka (and its Sasebo detachment) Japan and Guam. Additionally, the SRFs contract out a limited amount of work to private companies when required. It is important to note that the amount of privately contracted overseas work is very minimal compared to work done in our own SRFs. For instance, of the $221 million spent for ship maintenance and repair in the Western Pacific during fiscal year 1991, only $18.3 million of that amount was for private contract awards.

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SHIP DEPOT MAINTENANCE BUDGET

The fiscal year 1993 budget (figure 1) reflects a rebalancing of the overall ship maintenance program. Ship depot level repair funding decreases in fiscal year 1993, as previously deferred maintenance and Desert Storm related maintenance is completed during fiscal year 1992. Fiscal year 1993 funding supports ten overhauls, including an extensive complex overhaul for U.S.S. *John F. Kennedy* (CV 67), the overhaul of U.S.S. *Ohio* (SSBN 726) and the refueling overhaul of two 055 *Los Angeles* class (SSN 688) submarines. Funding in fiscal year 1993 also reflects the transfer of nuclear cruiser refueling funds from the operation and maintenance account to the shipbuilding and conversion account.

FLEET MODERNIZATION PROGRAM

The fleet modernization program, provides a structure for the orderly identification, approval, design, planning, programming, budgeting, procurement, and installation of improvements that increase the capability or reliability of a ship to perform its assigned mission.

During fiscal year 1991 there were 2,682 alterations performed on Navy ships and craft. The $1.18 billion was spent on equipment and $824 million was spent on installations. There were 821 alterations performed on submarines and submarine tenders at a cost of $219.0 million, 883 alterations on surface combatants at a cost of $1.26 billion, 689 alterations were performed on auxiliaries and amphibious ships at a cost of $217.3 million, and 261 alterations on carriers at a cost of $313.3 million.

Of the $824 million spent on FMP installations, private shipyards received $405.3 million, or approximately 49 percent of all installation dollars for performing modernization work during fiscal year 1991.

Extensive war-fighting improvements have been accomplished and continue to be installed. Some examples are:

- The Tomahawk/VLS upgrades on surface combatants.
- Installation of special hull treatment on submarines.
- Aircraft carrier tactical data system modifications.

Future modernization efforts include:

- Safety items.
- Joint operability enhancements.
- Pollution control.

In fiscal year 1990, FMP funding was transferred from operation and maintenance to the procurement accounts. Full funding of alteration installation was directed, so now FMP installation costs are identified and budgeted along with equipment procurement costs in the year of procurement.

At this time the 3-year appropriation limit is an area of concern. Procurement funds expire after 3 years. There are many instances when the equipment required for an alteration has production lead time in excess of 2 years. Since installation funds are budgeted in the same year as the equipment, under the current constraints some of those funds will have expired prior to our ability to install already procured equipment.

I urge your support of section 8076a of the legislative provisions of the President's budget to alleviate this constraint.

INACTIVE SHIP PROGRAM

Our inactivation program is significant. During fiscal year 1991 we initiated inactivation of 35 ships and submarines (26/9). During fiscal year 1992, we have inactivated or will initiate inactivation of 69 additional ships and submarines (60/9). Our fiscal year 1993 budget includes 30 inactivations: 23 ships and 7 submarines. We have managed these inactivations well. Many of the inactivated surface ships are being or will be maintained for potential mobilization. All submarines will be scrapped and recycled.

Our surface ships are maintained at one of four Naval Inactive Ship Maintenance Facilities (NISMFs)—Philadelphia, PA; Portsmouth, VA; Pearl Harbor, HI; and Bremerton, WA. In addition, we utilize Maritime Administration (MARAD) facilities for overflow, primarily for ships which we do not intend to retain for mobilization. Defueled submarines, nuclear surface ships, and ships with nuclear facilities are held either in Norfolk or Puget Sound Naval Shipyard.

The NISMFs have been receiving surface ships at a rate of over one a week. They have either been mothballing the ships for possible future mobilization or have been initiating disposal action. As part of the disposal process, the NISMFs prepare the

ships environmentally for disposal and remove equipment and spare parts for reuse. Once the NISMFs complete their actions, combatants usually are sold for scrap through the Defense Reutilization Marketing Region (DRMR), with proceeds reverting to the treasury. Title of merchant-capable ships are turned over to MARAD.

The Navy submitted a report to Congress last June which laid out the entire ship dismantlement and disposal process for both nuclear-powered submarine hulls and other inactive naval vessels. Usually the submarine and former nuclear hulls are recycled in naval shipyards and other ships are scrapped through private industry. During fiscal year 1991, one ship (*Albany*) was sold for scrap through DRMR and another five (*Lavaca, Casa Grande, Kings Port, Algol* and *Aucilla*) had title transferred to MARAD. Our fiscal year 1992 estimates are 16 sales and 12 title transfers.

SHIP MATERIAL READINESS TRENDS

Ships material readiness is measured by time free of significant material deficiencies (percentage of time free of C3/C4 CASREPS). For surface ships, operating time free from serious material degradation had declined in the past few years. However, the decline has leveled off, as shown in figure 2 and remains above the levels of the early 1980s.

Mr. Chairman, the Navy is faced with many requirements and pressures in executing our ship maintenance and modernization programs: affordability, schedule, personnel considerations, and the need to maintain viable ship repair facilities in both the public and private sectors. However, our fundamental goal is to provide ships to the fleet that are ready to sail in harm's way.

We ask for your continued support as we face the challenge of maintaining our Navy's high state of readiness in this era of declining budgets and the changing national security environment.

DEPARTMENT OF THE NAVY SHIP MAINTENANCE

[In millions of dollars]

	Fiscal year 1991	Fiscal year 1992	Fiscal year 1993
ACTIVE FORCES SHIP MAINTENANCE			
Ship overhauls	$2,823.2	$3,125.3	$2,535.9
Depot level support	197.9	304.9	233.4
IMA	472.6	504.7	448.9
Inactivations	367.5	457.8	335.0
Total ship maintenance	3,861.2	4,392.7	3,553.2
Number of ship overhauls (units)	14	14	10
Ship overhaul backlog			
Number of SRAs (units)	72	96	64
Number of PMAs (units)	60	72	42

equipment and spare parts for reuse.
mbatants usually are sold for scrap
Region (DRMR), with proceeds revert-
hips are turned over to MARAD.
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HIP MAINTENANCE

	Fiscal year 1991	Fiscal year 1992	Fiscal year 1993
NTENANCE			
	$2,823.2	$3,125.3	$2,535.9
	197.9	304.9	233.4
	472.6	504.7	448.9
	367.5	457.8	335.0
	3,861.2	4,392.7	3,553.2
	14	14	10
	72	96	64
	60	72	42

SHIP MATERIAL READINESS
(OPERATING TIME FREE C3/4 CASREPS)

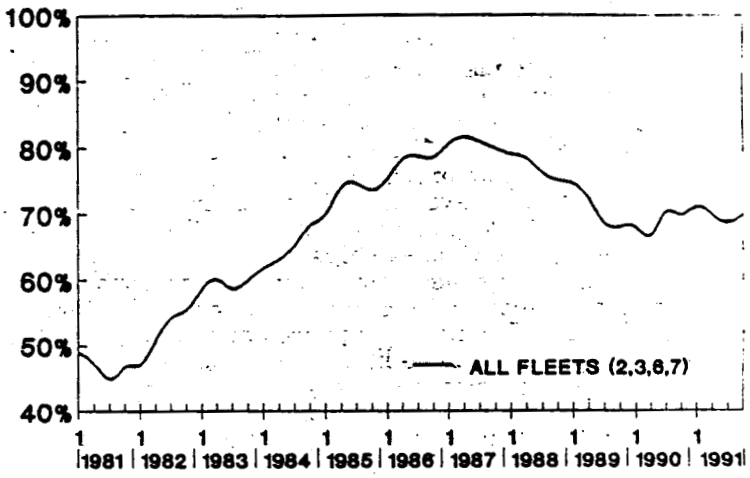

FIGURE 2

SPCC CASREP DATABASE
AS OF 31 DEC 91

Mr. BENNETT. Thank you. Admiral.

STATEMENT OF REAR ADM. JOHN S. CLAMAN, DEPUTY COMMANDER FOR INDUSTRIAL AND FACILITY MANAGEMENT, DEPARTMENT OF THE NAVY

Admiral CLAMAN. Mr. Chairman, distinguished members of the subcommittee, thank you for letting me report to you today on the Navy's ship overhaul and modernization program. I will address the industrial base which is involved in this work.

Mr. Chairman, as you pointed out, the Navy is faced with the challenge of maintaining a viable depot maintenance infrastructure in the face of decreasing workloads driven by reduced defense funding and force structure reductions over the coming years. This will necessitate judicious downsizing of our repair shipyards, both public and private. At the same time, we must maintain our skills base through this downturn.

Affordability is the major factor and will ultimately drive the size of our fleet. We are striving to achieve greater affordability by improving our processes. We simply must be able to execute the workload during this decade at less cost. For this reason, the Naval Sea Systems Command has developed and implemented the Naval Shipyard Corporate Operations Strategy and Plan to reduce naval shipyard overhead expense, improve our management and execution of work, and thus provide better utilization of the tax dollar in Navy ship maintenance. This plan has been incorporated into the Defense Management Review process for achieving savings in ship depot maintenance.

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HOUSE CONFERENCE REPORT NO. 102-311

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[page 313]

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2100) to authorize appropriations for fiscal years 1992 and 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SUMMARY STATEMENT OF CONFERENCE ACTION

The conferees recommend authorization for the Department of Defense for procurement, research and development, test and evaluation, operation and maintenance, working capital funds, military construction and family housing, weapons programs of the Department of Energy, and civil defense totaling $213.3 billion. This figure is $198.5 million above the amount requested by the President, $449.9 million above the House bill, and $217.3 million above the Senate amendment.

The authorizations included in this bill are substantially less than the functional total of $290.8 billion for national defense provided in the Budget Resolution. The primary reason for this difference is that, although military end strengths and pay raises require authorization, the actual funding for military pay and benefits (approximately $78.0 billion) is not reflected in this bill.

The budget authority implication of the authorizations in this bill is in compliance with the budget authority ceiling in the Budget Resolution.

* * * * *

are completed, including the development and implementation of the required automatic data processing systems. The Defense Department would have to report to Congress on the results of its analysis before it began any further consolidations.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

Limitation on depot maintenance workload competitions (sec. 314)

The House bill contained a provision (sec. 322) that would allow the Department of Defense to compete annually between $5.0 to $15.0 million of depot maintenance workload with the private sector. This provision would also limit the competition to not more than 40 percent of each depot's workload.

The Senate amendment contained a provision (sec. 313) that would amend section 922(a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) to extend the depot maintenance workload competition pilot program through fiscal year 1992. This provision would also repeal section 2464 of title 10, United States Code, which currently prohibits the Army and the Air Force from competing depot maintenance tasks between the Army and the Air Force or between the Army or the Air Force and a private contractor.

The Senate recedes with an amendment. The conference provision would provide that not less than 60 percent of the total depot maintenance of material in the Army and the Air Force shall be performed by employees of the Department of Defense. This percentage limitation should be measured in dollars. The conference provision would also provide that the civilian employees of the Department of Defense involved in the depot-level maintenance of material may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance.

The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of enactment of this Act in order to comply with the requirements of this provision. The Secretary of the Army and the Secretary of the Air Force may waive the operation of this provision for their respective Services if the Secretary concerned determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver. Not later than January 15 of 1992 and 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage limitation of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to this provision.

The conference provision would also authorize a depot maintenance competition pilot program for the Army and the Air Force. During fiscal years 1992 and 1993, the Secretary of Defense shall conduct a pilot program under which competitive procedures are used to select entities to perform depot-level maintenance of material for the Army and the Air Force. The program may not involve

more than 10 percent of all depot-level maintenance of material that is not required to be performed by employees of the Department of Defense pursuant to the limitations in this provision. The conferees direct that depot maintenance programs selected for this competition pilot program not be drawn disproportionately from one or several Army or Air Force depot maintenance activities. Not later than December 1, 1993, the Secretary of Defense shall submit a report to Congress containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads and describing the cost savings anticipated through the use of these procedures.

Authority of base commanders over contracting for commercial activities (sec. 315)

The House bill contained a provision (sec. 323) that would make permanent the authority of base commanders over contracting for commercial activities in section 2468 of title 10, United States Code.

The Senate amendment contained a provision (sec. 314) that would repeal section 2468 of title 10, United States Code.

The Senate recedes with an amendment that would extend the temporary authority of base commanders over contracting for commercial activities through September 30, 1993. The conferees direct the Secretary of Defense to submit a report to the congressional defense committees no later than March 1, 1993, pertaining to the impact of this provision on the commercial activities of the Department of Defense.

Defense Business Operations Fund (sec. 316)

The House bill contained a provision (sec. 341) that would prohibit the Department of Defense from establishing a Defense Business Operations Fund (DBOF).

The Senate amendment contained no similar provision, and would authorize funds for the DBOF for fiscal year 1992.

The Senate recedes with an amendment that would authorize the establishment and operation of the DBOF through April 15, 1993. This fund would consolidate the activities previously funded in the existing stock and industrial funds, as well as the Defense Finance and Accounting Service, the Defense Commissary Agency, the Defense Technical Information Center (including the Information Analysis Centers), the Defense Reutilization and Marketing Service, and the Defense Industrial Plant Equipment Center. The Defense Department shall maintain the separate identity of each working-capital fund and industrial, commercial, or support type activity managed through the DBOF for purposes of accounting, financial reporting, and auditing. The conferees endorse the concept of capital budgeting for equipment for the DBOF, but disapprove funding military construction projects through this new fund.

The conferees direct that no new activities be funded through the DBOF in fiscal year 1993 in order to give Congress an opportunity to evaluate the execution of this fund in fiscal year 1993 before any further expansion. No later than January 1, 1992, the Defense Department shall provide overall policy, implementation plans, and management performance factors to the congressional defense com-

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PREPARED STATEMENT OF GEN. JIMMY D. ROSS

GOOD MORNING, MR. CHAIRMAN AND DISTINGUISHED COMMITTEE MEMBERS. THANK YOU FOR THE OPPORTUNITY TO ADDRESS OUR MUTUAL INTEREST IN READINESS, SUSTAINABILITY AND SUPPORT TO THE ARMY. I AM PROUD TO REPRESENT THE U.S. ARMY MATERIEL COMMAND (AMC) FOR THE FIRST TIME BEFORE THIS COMMITTEE SINCE ASSUMING COMMAND EARLIER THIS YEAR.

AS REQUESTED, TODAY I WILL DISCUSS THE CURRENT AND PROJECTED STATUS OF THE ARMY'S OMA (OPERATION AND MAINTENANCE, ARMY) FUNDED INDUSTRIAL FACILITIES, CURRENT AND PROJECTED WORKLOADS, CIVILIAN PERSONNEL LEVELS AND WORKLOAD COMPETITION.

BOTH THE SECRETARY OF THE ARMY AND CHIEF OF STAFF HAVE ALREADY ARTICULATED TO THE CONGRESS THE ARMY'S CHALLENGE OF ENSURING A TRAINED AND READY ARMY WHILE CONCURRENTLY MANAGING A MASSIVE DRAWDOWN IN A TIGHT FISCAL ENVIRONMENT. THE U.S. ARMY MATERIEL COMMAND HAS A MAJOR ROLE MEETING THIS FORMIDABLE TASK. BUT WE HAVE A PLAN, AND WITH YOUR HELP CAN DOWNSIZE INTELLIGENTLY WHILE PROTECTING CRITICAL ACTIVITIES THAT ARE ESSENTIAL FOR THE NATION'S DEFENSE.

THE AMC NETWORK OF DEPOTS AND R&D FACILITIES, ALL MANNED BY A HIGHLY DEDICATED WORKFORCE, IS OF CONSIDERABLE VALUE TO OUR COUNTRY. THIS WAS DEMONSTRATED WITH STARTLING CLARITY DURING OPERATION DESERT SHIELD AND DESERT STORM. THE COMMAND HAD A MAJOR ROLE IN THE DECISIVE VICTORY OVER SADDAM HUSSEIN'S ARMY JUST ONE SHORT YEAR AGO. THE U.S. ARMY MATERIEL COMMAND FILLED OVER 1.6 MILLION SECONDARY ITEM REQUISITIONS, ISSUED OVER 400,000 END ITEMS AND SHIPPED OVER

454,000 SHORT TONS OF AMMUNITION TO SOUTHWEST ASIA. IN ADDITION, WE ARRANGED FOR 67 CONTRACTORS TO DEPLOY PERSONNEL TO SOUTHWEST ASIA AND DEPLOYED OVER 3,500 OF OUR OWN PERSONNEL, BOTH MILITARY AND CIVILIAN. THESE WERE TRULY DEDICATED AMERICANS, MANY OF WHOM FOUND THEMSELVES IN REMOTE AREAS EXPERIENCING THE SAME HARDSHIPS AS OUR COMBAT TROOPS. OUR WORK FORCE AT HOME LABORED WITHOUT COMPLAINT TO ENSURE THAT A STEADY STREAM OF ESSENTIAL MATERIEL REACHED THE FORCES IN THE FIELD. OUR HIGHLY SKILLED SCIENTISTS AND ENGINEERS FOUND SOLUTIONS TO URGENT PROBLEMS WHICH FACED OUR FORCES WITH SOME ITEMS DELIVERED TO COMBAT FORMATIONS ONLY HOURS BEFORE ATTACKING INTO IRAQ AND KUWAIT.

DESERT STORM WAS CLEARLY A GREAT SUCCESS, BUT THE WORK DID NOT END FOR AMC WITH THE VICTORY IN THE DESERT. MOST OF THE EQUIPMENT RETURNING FROM OPERATION DESERT STORM REQUIRES REPAIR AND WE ARE CURRENTLY SUPPORTING AN INTENSIVE, ARMY-WIDE EFFORT TO BRING EQUIPMENT BACK TO A HIGH READINESS CONDITION FOLLOWING THE GULF WAR. BUT THE AMOUNT OF WORK IS CONSIDERABLE AND SOME WILL NEED TO BE ACCOMPLISHED IN FY93 AND POSSIBLY BEYOND. FOR EXAMPLE, THE ARMY HAS A REQUIREMENT TO OVERHAUL/REPAIR OVER 1,000 TANKS FROM OPERATION DESERT STORM ALONE. THIS WORKLOAD WILL BE ACCOMPLISHED IN FY92, FY93, AND BEYOND. YOUR INITIATIVE LAST YEAR TO EXTEND THE DEPOT MAINTENANCE FY92 CARRYOVER BY 6 MONTHS INTO FY93 WILL BE OF GREAT HELP IN RESOLVING THIS PROBLEM. IT WILL ALSO ASSIST US TO RETAIN OUR IN-HOUSE WORK FORCE FOR A LONGER PERIOD, THUS REDUCING THE POTENTIAL FOR REDUCTION-IN-FORCE

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PROBLEMS IN THE AMC DEPOTS. BUT AS MENTIONED EARLIER, AUTHORITY TO OBLIGATE OPERATION DESERT STORM FUNDS THROUGHOUT ALL OF FY93 AND POSSIBLY FURTHER WILL BE REQUIRED. WE ASK FOR YOUR CONTINUED ASSISTANCE IN THIS AREA.

AS YOU ARE AWARE, THERE WERE SOME FUNDING SHORTFALLS IN NON-DESERT STORM AREAS IN FY91, BUT MANAGEMENT ACTIONS TAKEN DURING THE FY88 TO FY90 TIMEFRAME ALLOWED US TO GENERATE FUNDS TO SUPPORT SOME OF OUR MISSION REQUIREMENTS AND STILL LIVE WITHIN THE REDUCED FUNDING LEVELS. THESE ACTIONS INCLUDED SUBSTANTIAL REDUCTIONS IN TDY, OVERTIME, SUPPLY AND EQUIPMENT PURCHASES AND CIVILIAN PERSONNEL REDUCTIONS THROUGH HIRING FREEZES AND EARLY OUTS.

BECAUSE OF FORECASTED FUNDING LEVELS, AMC BEGAN PLANNING ALMOST TWO YEARS AGO FOR A SUBSTANTIAL REDUCTION-IN-FORCE. HOWEVER, THROUGH ATTRITION AND EARLY OUT ACTIONS IN THE LAST HALF OF FY90 AND FIRST MONTH INTO FY91, WERE ABLE TO DECREASE OUR PAYROLL BY OVER 6,000 PERSONNEL AND REDUCE THE INVOLUNTARY SEPARATIONS TO 194 INDIVIDUALS.

NOW TURNING TO OUR CURRENT FUNDING (LESS OPERATION DESERT STORM FUNDS). THE AMC OMA FUNDING FOR FY92 IS $3,029M. THIS IS A TIGHT FUNDING LEVEL WHICH HAS CAUSED CURTAILMENT OF REAL PROPERTY MAINTENANCE EXPENDITURES AND BASE OPERATIONS. WE ARE CONTINUING OUR EFFORTS TO DRAWDOWN AND STREAMLINE OUR WORK FORCE AND HAVE RECENTLY INVOKED A 100 PERCENT HIRING FREEZE IN AN ATTEMPT TO PRECLUDE ANY NECESSITY FOR A MAJOR FY92 REDUCTION-IN-FORCE. AT THE AGGREGATE LEVEL, OUR FY93 OMA FUNDING GUIDANCE OF $2,930M IS EQUIVALENT TO THE

FY92 LEVEL, BUT THERE ARE SHORTFALLS.

THE DIRECT FUNDED DEPOT MAINTENANCE PROGRAM (P7M) REQUEST DISPLAYED IN THE ARMY BUDGET IS $772.7M FOR FY93. ON THE SURFACE THIS IS A SIZABLE DROP FROM THE $1.7B DISPLAYED FOR FY92. THE CHANGE IS MAINLY CAUSED BY THE CESSATION OF OPERATION DESERT STORM FUNDS AT THE END OF FY92. THE FY93 FUNDING DOES REFLECT GROWTH IN THE NON-OPERATION DESERT STORM BACKLOG OF ABOUT $200M. THIS WAS A DELIBERATE DECISION MADE IN RESPONSE TO THE OVERALL FY93 FISCAL ENVIRONMENT. THE RISK ASSOCIATED WITH THIS PROGRAMMATIC DECREASE IS CONSISTENT WITH OVERALL ARMY PRIORITIES IN AN AUSTERE FISCAL ENVIRONMENT. BEGINNING IN FY92, THE ARMY INSTITUTED THE DEFENSE BUSINESS OPERATING FUND (DBOF). TO DATE, IMPLEMENTATION OF DBOF HAS HAD MINIMAL IMPACT ON AMC. AMC DEPOT, ARSENAL, AND SECONDARY ITEM MANAGEMENT FUNCTIONS ARE FUNDED THROUGH THE DBOF. PREVIOUSLY, MOST OF THESE FUNCTIONS WERE FUNDED THROUGH THE ARMY STOCK FUND (ASF) AND THE ARMY INDUSTRIAL FUND (AIF). BECAUSE THE DBOF EMPLOYS MANY PRINCIPLES OF OUR OLD ASF AND AIF, THERE HAVE BEEN NO SIGNIFICANT PROBLEMS ASSOCIATED WITH DBOF IMPLEMENTATION.

HOWEVER, AS DBOF EXPANDS TO ENCOMPASS ADDITIONAL UNIT COST BUSINESS AREAS, AND WE INCREASINGLY HAVE ELEMENTS BUYING AND SELLING TO EACH OTHER THROUGH THE FUND, WE DO ANTICIPATE HAVING INCREASED DIFFICULTY IN ACCURATELY ACCOUNTING FOR WORKLOAD, REVENUES AND EXPENSES.

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NATIONAL DEFENSE POSTURE - THE INDUSTRIAL BASE. ANY DISCUSSION OF THE DEFENSE INDUSTRIAL BASE CANNOT BE LIMITED TO OUR ORGANIC FACILITIES. THE DEFENSE INDUSTRIAL BASE OF THE NATION IS COMPOSED OF OUR ORGANIC CAPABILITIES AND OUR DEFENSE CONTRACTOR BASE. IT IS ONLY THROUGH THE INTEGRATED USE OF BOTH THESE CAPABILITIES COMBINED WITH A PRUDENT WAR RESERVE STOCKAGE POLICY THAT WE CAN ENSURE THE POWER PROJECTION AND SUSTAINMENT REQUIRED FOR OUR ARMED FORCES. THIS TOTAL DEFENSE INDUSTRIAL BASE WILL BE SMALLER. HOWEVER, IT MUST BE CAPABLE OF SUPPORTING THE ARMY IN ITS ROLE AS A DEPLOYABLE, STRATEGIC FORCE. UNDER NO CIRCUMSTANCES DO WE WANT TO BUY SOMETHING SIMPLY TO KEEP A CONTRACTOR IN BUSINESS. BUT WE DO HAVE TO TAKE AN AGGRESSIVE ROLE IN IDENTIFYING THE QUALITIES THAT WE ARE LOOKING FOR AND THEN ENSURE THAT THOSE QUALITIES ARE ENUMERATED IN OUR ACQUISITION STRATEGIES. WE DECIDE WHICH COMPANIES STAY IN THE DEFENSE BUSINESS EVERY TIME WE SIGN A CONTRACT. THE QUALITIES WE ARE LOOKING FOR MUST BE IN THOSE REQUESTS FOR PROPOSAL AND OUR SOURCE SELECTION PROCESS. IF THEY ARE, WE WILL IN EFFECT BE BUYING NOT JUST THE IMMEDIATE PRODUCT, BUT ALSO THE DEFENSE INDUSTRIAL BASE THAT WILL SUPPORT US INTO THE NEXT DECADE.

THE ARMY'S ORGANIC INDUSTRIAL BASE IS BEING STREAMLINED AND CONSOLIDATED TO MEET THE NEEDS OF THE ARMY IN THE 21ST CENTURY. WITH THE IMPLEMENTATION OF BRAC I, AMC IS IN THE PROCESS OF CLOSING FIVE DEPOT ACTIVITIES. OPERATIONS WILL CEASE AT THE FIRST ACTIVITY BEGINNING IN SEPTEMBER 1992 AND

THE LAST ACTIVITY TWO YEARS LATER. BRAC 91 DICTATED THE CLOSURE OF SACRAMENTO ARMY DEPOT AND THE TRANSFER OF THE TACTICAL MISSILE MAINTENANCE FUNCTION TO LETTERKENNY ARMY DEPOT, WHICH I WILL DISCUSS SHORTLY.

AS PART OF THE DEFENSE MANAGEMENT REVIEW PROCESS, DMRD 908, THE DEFENSE DEPOT MAINTENANCE COUNCIL WAS ESTABLISHED AS THE OFFICIAL GOVERNING BOARD FOR DOD DEPOT MAINTENANCE. THE DEFENSE DEPOT MAINTENANCE COUNCIL CORPORATE BUSINESS PLAN IS THE OFFICIAL DOCUMENT THAT IDENTIFIES THE SERVICES' STRATEGIES TO ACCOMPLISH THE DEPOT MAINTENANCE MISSION. THROUGH THE CORPORATE BUSINESS PLAN, THE ARMY IS DEVELOPING PLANS TO CONSOLIDATE DEPOT MAINTENANCE WORKLOADS AIMED AT ACHIEVING GREATER ECONOMIES AND EFFICIENCIES. THESE CONSOLIDATIONS INVOLVE BOTH INTERNAL REDISTRIBUTION OF WORK AND INCREASED INTERSERVICING OF ITEMS WHERE ONE SERVICE'S DEPOT MAINTENANCE CAPACITY CAN BE MOST COST EFFECTIVELY APPLIED TO SUPPORT THE NEEDS OF THE OTHER SERVICES. THE CONSOLIDATIONS THAT ARE BEING CONSIDERED ARE TARGETED TO INCREASE THE CAPACITY UTILIZATION OF SERVICE DEPOTS AND ELIMINATE DUPLICATE CAPABILITIES IN DOD FACILITIES. WITHIN THIS CONSOLIDATION INITIATIVE THE SERVICES WILL RETAIN THE CORE ORGANIC DEPOT MAINTENANCE CAPABILITIES REQUIRED TO SUSTAIN AND TO MOBILIZE THEIR COMBAT CRITICAL WEAPONS/EQUIPMENT SYSTEMS. THIS INCLUDES THE KIND OF CORE CAPABILITY NEEDED FOR DEPLOYMENT IN SUPPORT OF CONTINGENCY FORCES OPERATIONS SUCH AS THAT RECENTLY DEMONSTRATED BY THE ARMY'S DEPOTS IN SUPPORT OF DESERT SHIELD/STORM. AS

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MENTIONED EARLIER, ONE SUCH CONSOLIDATION IS THAT OF TACTICAL MISSILES OF ALL SERVICES TO LETTERKENNY ARMY DEPOT. IMPLEMENTATION PLANS FOR EACH MISSILE SYSTEM ARE DUE TO THE ARMY BY 31 MAY 1992 AND TRANSITION OF WORKLOAD WILL COMMENCE IN FY93 AND CONTINUE THROUGH FY96.

IN COMPLIANCE WITH THE NATIONAL DEFENSE AUTHORIZATION ACT OF FY92/FY93, AMC IS PROJECTING A MINIMUM OF 60 PERCENT OF AVAILABLE DEPOT MAINTENANCE FUNDS WILL BE SPENT AT ORGANIC DEPOT MAINTENANCE FACILITIES. THIS WORKLOAD CONSISTS OF P7M PROGRAMS AND DEPOT LEVEL REPARABLES. AS OF 15 JANUARY 1992, THE ARMY PROJECTS 61 PERCENT ORGANIC WORKLOAD FOR FY92 AND 65 PERCENT FOR FY93.

WHERE WORKLOAD EXISTS ABOVE OUR ESSENTIAL CORE DEPOT MAINTENANCE CAPABILITY, AND WITHIN THE 10 PERCENT OF DEPOT MAINTENANCE WORKLOAD AUTHORIZED FOR COMPETITION BY THE NATIONAL DEFENSE AUTHORIZATION ACT, WE WILL COMPETE THAT WORKLOAD BETWEEN THE SERVICE DEPOTS AND PRIVATE INDUSTRY TO INCENTIVIZE AND ATTAIN INCREASED COST EFFICIENCIES FOR THE ARMY. IN FY91, WE COMPETED ONE PROGRAM FROM EACH OF THE ARMY'S MAINTENANCE DEPOTS AND FIVE OF THE SEVEN BIDS WERE AWARDED TO ARMY MAINTENANCE DEPOTS.

THIS YEAR, WE PLAN TO COMPETE AND AWARD DEPOT WORKLOAD PROGRAMS VALUED AT $62.7M. CORPUS CHRISTI ARMY DEPOT WILL COMPETE FOR 40 PERCENT OF THE $62.7M. TOOELE ARMY DEPOT WILL COMPETE FOR 23 PERCENT OF THE DOLLARS AND RED RIVER ARMY DEPOT WILL COMPETE FOR NEARLY 22 PERCENT OF THE DOLLARS. ANNISTON ARMY DEPOT AND LETTERKENNY ARMY DEPOT WILL COMPETE

ON THE REMAINDER. SACRAMENTO AND TOBYHANNA ARMY DEPOTS ARE EXCLUDED FROM THIS COMPETITION BECAUSE OF THEIR ROLE IN THE SACRAMENTO ARMY DEPOT CLOSURE COMPETITION. AS A RESULT OF BRAC 91, SACRAMENTO ARMY DEPOT IS SCHEDULED TO CLOSE BY 1997. SACRAMENTO'S DEPOT MAINTENANCE FUNCTIONS OF NINE COMMODITY GROUPS WILL BE COMPETED WITH THE FINAL CONTRACT AWARD PLANNED FOR OCTOBER 1993. TOBYHANNA, ALONG WITH FOUR OTHER ARMY DEPOTS, WILL COMPETE FOR THIS WORKLOAD WITH AIR FORCE.

WE ARE ALSO DEVELOPING POLICY TO JUDICIOUSLY IMPLEMENT THE RECENTLY ENACTED LEGISLATION THAT PERMITS OUR ORGANIC INDUSTRIAL BASE TO TEAM WITH INDUSTRY. IT IS ENVISIONED THAT THIS LEGISLATION WILL BE USED WHEN RETENTION OF OUR CORE COMPETENCIES IS CRITICAL TO POSTURING THE BASE.

MR. CHAIRMAN, IN CLOSING I WANT TO THANK YOU AND THE MEMBERS OF THE COMMITTEE FOR THIS OPPORTUNITY TO TESTIFY. TO SUM UP, WE ARE CLEARLY COMMITTED TO SEIZE EVERY OPPORTUNITY TO ACHIEVE GREATER EFFICIENCIES. AT THE SAME TIME, WE MUST MAINTAIN A "BALANCE" ACROSS AND WITHIN THE FORCE AND PURSUE A REASONABLE PACE IN OUR EFFORTS TO RESHAPE.

WE MUST NOT FORGET OUR PRINCIPAL JOB IS TO SUSTAIN THE ARMY COMBAT MISSION WHENEVER AND WHEREVER NEEDED.

Mr. HUTTO. T
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Mr. HUTTO. Al

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Capital asset subaccount (sec. 342)

The House bill contained a provision (sec. 332) that would limit the use of the capital asset subaccount within the Defense Business Operations Fund and would also require a report by the Secretary of Defense on this account.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

Limitations on obligations against Defense Business Operations Fund (sec. 343)

The Senate amendment contained a provision (sec. 352) that would prohibit the Secretary of Defense from incurring obligations against the Defense Business Operations Fund during fiscal year 1993, except for obligations for fuel, subsistence and commissary items, retail operations, repair of equipment, and the cost of operations, in excess of 65 percent of the sales from the Defense Business Operations Fund during the fiscal year. This provision would allow the Secretary of Defense to waive this 65 percent limitation cap if he determines that such action is essential to the national security of the United States.

The House bill contained no similar provision.

The House recedes.

SUBTITLE E—DEPOT-LEVEL ACTIVITIES

Competitive bidding for tactical missile maintenance (sec. 351)

The House bill contained a provision (sec. 341) that would require the Secretary of Defense to use competitive procedures if the Secretary decides to consolidate tactical missile maintenance.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to ensure that the Systems Management Activity and the Depot Systems Command are relocated to Rock Island Arsenal, Illinois, in accordance with the recommendation of the Base Closure and Realignment Commission dated July 1, 1991.

Limitations on the performance of depot-level maintenance of material (sec. 352)

The House bill contained a provision (sec. 342) that would establish a limit of no more than 40 percent of the depot-level maintenance workload by each type of equipment and materiel that may be offered for contract by non-governmental personnel. The provision would also extend the limitations on the performance of depot-level maintenance by the Army and Air Force in section 2466 of title 10, United States Code, to the Navy.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

The conferees agree to include the Navy under the limitations on the performance of depot-level maintenance in section 2466 of title 10, United States Code. The conferees do not agree to establish a limit of no more than 40 percent of the depot-level maintenance workload by each type of equipment and materiel that may be offered for contract by non-governmental personnel. However, the conferees agree that the Secretary of the Army shall provide for

the performance by employees of the Department of Defense of not less than 50 percent in fiscal year 1993, 55 percent in fiscal year 1994 and 60 percent in fiscal year 1995 of Army aviation depot-level maintenance. The Secretary concerned may not cancel a depot-level maintenance contract in effect on the date of enactment of this act in order to comply with the requirements of this provision.

Requirement of competition for the performance of workloads previously performed by depot-level activities of the Department of Defense (sec. 353)

The House bill contained a provision (sec. 343) that would require the Department of Defense to use competitive procedures for awarding any workload currently being performed in a military depot.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would provide that the Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a threshold value of $3.0 million and that is being performed by a depot-level activity of the Department of Defense to performance by a private contractor unless, prior to selection of the private contractor, the Secretary uses competitive procedures for the selection.

Repeal of requirement for competition pilot program for depot-level maintenance of materials (sec. 354)

The House bill contained a provision (sec. 345) that would amend section 314 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to increase the limit of non-core workload that can be competed among depots or with private industry from 10 percent to 20 percent.

The Senate amendment contained a provision (sec. 358) that would amend section 314 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 by deleting the limitation on the amount of depot maintenance workload in the Army and the Air Force above the core level that can be opened to competition during fiscal year 1993.

The House recedes. The conferees direct that depot maintenance workload selected for competition not be drawn disproportionately from one or several depot maintenance activities of the military Services.

SUBTITLE F—COMMISSARIES AND MILITARY EXCHANGES

Standardization of certain programs and activities of military exchanges (sec. 361)

The House bill contained a provision (sec. 351) that would require the Secretary of Defense to standardize among the military departments certain programs and activities of the military exchanges of the military departments not later than October 1, 1993. The provision would also require the Secretary of Defense to submit to the Congress a report on other programs and activities of the military exchanges that the Secretary determines can be eco-

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES E. SMITH MANAGEMENT, INC., Plaintiff, v. **LES ASPIN** **In His Official Capacity As** **SECRETARY OF DEFENSE** and **THE DEFENSE BASE CLOSURE AND** **REALIGNMENT COMMISSION,** Defendants.	Please refer to this number when responding 930921-7 Civil Action No. 93-844-A

AFFIDAVIT OF MICHAEL T. SHEHADI

Michael T. Shehadi, being duly sworn, deposes and says:

1. I am Group Senior Vice President of Charles E. Smith Management Inc. ("Smith") and agent for Plaza Associates L.P. I respectfully submit this affidavit in support of the plaintiff's motion for summary judgment and in opposition to defendant's motion to dismiss.

2. The closure of the Naval Systems Commands ("NSC") in Crystal City will have a substantial impact on northern Virginia and on Arlington County in particular. Some 19,500 individuals are employed in Arlington as a direct result of the Navy's presence in Crystal City, including 11,397 Navy employees and 7,013 Navy

contractor employees. This represents approximately 15.7 percent of Arlington County office-using employment today. Further, the Navy and Navy contractors occupy approximately 18.6 percent of Arlington County's total inventory of office space.

3. Since the Navy has resided in Crystal City for so many years, I am knowledgeable about the history of its locational plans and decisions. Prior to March 1993, the Navy sought to consolidate the Naval Systems Commands into a single newly-constructed building to be located in Crystal City. The Navy undertook this consolidation action under authority provided in the Federal Property and Administrative Services Act of 1949, not the Base Closure Act.

On March 29, 1990, the U.S. Office of Management and Budget forwarded to Congress a prospectus requesting approval to build a three million square-foot building in northern Virginia to house the NSC. In June and October 1990, the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works, respectively, adopted resolutions authorizing construction of a new building in northern Virginia for the NSC.

The FY 1991 Treasury, Postal Service, General Government Appropriations Act was enacted on November 5, 1990 and included an appropriation of $273 million for construction of the new building. At the same time, a draft Environmental Impact Statement ("DEIS") entitled Draft Environmental Impact Statement, U.S. Naval Systems Commands Consolidation was released.

In April 1991, the General Services Administration (GSA)

solicited offers for land in northern Virginia to build a facility for the commands. That year, AT&T made an offer of land in Crystal City to house one million square feet of the NSC. GSA selected this land and awarded a contract for its purchase. In February 1992, GSA issued a supplemental environmental impact statement for the project, indicating the AT&T site was satisfactory.

GSA took numerous additional steps toward the consolidated NSC facility, including in December 1991 or January 1992, hiring an architect to design the facility, meeting with community groups, conducting environmental tests, and issuing a solicitation for construction of the facility. This solicitation was withdrawn in July 1992, and the consolidation effort was ended.

4. Plaza Associates, L.P. ("partnership") is a limited partnership organized under the laws of the Commonwealth of Virginia which owns, among other buildings, 2211 Jefferson Davis Highway, Arlington, Virginia 22202 (Crystal Plaza 5), and 2221 Jefferson Davis Highway, Arlington, Virginia 22202 (Crystal Plaza 6), buildings of approximately 135,005 and 151,558 square feet, respectively, located in Crystal City, Virginia. The partnership leases Crystal Plaza 5 and 6 to the GSA. Crystal Plaza 5 is occupied by the Naval Sea Systems Command (56,434 square feet) and other Navy tenants. GSA's lease for Crystal Plaza 5 runs until September 29, 1999. That lease has a cancellation clause which GSA can exercise as early as March 1, 1997. GSA's lease

for Crystal Plaza 6 runs until November 30, 1998. That lease has a cancellation clause which GSA can exercise as early as December 1, 1996. Crystal Plaza 6 is occupied by the Naval Sea Systems Command (23,355 square feet), the Naval Supply Systems Command (1,000 square feet) and other government users.

The decision to realign and relocate these leased facilities and the statutory mandate in the Base Closure Act to begin implementation of Base Closure Commission recommendations within 2 years means that GSA will lose the NSC tenants occupying these buildings. As a result of this loss, GSA may exercise the cancellation clause in advance of lease termination. That would deprive the partnership of substantial revenue that it would have received absent the decision to relocate these facilities. At a minimum, the possibility that these clauses will be used raises a substantial level of uncertainty into partnership operations.

The closure of Crystal Plaza 5 and 6 as the offices for the commands will directly harm the partnership. Together these facilities represent more than 80,000 square feet. Lost revenues will be a minimum of $1.4 million because upon NSC vacancy of Crystal Plaza 5 and 6, an unavoidable period of downtime will occur while the building is restored to condition for re-rental and while new tenants are sought. Based on previous experience, this period of downtime will range between 9 months and 1 year. The rental rate for NSC tenants in Crystal 5 is $22.84 per square foot. The rental rate for HSC tenants in Crystal plaza 6 is $23.18. The average rental rate for the NSC tenants in Crystal

Plaza 5 and 6 is calculated as $22.94. The minimum revenue loss can be calculated as follows: $22.94 per square foot x 80,789 square feet x .75 year = $1.4 million.

5. The recommended closure of Crystal Plaza 5 and 6 will immediately and unavoidably cause the partnership to incur direct costs of at least $1.5 million to ready the space for commercial rental.

Further Affiant sayeth naught.

Michael T. Fickel

Michael T. Fickel

Subscribed and Sworn
Before me on
this 16th day of September, 1993

Nola G. Williams

Notary Public

My commission expires October 31, 1997

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1-16.601

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE: FEB 28 1990

LEASE NO.: GS-11B-00074 "NEG"

THIS LEASE, made and entered into this date by and between

Gateway Associates Limited Partnership
c/o Charles E. Smith Management, Inc.

whose address is 2345 Crystal Drive
Arlington, VA 22202

and whose interest in the property hereinafter described is that of owner

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

22,656 net usable square feet of office space being: 8,059 net usable square feet being a portion of the eleventh floor and 14,597 net usable square feet being a portion of the twelveth floor in the building known as Crystal Gateway Three located at 1215 Jefferson Davis Highway, Arlington, Virginia 22202.

to be used for purposes as designated by the Government.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on

December 5, 1989 through December 4, 1996, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $ See Rider 1

at the rate of $ See Rider 1 per See Rider 1 in arrears. Rent for a lesser period shall be prorated. Rent checks shall be made payable to:

Gateway Associates Limited Partnership, c/o Charles E. Smith Management, Inc.
2345 Crystal Drive, Arlington, Virginia 22202

4. The Government may terminate this lease in whole or in part after December 5, 1994 by giving at least See Rider 1 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

~~5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals~~

provided notice be given in writing to the Lessor at least ..... days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term. ~~Such notice shall be computed commencing with the day after the date of mailing.~~

INITIALS: Lessor | Govt.

Initials: Lessor

2-106

RIDER NUMBER 1
OF LEASE CONTRACT NUMBER
GS-11B-00074

1. Lease Rental Agreement
Paragraph 3 of SF-2:

The Lessor shall give the Government a three (3) month rental abatement beginning December 5, 1989, and ending March 4, 1990. Beginning March 5, 1990, the Government shall pay the Lessor annual rent of $617,602.56 at the rate of $51,466.88 per month in arrears. Rent for a lesser period shall be prorated.

2. Government Termination Rights
Paragraph 4 of SF-2:

in whole or in part, in increments consisting of the suites identified in Attachment to Rider 1, pages 3 & 4.

INITIALS
Lessor | Gov.

The Government may terminate this lease after December 5, 1994, by giving at least 180 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

3. The Lessor Shall Provide the Following:

The Lessor shall furnish to the Government, as part of the rental consideration, the following:

A. All services and maintenance necessary for operations as required by this lease and by the Solicitation of Offers(SFO) 89-055.

B. In accordance with SFO 89-055, Paragraph 33, entitled "Painting", all areas identified on the attached floor plan shall be newly painted. The Lessor shall paint the identified surfaces within 120 days of lease award.

Attachment, Rider 1, 1 and 2

INITIALS
Lessor | Govt.

INITIALS
Lessor | Govt.

C. In accordance with SFO 89-055, Paragraph 45, entitled "Carpet", all floor areas identified on the attached floor plan, shall be newly carpeted. A minimum of three (3) color samples shall be submitted to the GSA designated Field Office within forty-five (45) days of award of this lease. The Lessor shall carpet identified floor areas within 210 days of award.

Attachment to Rider 1, pages 1 and 2.

D. In accordance with SFO 89-055, Paragraph 38, entitled "Doors: Identification", all door knobs identified in writing by award as posing a danger to the blind, shall be equipped with a plastic abrasive coating. All warning indicators shall be installed within thirty (30) days of award of this lease.

Lessor _____ Government _____

RIDER NUMBER 1
OF LEASE CONTRACT NUMBER
(CONTINUED)
GS-11B-00074

4. Parking

The Lessor will make at least 43 parking spaces available to the Government tenants housed under this lease agreement at no additional cost to the Government; however, at the Government employee's expense.

INITIALS
Lessor G

5. "Existing" clause:

Certain items or conditions in this solicitation are proposed to be accepted as "Existing". The intent of this qualification is that the Government finds such items or conditions to be at least minimally acceptable in this succeeding lease.

Nonetheless, such items or conditions are to be in "good repair and tenantable condition" at the time of the lease commencement or by any other specified date(s). Further, the Lessor is to maintain (or replace, if necessary) such items or conditions so that they remain in "good repair and tenantable condition" throughout the term of this lease. If replacement is or becomes necessary, such replacement must be no less than equal, in quality and function to the existing.

6. Government's Option for Additional Space:

In the event that a minimum of 5,900 contiguous net usable square feet becomes available in Crystal Gateway Three located at 1215 Jefferson Davis Highway, Arlington, Virginia, the Lessor will notify the Government in writing. The Lessor shall also provide, at the same time, a 1/8th inch blue line drawing of the space offered to the Government. The Government will be given sixty (60) days from receipt of the Lessor's notification and drawings to determine if it is in the Government's best interests to exercise this option. The space offered under this option will be subject to net usable measurement by the Government.

If the Government chooses to exercise this option for additional space within the designated period of time, the term of said space will be co-terminous with this Lease Contract GS-11B-00074. All conditions, concessions, and rental agreements shall be subsequently agreed to by the parties.

Additionally, upon agreement on the conditions, concessions, and rental agreements, a Supplemental Lease Agreement will be issued to record and amend this Lease Contract GS-11B-00074.

Lessor _____ Government _____

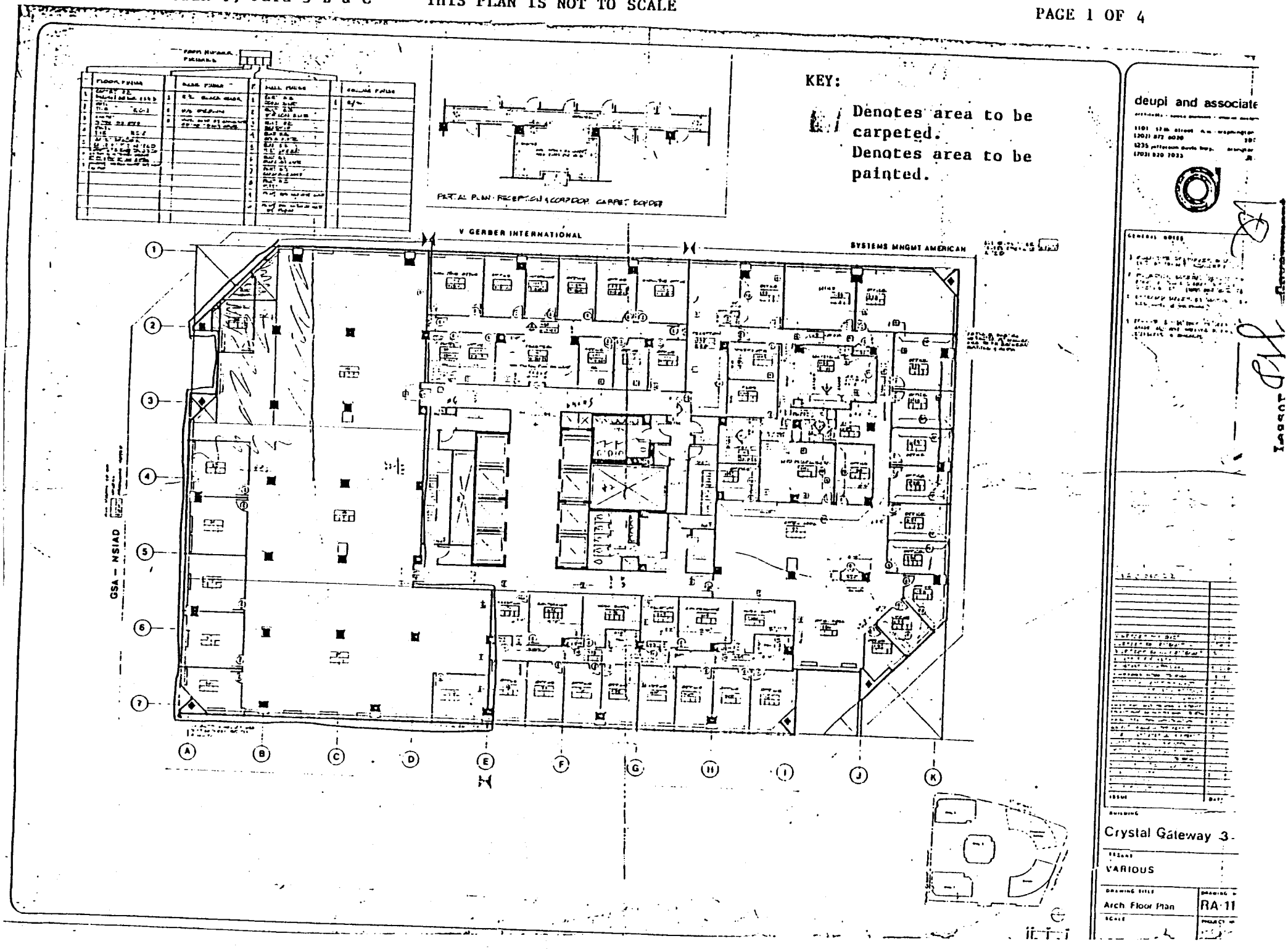
RIDER NUMBER 1
OF LEASE CONTRACT NUMBER
(CONTINUED)
GS-11B-00074

7. Overtime Rate

The Lessor and the Government will agree to an overtime services rate within 90 days of lease award. When the services rate is agreed upon, a Supplemental Lease Agreement will be issued to record and amend this Lease Contract GS-11B-00074. However, until an overtime services rate is agreed upon, the Government's designated Field Office will notify the Lessor when overtime operation of the building systems are necessary. After the overtime services are rendered, the Lessor will submit actual bills and receipts to the GSA designated Field Office as proof of the overtime expenses incurred at the subject building. The Government will be given the time and opportunity to review, discuss, and negotiate these expenses with the Lessor prior to payment.

Lessor _____ Government _____

ATTACHMENT TO RIDER 1, Para 3 B & C THIS PLAN IS NOT TO SCALE

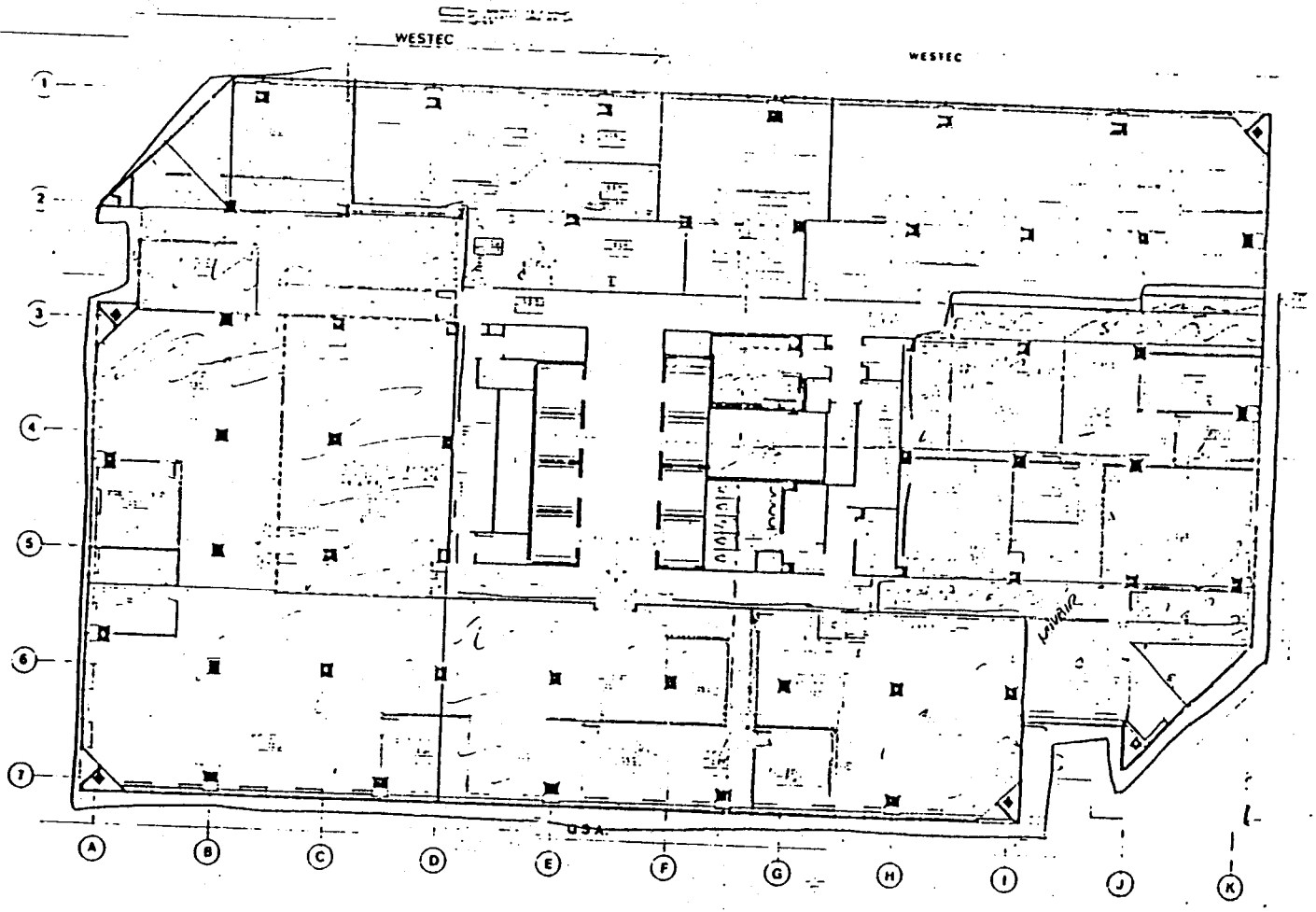


FLOOR | NO | BASE | NO | WALL | NO | CEILING

KEY:

Denotes area to be carpeted.

Denotes area to be painted.



deupi and associates

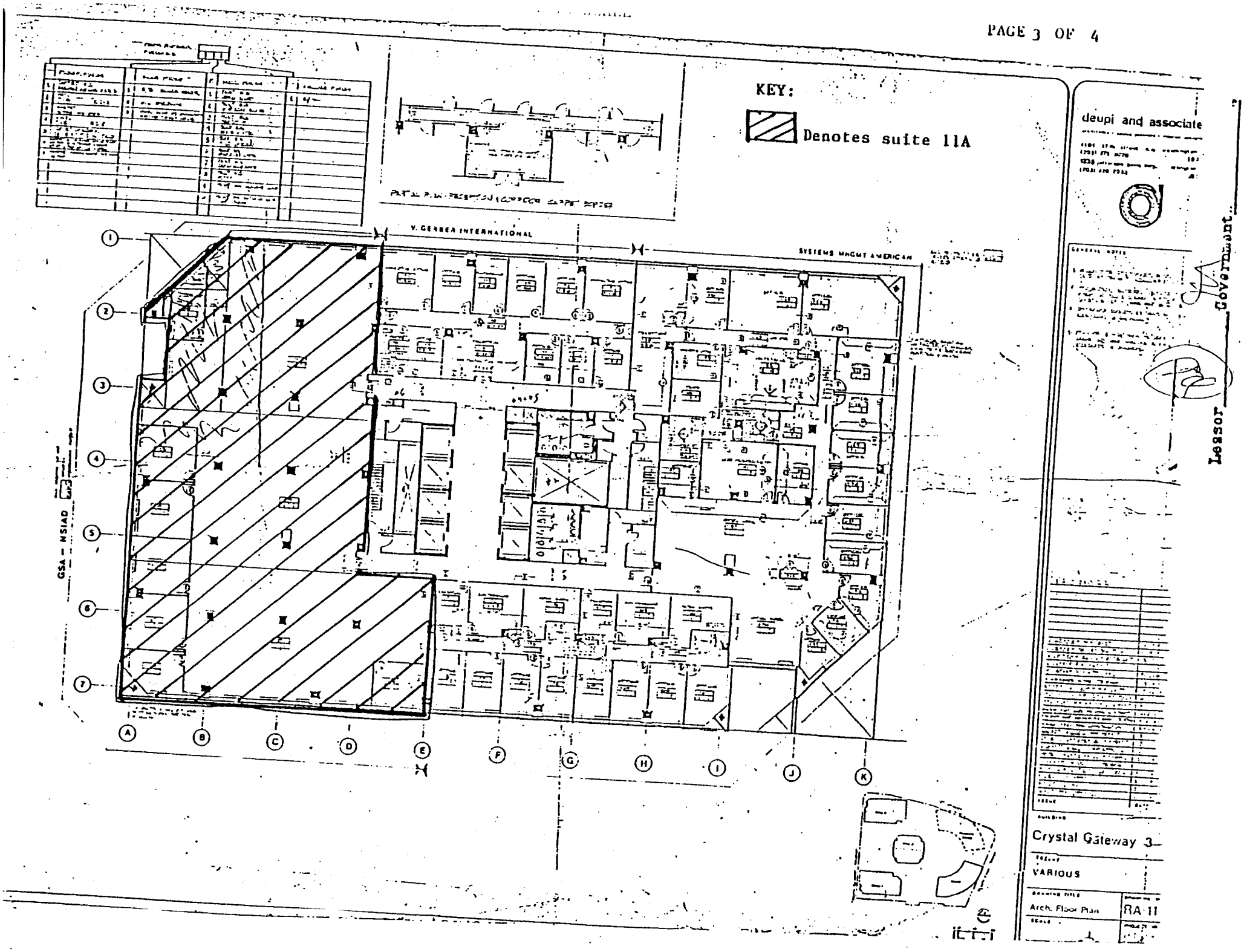
Crystal Gateway 3

VARIOUS

Arch. Floor Plan

RA-12

Lessor Government


KEY:
Denotes suite 11A
V. GERBER INTERNATIONAL
SYSTEMS MNGMT AMERICAN
GSA - NSIAD
deupi and associate
Lessor Government
Crystal Gateway 3
VARIOUS
Arch. Floor Plan
RA-11

THIS PLAN IS NOT TO SCALE

KEY:

Denotes suite 12A

Denotes suite 12B

Denotes suite 12C

WESTEC

WESTEC

1 2 3 4 5 6 7

A B C D E F G H I J K

deupi and associates

Crystal Gateway 3

Arch. Floor Plan

RA-12

Government Square

PUBLIC BUILDING SERVICE

SUPPLEMENTAL LEASE AGREEMENT

NO. - SEP 27 1997

TO LEASE NO GSD - GS-11B-00074

ADDRESS OF PREMISES Crystal Gateway Three
1215 Jefferson Davis Highway
Arlington, VA 22202

THIS AGREEMENT, made and entered into this date by and between

Gateway Associates Limited Partnership
c/o Charles E. Smith Management, Inc.
whose address is 2345 Crystal Drive
Arlington, Virginia 22202

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease,

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective _____, as follows:

Issued to reflect an increase of 7,875 net usable square feet of space at the Crystal Gateway III Building, as identified on the attached floor plan, in accordance with paragraph 6 of Rider Number 1. The following paragraphs are hereby amended as follows:

Paragraph 1 of the basic lease:

30,531 net usable square feet of office space being: 7,875 net usable square feet being a portion of the tenth floor, 8,059 net usable square feet being a portion of the eleventh floor, and 14,597 net usable square feet being a portion of the twelfth floor in the building known as Crystal Gateway Three located at 1215 Jefferson Davis Highway, Arlington, Virginia 22202.

The alterations for the tenth floor space will be at additional expense subject to negotiation by the parties, not to exceed $150,8[illegible]2.00. At the option of the Government, all or part of the alterations cost may be ammortized over the term of the rental at the interest rate of 10%. In the event the Government exercises its right to terminate the lease

All other terms and conditions of the lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date:

LESSOR

Gateway Associates Limited Partnership

BY _____ General Partner
Robert H. Smith (Signature) (Title)

IN PRESENCE OF

_____ _____
(Signature) (Address)

UNITED STATES OF AMERICA

BY _____ Contracting Officer
(Signature) (Official Title)

GSA DC 68D1178

GSA FORM JUL 87 276

prior to the expiration date, the unamortized portion of the cost of the alterations would be payable to the Lessor in a lump sum.

Upon substantial completion the of alterations and Government acceptance, subject to punch list items, rent shall commence for the additional space and shall be coterminous with the prime lease. Rent for the tenth floor space will be $214,672.50 per annum payable at the rate of $17,889.38 per month in arrears. The effective date for rental payments shall be established by Supplemental Lease Agreement (SLA) upon Government acceptance of the space.

Paragrah 18 of the SFO:

The percentage of Government occupancy for tax purposes is 11.9%.

Paragrah 19 of the SFO:

The base year operating cost for escalation purposes is $136,609.25. The effective date for escalations will remain December 5 of each year.

INITIALS

Lessor	Govt.

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1D16.601

U.S. GOVERNMENT
LEASE FOR REAL PROPERTY

DATE OF LEASE JUN 8 1992

LEASE NO. GS-11B-20689 "Negotiated"

THIS LEASE, made and entered into this date by and between

Third Gateway Associates Limited Partnership
c/o Charles E. Smith Management, Inc.
2345 Crystal Drive
whose address is Arlington, Virginia 22202

and whose interest in the property hereinafter described is that of owner

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

A total of 58,314 net usable square feet (nusf), being the entire 3rd floor, the entire 4th floor, the entire 5th floor, the entire 6th floor and 10,094 square feet on the 7th floor, totaling 58,314 square feet of office space located in Crystal Gateway Four, 1213 Jefferson Davis Highway, Arlington, Virginia 22202.

to be used for such purposes as will be designated by the General Services Administration.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on

November 1, 1991 through October 31, 1998, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $ 1,457,850.00

at the rate of $ 121,487.50 per month in arrears. Rent for a lesser period shall be prorated. Rent checks shall be made payable to: Charles E. Smith, Inc.
2345 Crystal Drive, Arlington, Virginia 22202

4. The Government may terminate this lease at any time after the 3rd year of the lease by giving at least 365 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

~~5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:~~

~~provided notice be given in writing to the Lessor at least _____ days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term.~~
~~Said notice shall be computed commencing with the day after the date of mailing.~~

INITIALS
Lessor | Govt.

EXCEPTION TO SF2 APPROVED BY GSA / IRMS 12D89

6. **The Lessor shall furnish to the Government, as part of the rental consideration, the following:**

A. The Lessor shall provide all services, utilities and maintenance in accordance with SFO No. 91-120, as amended, and its attachments.

B. The Lessor will paint space occupied by the tenant after working hours at his own expense, including moving and returning furniture, within 90 days of lease award.

C. Certain items or conditions in the Lease have been "Accepted as Existing". The intent of this qualification is to give proper recognition to the fact that this lease is a succeeding lease and that the Government has found such items to be at least minimally acceptable with regard to the Government's continued occupancy of the space. However, Lessor is not relieved from compliance with the basic provisions and specifications as contained in this lease for future alterations, construction and/or improvements unless the Contracting Officer determines that the proposed alterations, construction and/or improvements are acceptable; said acceptance will be required to maintain his responsibilities, as identified in the Lease, and any attachments, in the condition as specified at the time of award.

7. **The following are attached and made a part hereof:**

A. SFO No. 91-120 (30 pages)
B. GSA Form 3517 (24 pages)
C. GSA Form 3518 (8 pages)
D. GSA Form 1217 (1 page)
E. Rider I (2 pages)
F. Rider II (1 page)
G. Rider III (2 pages)
H. Amendment to SFO #91-120 dated 11/22/91 (1 page)
I. Floor Plan of 7th floor

8. **The following changes were made to this Lease prior to its execution: Paragraph 4 of this SF-2 has been amended and Paragraph 5 has been deleted in its entirety.**

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR Third Gateway Associates, L.P.

BY _____ (Signature) Robert H. Smith

_____ (Signature) Robert P. Kogod

IN PRESENCE OF:

_____ (Signature)

_____ (Address)

UNITED STATES OF AMERICA

BY _____ (Signature)

Contracting Officer, RED, NCR
General Services Administration
(Official Title)

STANDARD FORM 2
FEBRUARY 1965 EDITION

EXCEPTION TO SF2
APPROVED BY GSA / IRMS 12D89

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES ADMINISTRATION
FPR (41CFR) 1D16.601

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE: NOV 29 1991

LEASE No. GS-11B-10268 "NEG" NOV 29 1991

THIS LEASE, made and entered into this date between Plaza Associates Limited Partnership

whose address is: c/o The Charles E. Smith Copanies
1735 Jefferson Davis Highway
Arlington, VA 22202

and whose interest in the property hereinafter described is that of OWNER, hereinafter called the LESSOR, and the UNITED STATES OF AMERICA, hereinafter called the Government.

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

A TOTAL OF 137,162 NET USABLE SQUARE FEET (NUSF) OF OFFICE AND RELATED SPACE CONSISTING OF FLOORS 2 THROUGH 12 BEING 129,285 NUSF, A PORTION OF THE 1ST FLOOR BEING 5,607 NUSF, AND A PORTION OF THE LOWER LEVEL BEING 2,270 NUSF AS SHOWN ON THE ATTACHED FLOOR PLANS. THE SPACE IS LOCATED AT THE BUILDING KNOWN AS CRYSTAL PLAZA 6, 2221 JEFFERSON DAVIS HIGHWAY ARLINGTON, VA 22202.

to be used for SUCH PURPOSES AS DETERMINED BY THE GOVERNMENT.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on DECEMBER 1, 1991, through NOVEMBER 30, 1996, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $3,154,726.00 at the rate of $262,893.83 per MONTH in arrears. Rent for a lesser period shall be prorated. Rent checks shall be made payable to: CHARLES E. SMITH COMPANIES, ~~1735 JEFFERSON DAVIS HIGHWAY~~ 2345 Crystal Drive, ARLINGTON, VA 22202.

LESSOR	GOVT

4. The Government may terminate this lease after the 5th year by giving at least 120 day's notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

~~5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:~~

provided notice be given in writing to the ~~Lessor at least~~ _____ days before the end of the original lease term or any renewal term; all other ~~terms and~~ conditions of this lease shall remain the same during any renewal term. Said notice shall be ~~computed commencing with the day after the date of mailing.~~

EXCEPTION TO SF2 APPROVED GSA/RMS 12D89

6. The Lessor shall furnish to the Government as part of the rental consideration, the following:

A. ALL SERVICES, MAINTENANCE, ALTERATIONS, REPAIRS, AND UTILITIES IN ACCORDANCE WITH SFO NO. 91-084 as amended.

7. The following are attached and made a part hereof:

1. SOLICITATION FOR OFFERS NO. 91-084 - 31 PAGES
2. AMENDMENT NO. 1 - 1 PAGE
3. GSA FORM 1217, LESSOR'S ANNUAL COST STATEMENT - 1 PAGE
4. LEASE RIDER NO. 1 - 1 PAGE
5. LEASE RIDER NO. 2 - 1 PAGE
6. LEASE RIDER NO. 3 - 1 PAGE
7. LEASE RIDER NO. 4 - 1 PAGE
8. LEASE RIDER NO. 5 - 2 PAGES
9. LEASE RIDER NO. 6 - POSITIVE CERTIFICATION FOR ASBESTOS/ACTION PLAN - 3 PAGES
10. FLOORPLANS OF LEASED AREA - 13 PAGES
11. GSA FORM 3517, GENERAL CLAUSES (REV 1/91), 24 PAGES
12. GSA FORM 3518, REPRESENTATIONS AND CERTIFICATIONS (REV 1/91), 8 PAGES

8. The following changes were made in this lease prior to its execution:

PARAGRAPH 5 OF THIS STANDARD FORM 2 HAS BEEN DELETED IN ITS ENTIRETY.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed thier names as of the date first above written.

LESSOR - PLAZA ASSOCIATES LIMITED PARTNERSHIP C/O THE CHARLES E. SMITH COMPAINES
BY ITS AGENT, CHARLES E. SMITH MANAGEMENT INC.,

BY _____ BY _____
ROBERT SMITH

IN PRESENCE OF _____ ADDRESS _____

UNITED STATES OF AMERICA

BY _____ CONTRACTING OFFICER, GSA, NCR, OPR, RED
MS. NANCY CARVER

STANDARD FORM 2
FEBRUARY 1965 EDITION

EXCEPTION TO SF2 APPROVED