BASE REDEVELOPMENT AND REALIGNMENT MANUAL

March 1, 2006

OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE
(INSTALLATIONS AND ENVIRONMENT)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION,
TECHNOLOGY
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FOREWORD

This Manual is reissued under the authority of DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L))," December 9, 2005 (reference (a)). It prescribes the procedures on how to reuse and redevelop bases. DoD 4165.66-M, "Base Reuse Implementation Manual," December 1, 1997, is hereby canceled.

This Manual applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components.")

This Manual is effective immediately and is mandatory for use by all the DoD Components.

Send recommended changes to this Manual to the following address:

Office of the Deputy Under Secretary of Defense
(Installations and Environment)
3400 Defense Pentagon, Room 5C646
Washington, DC 20301-3400

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Philip W. Grone
Deputy Under Secretary of Defense
(Installations and Environment)

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REFERENCES[1]

(a) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L))," December 9, 2005
(b) DoD 4165.66-M, "Base Reuse Implementation Manual," December 1, 1997 (hereby canceled)
(c) Title 10, United States Code 2687, "Defense Base Closure and Realignment Act of 1990" (Public Law 101-510), as amended
(d) Title 42, United States Code 7401 - 7661, "Clean Air Act"
(e) Title 32, Code of Federal Regulations, Parts 174 and 176, current edition, "Revitalizing Base Closure Communities and Addressing Impacts of Realignment"
(f) Title 42, United States Code 9601 - 9675, "Comprehensive Environmental Response, Compensation and Liability Act," as amended
(g) Title 42, United States Code 9620, "Community Environmental Response Facilitation Act"
(h) Title 40, United States Code 102, "Public Buildings, Property, and Works," "Federal Property and Administrative Services: Purpose and Definitions"
(i) Title 41, Code of Federal Regulations Part 102-71.20, "Public Contracts and Property Management - Definitions"
(j) Title 49, United States Code 47151 - 47153, "Authority to Transfer Interest in Surplus Property"
(k) Title 42, United States Code 11411(i)(4), "Stewart B. McKinney Homeless Assistance Act"
(l) Title 16, United States Code 668, "Bald and Golden Eagle Protection Act"
(m) Title 33, United States Code 251 - 1387, "Clean Water Act"
(n) Title 16, United States Code 1451 - 1464, "Coastal Zone Management Act"
(o) Title 16, United States Code 1531 - 1544, "Endangered Species Act"
(p) Title 7, United States Code 136, "Federal Insecticide, Fungicide and Rodenticide Act"
(q) Title 42, United States Code 4801 - 4846, "Lead-Based Paint Poisoning Prevention Act"
(r) Title 16, United States Code 703 - 712, "Migratory Bird Treaty Act"
(s) Title 25, United States Code 3001 - 3013, "Native American Graves Protection and Repatriation Act"
(t) Title 42, United States Code 4321 - 4370a, "National Environmental Policy Act"
(u) Title 16, United States Code 470(h), "National Historic Preservation Act"
(v) Title 42, United States Code 6901, "Resource Conservation and Recovery Act"
(w) Title 42, United States Code 300f - 300j, "Safe Drinking Water Act"
(x) Title 15, United States Code 2601 - 2671, "Toxic Substances Control Act"
(y) Title 20, Code of Federal Regulations Parts 652, 660 - 671, "Workforce Investment Act"
(z) Department of Defense, "Base Closure and Realignment Report," May 2004
(aa) "Responding to Change: Communities and BRAC," Office of Economic Adjustment
(ab) Title 41, Code of Federal Regulations Parts 102 - 75, "Real Property Disposal"
(ac) "Organizing for BRAC," Office of Economic Adjustment

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[1] For most United States government documents, including United States Code and the Code of Federal Regulations, go to the U.S. Government Printing Office (GPO) Web site database: http://www.gpoaccess.gov/databases.html

(ad) Section 2915 of Public Law 103 - 160, "National Defense Authorization Act for Fiscal Year 1994," "Transition Coordinators for Assistance to Communities Affected by Closure of Installations"
(ae) Joint Travel Regulations, Volume 2
(af) Federal Acquisition Regulation, Part 52.207 - 3, "Right of First Refusal of Employment"
(ag) Title 5, United States Code 9902(j), "DoD National Security Personnel System (NSPS)"
(ah) Title 5, United States Code 3341, "Details, within Executive or Military Departments"
(ai) Section 1013 of Public Law 89 - 754, "Demonstration Cities and Metropolitan Development Act of 1966"
(aj) General Services Administration Form 1334, "Request for Transfer of Excess Real and Related Personal Property"
(ak) Department of Defense Form 1354, "Transfer and Acceptance of Military Real Property"
(al) Title 43, Code of Federal Regulations 2372, "Restoration and Revocations"
(am) Title 24, Code of Federal Regulations 586, "Revitalizing Base Closure Communities and Community Assistance"
(an) Deputy Under Secretary of Defense Memorandum, "Defense Environmental Restoration Program Management Guidance," September 28, 2001
(ao) Title 10, United States Code 2694a, "Conveyance of Surplus Real Property for Natural Resource Conservation"
(ap) "Guidelines on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3)__ Early Transfer Authority Guidance," Environmental Protection Agency
(aq) Title 10, United States Code 2869, "Conveyance of Property at Military Installations Closed or Realigned to Support Military Construction"
(ar) Title 36, Code of Federal Regulations 800, "Protection of Historic Properties"
(as) Title 36, Code of Federal Regulations 63, "Determinations of Eligibility for Inclusion in the National Register of Historic Places"
(at) Executive Order 13007, "Indian Sacred Sites"
(au) Title 10, United States Code 2692, "Storage, Treatment, and Disposal of Nondefense Toxic and Hazardous Materials"
(av) Title 16, United States Code 431 - 433, "Antiquities Act"
(aw) Title 16, United States Code 469, "Reservoir Salvage Act" and "Archaeological and Historic Preservation Act"
(ax) Title 16, United States Code 470aa - mm, "Archaeological Resources Protection Act"
(ay) Title 36 Code of Federal Regulations 79, "Curation of Federally-Owned and Administered Archaeological Collections"
(az) 41 Code of Federal Regulations 102-14 through 102-220, Personal Property, Donation of Personal Property
(ba) 41 Code of Federal Regulations 102-37, Donation of Surplus Personal Property
(bb) 41 Code of Federal Regulations 102-38, Sale of Personal Property
(bc) Title 15, United States Code 3701-3714, "Stevenson-Wydler Technology Innovation Act of 1980"
(bd) Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century"
(be) Executive Order 11988, "Floodplain Management"
(bf) Executive Order 11990, "Wetlands"

(bg) Title 50, Code of Federal Regulations 402, "Interagency Cooperation - Endangered Species Act of 1973," as amended
(bh) Title 50, Code of Federal Regulations 17.11, 17.12, 17.95, 17.96, "Endangered and Threatened Wildlife and Plants"
(bi) Title 36, Code of Federal Regulations 800.5, "Protection of Historic Properties"
(bj) Early Transfer Authority: A Guide to Using ETA to Dispose of Surplus Property," Department of Defense, October 2004
(bk) Title 10, United States Code 2667, "Leases: Non-Excess Property of Military Departments"
(bl) Title 40, Code of Federal Regulations Code 264, "Hazardous Waste at Permitted Facilities," 265, "Hazardous Waste at Interim Status Facilities," and 280, "Regulated Substances Subject to the Underground Storage Tank Provisions"
(bm) Office of the Under Secretary of Defense (AT&L), Memorandum "Asbestos Cleanup," October 31, 1994
(bn) Title X, United States Code 2667, "Residential Lead-Based Paint Hazard Reduction Act"
(bo) Office of the Under Secretary of Defense (AT&L), Memorandum, "Lead-Based Paint," January 7, 2000
(bp) Lead-Based Paint Guidelines for Disposal of DoD Residential Real Property: A Field Guide (Interim Final - December 1999)
(bq) Title 40, Code of Federal Regulations 761.1, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions"
(br) Public Law 109-163, "National Defense Authorization Act for Fiscal Year 2006"
(bs) DoD Directive 4165.6, "Real Property," October 13, 2004
(bt) DoD Directive 4165.63, "DoD Housing," January 8, 2005
(bu) National Defense Authorization Act for Fiscal Years 1992 and 1993 (NDAA 92/93), Pub. L. 102-190 §§ 334(a), 2821, 2827
(bv) National Defense Authorization Act for Fiscal Year 1993 (NDAA 93), Pub. L. 102-484
(bw) National Defense Authorization Act for Fiscal Year 1995 (NDAA 95), Pub. L. 103-337
(bx) National Defense Authorization Act for Fiscal Year 2005 (Section 2400 of Public Law 108-375, as amended)
(by) Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Redevelopment Act), Pub. L. 103-421
(bz) National Defense Authorization Act for Fiscal Year 1996 (NDAA 96), Pub. L. 104-106
(ca) National Defense Authorization Act for Fiscal Year 1997 (NDAA 97), Pub. L. 104-201
(cb) Federal Property Management Regulations, 41 CFR Part 101-47 (Real Property) and 41 CFR Parts 101-43–101-45 (Personal Property)
(cc) Surplus Property Act (SPA), 50 U.S.C. App. § 1622(d) and 49 U.S.C. §§ 47151–47153
(cd) Act of May 19, 1948, 16 U.S.C. § 667b-d
(ce) Indian Self-Determination Act, 25 U.S.C. §§ 450f–450n
(cf) Indian Reorganization Act, 25 U.S.C. §§ 461–479
(cg) Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a–1975d, 2000a–2000h-6
(ch) Rehabilitation Act of 1973, 29 U.S.C. §§ 701–709, 720–724, 730–732, 740, 741, 750, 760–764, 770–776, 780–787, 790–794
(ci) Public Buildings Cooperative Use Act (PBCUA), 40 U.S.C. §§ 490, 601a, 606, 611, and 612a
(cj) 10 U.S.C. § 2391 (Military Base Reuse Studies and Community Planning Assistance)

(ck) Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §§ 2641–2655; 40 CFR Part 763
(cl) American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996
(cm) Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. §§ 661–666
(cn) Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361-1421
(co) Watershed Protection and Flood Prevention Act (WPFPA), 16 U.S.C. § 1001 et seq.; 33 U.S.C. § 701-1
(cp) Wild and Scenic Rivers Act (WSRA), 16 U.S.C. § 1271 et seq
(cq) Executive Order 12088, "Federal Compliance with Pollution Control Standards," May 23, 1995
(cr) Executive Order 12372 (as amended by Executive Order 12416), "Intergovernmental Review of Federal Programs," July 14, 1982
(cs) Executive Order 12580, "Superfund Implementation," January 23, 1987
(ct) Executive Order 12788, January 15, 1992, as amended by Executive Order 13378, "Defense Economic Adjustment Program," May 12, 2005
(cu) Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994
(cv) Executive Order 13089, "Coral Reef Protection," June 15, 1998
(cw) DoD Directive 3030.1, "Office of Economic Adjustment," November 12, 2004
(cx) DoD Instruction 4715.4, "Pollution Prevention," June 18, 1996
(cy) DoD Directive 4500.34, "DoD Personal Property Shipment and Storage Program," May 6, 2004
(cz) DoD Directive 5410.12, "Economic Adjustment Assistance to Defense-impacted Communities," December 22, 1987
(da) DoD Instruction 4165.68, "Revitalizing Base Closure Communities and Community Assistance - Community Redevelopment and Homeless Assistance," May 27, 1997
(db) 32 CFR Part 651 (Army Regulation 200-2), Department of the Army Environmental Analysis of Army Actions
(dc) 32 CRF Part 775, Department of Navy Procedures for Implementing the National Environmental Policy Act
(dd) 32 CFR Part 989, Department of the Air Force Environmental Impact Analysis Process
(de) DLA Regulation 1000.22, Environmental Considerations in DLA Actions in the United States, November 2002

DEFINITIONS

D1.1. DEFINED TERMS:

D1.1.1. Base Closure Law. The provisions of Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526, 102 Stat. 2623, 10 U.S.C. 2687 note), and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C 2687 note) (reference (c)).

D1.1.2. Base Realignment and Closure (BRAC). The process that the Department of Defense uses to reorganize its installation infrastructure to more efficiently and effectively support its forces, increase operational readiness, and facilitate new ways of doing business. The Department of Defense anticipates that BRAC 2005 will build upon processes used in previous BRAC efforts. [Source: OSD Web site (http://www.dod.gov/brac/docs/definitions012004.pdf)]

D1.1.3. Clean Air Act (reference (d)). This Act provides the nation's air pollution control program. The program is carried out by the Environmental Protection Agency and state regulatory programs.

D1.1.4. Closure. An action that ceases or relocates all current missions of an installation and eliminates or relocates all current personnel positions (military, civilian, and contractor), except for personnel required for caretaking, conducting any ongoing environmental cleanup, or property disposal. Retention of a small enclave, not associated with the main mission of the base, is still a closure. [See: 32 CFR 174 (reference (e))]

D1.1.5. Commission. The Commission established by section 2902 of the Defense Base Closure and Realignment Act, also referred to as the BRAC Commission. [See: http://www.dod.gov/brac/docs/definitions012004.pdf]

D1.1.6. Communities in the vicinity of the installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation. [Source: Section 2905(b)(7)(O) of reference (c)]

D1.1.7. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (reference (f)). Also known as the "Superfund Act," CERCLA is the legal framework for the identification and restoration of contaminated property.

D1.1.8. Community Environmental Response Facilitation Act (reference (g)). This Act amends reference (f) to require identification of uncontaminated parcels at closing bases and allows clean parcels to be transferred while long-term cleanup of contaminated parcels continues.

D1.1.9. Consultation. Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement. [See

reference (e)]

D1.1.10. Cost of Base Realignment Actions (COBRA). An analytical tool for calculating the costs, savings, and return on investment of proposed realignment and closure actions. [Source: OSD Web site (http://www.dod.gov/brac/docs/definitions012004.pdf)]

D1.1.11. Date of Approval. The date on which the authority of the Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under reference (c) expires. [See reference (e)]

D1.1.12. Economic Development Administration (EDA). The EDA, which is a part of the Department of Commerce, provides economic development grants to help communities implement their economic development plans.

D1.1.13. Excess property. Property under the control of a Federal agency that the head of the agency determines is not required to meet the agency's needs or responsibilities. [See 40 U.S.C. 102(3) (reference (h))].

D1.1.14. Highest and Best Use. The most likely use to which a property can be put, which will produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g., zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural. [See: 41 CFR Part 102-71.20 (reference (i))]

D1.1.15. Installation. 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. It 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. [See reference (e)]

D1.1.16. Local Redevelopment Authority (LRA). Any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan. [See reference (e)]

D1.1.17. Military Departments. The Departments of the Army, Navy, and Air Force.

D1.1.18. Office of Economic Adjustment. An organization within the Department of Defense that is in charge of helping communities plan for base closure and realignments. The agency also provides planning grants to impacted communities.

D1.1.19. Other Interested Parties. Includes any parties eligible for the conveyance of

property of the installation under section 550 of title 40, United States Code, or sections 47151 through 4717153 of title 49, United States Code, whether or not the parties assist the homeless.

D1.1.20. Private nonprofit organization. An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual, that has a voluntary board, an accounting system, or designated an entity that will maintain a functioning accounting system for the organization according to generally accepted accounting procedures, and practices nondiscrimination in the provision of assistance. [See reference (e)]

D1.1.21. Public benefit conveyance. The transfer of surplus military property for a specified public purpose at up to a 100 percent discount. [See 49 U.S.C. 47151-47153 (reference (j))]

D1.1.22. Realignment. Any action that 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.

D1.1.23. Redevelopment authority. See "Local Redevelopment Authority" above.

D1.1.24. Redevelopment plan. A plan, agreed to by the LRA with respect to the installation, which provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment because of the closure or realignment of the installation.

D1.1.25. Representative of the homeless. A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless. [See section 501(i)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(i)(4) (reference (k))].

D1.1.26. Surplus property. Excess property that the Administrator or the Secretary concerned determines is not required to meet the needs or responsibilities of all Federal agencies. [See 40 U.S.C. 102(10) (reference (h))]

ACRONYMS

Acronym	Definition
ACHP	Advisory Council on Historic Preservation
ACM	Asbestos containing material
AQCR	Air quality control region
BGEPA	Bald and Golden Eagle Protection Act, 16 U.S.C. 668 (reference (l))
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOQ	Bachelor Officer's Quarters
BRAC	Base Realignment and Closure
BTC	Base transition coordinator
CAA	Clean Air Act, 42 U.S.C. 7401, as amended (reference (d))
CAAA	Clean Air Act Amendments of 1990
CARE	Civilian Assistance and Re-Employment Program
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, as amended (reference (f))
CFR	Code of Federal Regulations
CMP	Coastal Management Programs
CWA	Clean Water Act, 33 U.S.C. 251–1387, as amended (reference (m))
CZMA	Coastal Zone Management Act, 16 U.S.C. 1451–1464 (reference (n))
DBCRA 90	Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended (reference (c))
DEIS	Draft Environmental Impact Statement
DoD	Department of Defense
DoEd	Department of Education
DOI	Department of the Interior
DOL	Department of Labor
DORS	Defense Outplacement Referral System
DRMO	Defense Reutilization and Marketing Office

Acronym	Definition
EA	Environmental assessment
EAC	Economic Adjustment Committee
EBS	Environmental baseline survey
ECP	Environmental condition of property
EDA	Economic Development Administration
EDC	Economic development conveyance
EIS	Environmental Impact Statement
EO	Executive Order
EPA	Environmental Protection Agency
ERC	Emission reduction credit
ESA	Endangered Species Act, 16 U.S.C. 1531–1544 (reference (o))
EUL	Enhanced Use Leasing
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FEHB	Federal employee health benefits
FEIS	Final Environmental Impact Statement
FHA	Federal Housing Authority
FHWA	Federal Highway Administration
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 (reference (p))
FONSI	Finding of No Significant Impact
FOSL	Finding of Suitability to Lease
FOST	Finding of Suitability to Transfer
GSA	General Services Administration
HAP	Homeowners Assistance Program
HR	Human resources
HRO	Human resources office
HRMA	Housing Requirement Market Analysis
HUD	Department of Housing and Urban Development

Acronym	Definition
IAG	Interagency Agreement
ICTAP	Interagency career transition assistance plan
LBPPPA	Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801–4846 (reference (q))
LRA	Local Redevelopment Authority
MARAD	Maritime Administration
MBTA	Migratory Bird Treaty Act, 16 U.S.C. 703–712 (reference (r))
MWR	Morale Welfare and Recreation
NAF	Non-appropriated fund
NAGPRA	Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001—3013 (reference (s))
NEPA	National Environmental Policy Act of 1969, 42 U.S.C. 4321, as amended (reference (t))
NHPA	National Historic Preservation Act, 16 U.S.C. 470 (reference (u))
NOA	Notice of Availability
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
OEA	Office of Economic Adjustment
OPM	Office of Personnel Management
OPS	Operating properly and successfully
OSD	Office of the Secretary of Defense
PBC	Public Benefit Conveyance
PCBs	Polychlorinated biphenyls
PCS	Permanent change of station
PPP	Priority Placement Program
Pub. L.	Public Law
RAB	Restoration Advisory Board
RCRA	Resource Conservation and Recovery Act (reference (v))
RIF	Reduction in Force
ROD	Record of Decision

Acronym	Definition
RPL	Reemployment Priority List
SDWA	Safe Drinking Water Act, 42 U.S.C. 300f–300j-26 (reference (w))
SIP	State Implementation Plan
TCP	Traditional Cultural Properties
TSCA	Toxic Substances Control Act, 15 U.S.C. 2601–2671 (reference (x))
U.S.C.	United States Code
VA	Department of Veterans Affairs
VERA	Voluntary Early Retirement Authority
VRIF	Voluntary Reduction in Force
VSIP	Voluntary Separation Incentive Program
WIA	Workforce Investment Act (reference (y))

C1. CHAPTER 1

INTRODUCTION

C1.1. PURPOSE

This Manual, which has been prepared by the Deputy Under Secretary of Defense (Installations and Environment), in cooperation with the DoD Components, has several objectives:

C1.1.1. Supersede DoD 4165.66-M, "Base Reuse Implementation Manual," December 1997.

C1.1.2. Provide a common set of guidelines for BRAC 2005 and remaining incomplete actions from prior BRAC rounds that allow flexibility for base redevelopment implementation.

C1.1.3. Provide supplemental guidance for carrying out the laws and regulations for closing installations and revitalizing base closure communities and community assistance (e.g., Public Law 101-510 as amended and 32 CFR Parts 174 and 176 (references (c) and (e)).

C1.1.4. Identify common-sense approaches and general practices to follow during base closure and redevelopment implementation.

C1.2. APPLICABILITY

This Manual 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 Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components"). The provisions of this Manual are subject to, and should be interpreted in accordance with, 32 CFR parts 174 and 176 (reference (e)).

C1.3. POLICY

For over 4 decades, the Department of Defense has recognized its responsibility to assist the communities that have hosted its installations. Consistent with that responsibility, the Department of Defense Base Closure and Realignment Report, May 2005 (reference (z)), established the following policy guidance:

C1.3.1. Act expeditiously, whether closing or realigning. Relocating activities from installations designated for closure will, when feasible, be accelerated to facilitate the transfer of real property for community reuse. In the case of realignments, the Department of Defense will pursue aggressive planning and scheduling of related facility improvements at the receiving locations.

C1.3.2. Fully utilize all appropriate means to transfer property. Federal law provides the Department of Defense with an array of legal authorities, including public benefit transfers,

economic development conveyances at cost and no cost, negotiated sales to State or local government, conservation conveyances, and public sales, by which to transfer property on closed or realigned installations. Recognizing that the variety of types of facilities available for civilian reuse and the unique circumstances of the surrounding communities does not lend itself to a single universal solution, the Department of Defense will use this array of authorities in a way that considers individual circumstances.

C1.3.3. Rely on and leverage market forces. Community redevelopment plans and military conveyance plans should be integrated to the extent practical and should take account of any anticipated demand for surplus military land and facilities.

C1.3.4. Collaborate effectively. Experience suggests that collaboration is the linchpin to successful installation redevelopment. Only by collaborating with the local community can the Department of Defense close and transfer property in a timely manner and provide a foundation for solid economic redevelopment.

C1.3.5. Speak with one voice. The Department of Defense, acting through the DoD Components, will provide clear and timely information and will encourage affected communities to do the same.

C1.3.6. Work with communities to address growth. The Department of Defense will work with the surrounding community so that the public and private sectors can provide the services and facilities needed to accommodate new personnel and their families. The Department of Defense recognizes that installation commanders and local officials, as appropriate (e.g., State, county, and tribal), need to integrate and coordinate elements of their local and regional growth planning so that appropriate off-base facilities and services are available for arriving personnel and their families.

C1.4. KEYS TO SUCCESSFUL DISPOSAL OF CLOSING MILITARY INSTALLATIONS

C1.4.1. This Manual was developed based on the following themes:

C1.4.1.1. Consultation. The Military Department, Office of Economic Adjustment (OEA), and Local Redevelopment Authority (LRA) should be in constant contact throughout the base closure and redevelopment process. They should resolve any problems through consultation.

C1.4.1.2. Cooperation. The Military Department(s), OEA, and LRA should work together to achieve mutual goals.

C1.4.2. In embracing these themes, the Manual also stresses adoption of the following characteristics:

C1.4.2.1. Work cooperatively**.** Effective and extensive communication will make the process smoother over the long run.

C1.4.2.2. Consider community needs**.** Accomplish the mission, but consider the impact to local communities.

C1.4.2.3. Be innovative**.** Do not limit creativity. Decisions, within applicable laws and regulations, can be new and different.

C1.4.2.4. Exercise common sense. Solutions should fit within the overall guidance, but they also should be site-specific.

C1.4.2.5. Delegate. Allow front-line employees to make as many decisions as possible, especially when an issue is routine or when the policy has already been formulated. Establishing layers of approval only creates delays.

C1.4.2.6. Apply growth management principles. When realignments cause a significant influx of missions and personnel, growth management planning will be necessary to ensure public facilities and services are available when personnel arrive.

C2. CHAPTER 2

BASE CLOSURE AND REALIGNMENT PROCESS OVERVIEW

C2.1. GENERAL

C2.1.1. This chapter describes the Department of Defense's overall process for base closure and realignment. Prior rounds provide examples and lessons learned that can assist those now facing similar situations. Implementing BRAC creates challenging tasks related to four possible scenarios:

C2.1.1.1. Realignment and drawdown of an installation that includes property disposal.

C2.1.1.2. Closure of a base.

C2.1.1.3. Drawdown of personnel at a realigned base that does not involve property.

C2.1.1.4. Growth at gaining installations.

C2.1.2. Much of this Manual focuses on the first two scenarios—situations involving base closures and realignments that result in reductions of personnel and property. For installations experiencing personnel and mission drawdown, but no property involved, Chapter 4 will be of primary interest. At gaining installations, Chapter 9 provides general guidance, while Chapter 8 provides direction for both property disposal situations as well as installations gaining missions and personnel.

C2.1.3. For closures or realignments that result in reduction of personnel and property, many of the required tasks are often unique to specific locations. However, the overall process is similar from locale to locale. It involves the drawdown of the military mission, base redevelopment planning, and property disposal.

C2.2. MILITARY MISSION DRAWDOWN

C2.2.1. While local communities begin planning for redevelopment, the order to close an installation creates for military commanders a significant new mission that entails closing the functions and units that are being inactivated. For closures and realignments that involve relocations, the order creates a second mission: Support the efforts of those units relocating to other installations. Many installation commanders rank these two missions on par with their operational or training missions.

C2.2.2. Military Departments will organize their staffs to support these new missions. A project management approach and a special task force—a base closure team—can be very effective. Although many variations of these two initiatives have been used, the following activities by local commanders are common to the more successful approaches:

C2.2.2.1. Publish revised written mission statements to reflect the new drawdown mission(s).

C2.2.2.2. Create core teams that handle the planning, day-to-day administration, and oversight of the base closure.

C2.2.2.3. Prepare charters that spell out in detail the duties and authorities of the base closure teams. Charters establish the importance of the base closure effort, lend structure and strength to the closure team, and have a unifying effect on base closure efforts. They also prescribe deadline dates whenever possible.

C2.2.2.4. Establish and maintain Public Affairs plans to keep internal and external audiences informed about the closure and realignment mission and improve efforts to foster understanding and support for the drawdown process.

C2.2.2.5. Establish and chair standing groups that focus on closure policy, supervision, and information flow. These groups should also tackle major problems that require a quick response or extensive coordination. Typically composed of closure team members and representatives from all base entities, the groups meet only when necessary.

C2.2.2.6. Approve base closure-related documents. This practice reinforces the importance of the effort and fosters smoother coordination among staffs and subordinate commands.

C2.2.2.7. The commanders should also support the mission drawdown by planning for the drawdown, sustaining quality of life for the installation population during the process, and scheduling actions and key milestones throughout the process.

C2.2.3. Planning. Central to effective base closure planning is determining what to do, who will do it, and when it will be done. Answering these questions will result in the preparation of a comprehensive task list and a time-phased schedule that clearly defines the drawdown actions of installation units and activities, including tenants. Included on most task lists are the following three critical tasks:

C2.2.3.1. Mission relief. This is the end of mission drawdown and it defines the drawdown deadline. The commander should work closely with the major command or claimant to obtain early commitments on relief dates.

C2.2.3.2. Training drawdown. After receiving a fixed date for mission relief, the commander should develop plans for drawdown of unit training. Units should continue training while their strengths are sufficiently robust to make it worthwhile; training also helps to maintain individual proficiency and morale. Training should be stopped before it seriously conflicts with the command's preparation for relocation or inactivation. Balance is the key. Choose a date, but be flexible enough to change it if manning levels fluctuate from those projected.

C2.2.3.3. Relief of taskings and inspections. In developing a schedule, the routine taskings and inspections from higher headquarters or other agencies need to be considered.

These requirements may become extremely taxing when an installation approaches mission cessation or drawdown. Close and frequent coordination is the key to minimizing this problem.

C2.2.4. Quality of Life Support. The term "quality of life" refers to medical care, commissary and exchange services, housing and barracks maintenance, community and family support services, and employment benefits, which are specific aspects of installation life that contribute to its support. During drawdown, commanders should strive to continue providing the appropriate levels of quality of life support for service members, their family members, and the civilian employees remaining at the installation. The drawdown of quality of life programs and services needs to be synchronized with that of personnel and training because they share a common linkage.

C2.2.5. Scheduling. An effective plan for the drawdown of a military mission must be based on a time-phased schedule. Some of the tasks included in such a schedule (not necessarily in chronological order as installation circumstances may vary) are listed below:

C2.2.5.1. Mission relief.

C2.2.5.2. Training drawdown.

C2.2.5.3. Relief of major command or claimant taskings and inspections.

C2.2.5.4. Unit readiness reporting for reorganized or inactivating units.

C2.2.5.5. Unit movements.

C2.2.5.6. Personnel actions (see Chapter 4).

C2.2.5.6.1. Key skills and positions (military and civilian) needed throughout the drawdown.

C2.2.5.6.2. Flow of inbound and outbound military personnel.

C2.2.5.6.3. Reduction of the civilian workforce through reduction in force (RIF) actions or alternatives.

C2.2.5.6.4. Job transition assistance and job placement programs.

C2.2.5.7. Personnel support.

C2.2.5.8. Closing of religious support facilities.

C2.2.5.9. Closing of morale, welfare, and recreation (MWR) facilities.

C2.2.5.10. Closing of exchanges and commissaries.

C2.2.5.11. Closing of installation museums.

C2.2.5.12. Housing plan for relocating families.

C2.2.5.13. Base operations and support.

C2.2.5.13.1. Termination of fire protection, laundry, transportation services, flight operations, security, and housing.

C2.2.5.13.2. Disconnection, or transfer to local authorities, of steam, water, gas, and electric utilities.

C2.2.5.13.3. Termination of telephone, cable TV contracts, postal, and information services support.

C2.2.5.13.4. Caretaker and security requirements for property not sold or transferred by closure.

C2.2.5.14. Tenant activities.

C2.2.5.15. Interservice support responsibilities.

C2.2.5.16. Contracts analysis.

C2.2.5.17. Environmental compliance.

C2.2.5.18. Transfer, care, and custody of cemeteries.

C2.2.5.19. Personal property disposal disposition.

C2.2.5.20. Legal considerations, such as jurisdictional issues, if appropriate.

C2.2.5.21. Base closure protocol and briefing teams.

C2.3. BASE CLOSURE AND REDEVELOPMENT PROCESS OVERVIEW

C2.3.1. To achieve the optimum redevelopment potential of every installation closing or realignment, the Military Department and the LRA need to thoroughly understand the basic elements of the entire process. Each action in the process should be conducted with the whole process in mind.

C2.3.2. The base closure and redevelopment process is affected by many Federal real property and environmental laws and regulations, along with volumes of implementing guidance. Some of these laws (see Table AP1.T1 for a synopsis of the primary laws) were specifically enacted to govern specific parts of this process. Others were enacted to address more general government property transactions or specific problems such as environmental restoration. Collectively, they have a great effect on the process.

C2.3.3. For BRAC 2005, installations are selected for realignment or closure according to a process prescribed in the BRAC law (reference (c)). After an installation has been approved for closure or realignment, numerous laws and regulations shape the process that follows—base disposal and redevelopment implementation. The following excerpt illustrates just one small

component of the BRAC law, while Figure C2.F1. shows the general sequence of events associated with BRAC 2005 disposal and redevelopment implementation.

> Public Law 101-510, section (b)(2)(D)—"Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned."

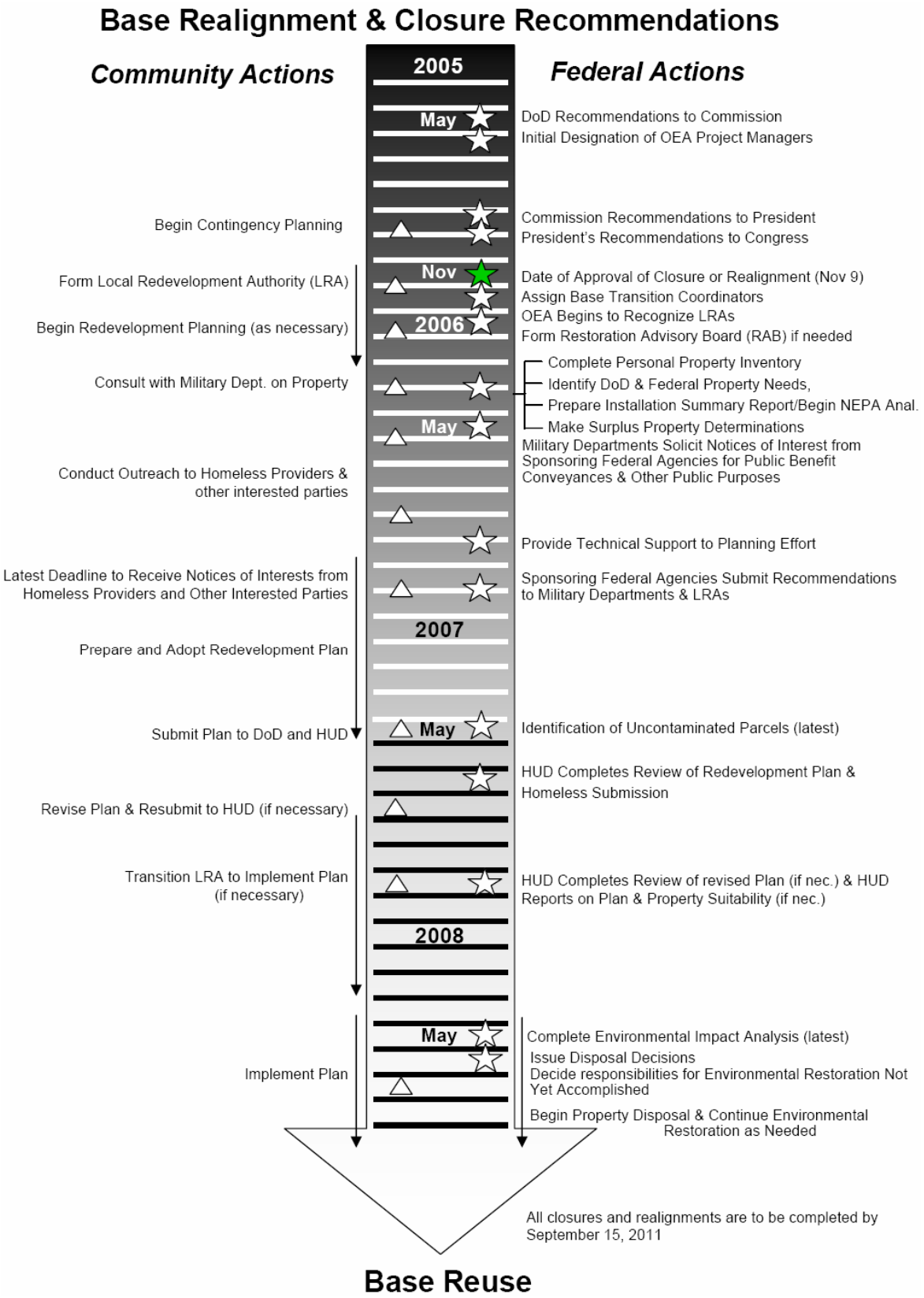
C2.3.4. Although Figure C2.F1. depicts a seemingly linear and sequential series of events, the base disposal and redevelopment process is a series of concurrent activities that can be subdivided into the following three principal phases following Federal property screening:

C2.3.4.1. Phase One, Base Redevelopment and Disposal Planning: This phase consists of the community's redevelopment planning, environmental impact analysis activities, natural and cultural resources determinations and consultations, identification of uncontaminated property, the Military Department's development of an Installation Summary Report that considers all property assets, market conditions, and potential disposal options, and many environmental restoration and compliance activities.

C2.3.4.2. Phase Two, Surplus Property Disposal Decision Making: The second phase consists of activities associated with the Military Department's surplus property disposal decision-making. This phase may include the issuance of one or more Disposal Records of Decision (RODs), or similar decision documents. It also may include the acceptance of applications submitted for property under various public benefit conveyance authorities (such as public airport, parks, and other public benefit conveyances) and economic development conveyance.

C2.3.4.3. Phase Three, Parcel-by-Parcel Disposal: After the Military Department has issued its final disposal decisions, the last phase, parcel-by-parcel decision implementation, occurs for each disposal parcel. This phase lasts until the property has been conveyed. There also may be continuing environmental cleanup activities conducted by either the Military Department or the new owner of the property.

C2.F1. Notional Disposal and Redevelopment Process



C2.3.5. For this undertaking to be successful, all involved parties must work as a team. Representatives from the Military Department, the Base Transition Coordinator, the OEA Project Manager, the LRA, local and State governments, and many other Federal, state, and local organizations all could potentially have key roles. The document "Responding to Change: Communities and BRAC"[1] (reference (aa)) provides information intended for local and State officials, LRAs, and the public. It includes practical advice on organizing an LRA as well as developing and implementing a redevelopment plan. The three phases are expanded in the following sections.

C2.4. PHASE ONE: BASE REDEVELOPMENT AND DISPOSAL PLANNING

C2.4.1. Disposal and redevelopment planning requires the concurrent execution of numerous activities, most of which are specified by law. Generally, this phase begins at the approval date for the closure or realignment of the installation (see Figure C2.F1.). OEA is available to assist eligible LRAs with redevelopment planning when needed.

C2.4.2. In this phase, the Military Department is responsible for completing the following tasks:

C2.4.2.1. Relocate active mission elements (mission drawdown).

C2.4.2.2. Determine what property needs to be retained for military purposes.

C2.4.2.3. Prepare the Environmental Condition of Property (ECP) Report for use in redevelopment planning and due diligence by interested parties (see Chapter 8).

C2.4.2.4. Screen for DoD and Federal use of the property. It is important to remember that the closure or realignment of an installation (whether leased or owned) does not preclude any component of the Department of Defense (including the component currently utilizing the installation) from using that installation for missions or functions other than those that were the subject of the closure or realignment recommendations. The property screening process is the means by which the Department determines whether it has any other use for the property or it will make the property available for use by others.

C2.4.2.5. Identify and resolve legislative jurisdictional issues with State and local governments.

C2.4.2.6. Consult with the LRA on other Federal agency interests in property and with Federal sponsoring agencies for interest in public benefit conveyances.

[1] This document and other useful documents may be obtained by visiting OEA's home page at http://www.oea.gov.

C2.4.2.7. Encourage other Federal agencies to consult with the LRA to determine public benefit conveyance opportunities.

C2.4.2.8. Consult with the LRA on the personal property that will be made available to the LRA for redevelopment.

C2.4.2.9. Identify installation real property that is surplus to the Federal government's needs that will be made available for redevelopment.

C2.4.2.10. Provide available facility and environmental data to the LRA.

C2.4.2.11. Submit uncontaminated parcel determinations to the appropriate environmental regulatory agencies.

C2.4.2.12. Initiate required National Environmental Policy Act (NEPA) (reference (t)) analysis.

C2.4.2.13. Undertake historic and cultural preservation consultations.

C2.4.2.14. Plan for and carry out protection and maintenance (caretaking) of installation property and facilities not conveyed or redeveloped at the time of active mission departure or base closure.

C2.4.2.15. Continue to perform installation management functions.

C2.4.2.16. Inventory property assets.

C2.4.2.17. Assess need for installation summary report that considers all property assets, market conditions, and potential disposal options (see paragraph C5.6.1 for more discussion on this report).

C2.4.3. Local redevelopment planning efforts must be well organized and effectively coordinated. To assure achievement of those objectives, the LRA generally will accomplish the following activities during redevelopment planning:

C2.4.3.1. Seek recognition from the Department of Defense as an LRA, and economic adjustment and other assistance as needed.

C2.4.3.2. Initiate and maintain a comprehensive and effective communication program with the public.

C2.4.3.3. Conduct outreach activities that focus on community needs, including homeless assistance, economic redevelopment and other development, and other development needs of communities in the vicinity.

C2.4.3.4. Conduct market research.

C2.4.3.5. Identify interests in acquiring available real and personal property.

C2.4.3.6. Consider past use and current condition of the property, particularly for areas that may have ordnance and explosives, taking into account ongoing and planned environmental remediation activities when developing the redevelopment plan.

C2.4.3.7. Develop a comprehensive land-use plan in consultation with the Department of Defense.

C2.4.3.8. Prepare a comprehensive redevelopment plan and other essential redevelopment-related planning documents.

C2.5. PHASE TWO: SURPLUS PROPERTY DISPOSAL DECISION MAKING

C2.5.1. This phase includes the activities associated with the Military Department's disposal decisions and the LRA's redevelopment planning. After redevelopment planning activities are completed, the LRA submits its adopted redevelopment plan to the Military Department. It also includes the plan in an application to the Department of Housing and Urban Development (HUD), in accordance with the BRAC law. Following a review of the plan and the homeless accommodation submission, HUD will make a determination that the application is complete, that the LRA complied with all required procedures, and that the plan satisfies the review criteria or will provide the LRA comments on deficiencies.

C2.5.2. After completing the NEPA analysis and associated documentation, the Military Department issues its final disposal decisions. The decision document addresses the Military Department's decisions with respect to the property based on reasonably foreseeable uses and the potential mitigation actions that may be required for potential environmental impacts. Although the Military Departments may indicate the specific disposal decisions in these decision documents, these decisions do not represent a contractual commitment to a prospective transferee and can be amended as appropriate.

C2.5.3. This phase also includes the Military Department's decisions on requests for specific property conveyances. Applications for public benefit conveyances[2] are reviewed by the appropriate government agencies. For example, the Department of Education reviews and approves all applications for education public benefit conveyances before the Military Department acts on the application. Economic development conveyances (EDCs) also require an application.

C2.5.4. While the Military Department will give deference to the redevelopment plan in preparing the record of decision or other decision documents, it always retains ultimate responsibility and authority to make the final property disposal decisions. It also resolves any conflicting property interests when the final decisions are issued.

[2] See GSA site http://propertydisposal.gsa.gov/Property/PubBenefitProp/PBCBrochure.pdf

C2.6. PHASE THREE: PARCEL-BY-PARCEL DISPOSAL

C2.6.1. After necessary applications have been submitted, reviewed, and accepted, and the Military Department has issued its final disposal decisions, the redevelopment process enters the decision implementation phase. This phase includes Military Department conveyance of installation property (or property "disposal"). In disposing of that property, the Military Department follows its documented disposal decisions, using conveyance authorities established by Titles 40 and 49 U.S.C. (references (h) and (j)), DBRCA 90(reference (c)), and other authorizing statutes, as implemented in the Federal Management Regulations (41 CFR Part 102-75) (reference (ab)), and elsewhere.

C2.6.2. The Military Department, in consultation with environmental regulators and the LRA, then makes parcel-by-parcel decisions on responsibilities for remaining remediation. Some remedial actions may be completed by the Military Department, either before or after property transfer. Others may be completed by the new owners as part of a property conveyance.

C2.6.3. Installation property should be transferred or conveyed as soon as possible for redevelopment. The Military Department may use a variety of property conveyance methods, and it may convey the property in multiple parcels to multiple future owners. Typical types of conveyances may include the following:

C2.6.3.1. Public benefit conveyances. A public benefit conveyance typically involves airports, education, health, historic monuments, ports, parks and recreation, and wildlife conservation areas. Generally, a Federal agency with specific expertise in a conveyance category (such as the National Park Service for parkland and recreation conveyances) is authorized to serve as a sponsoring or approving agency.

C2.6.3.2. Homeless assistance conveyances. This type of conveyance entails no cost consideration for the property, either to the LRA or to the representatives of the homeless. Personal property may be transferred to the LRA for use by the homeless assistance provider. Homeless conveyances require that the use of the property be limited to authorized programs that support the homeless, as determined by HUD. The LRA is responsible for monitoring implementation of the homeless assistance provisions of its redevelopment plan.

C2.6.3.3. Negotiated sale. A negotiated sale to public bodies or other entities requires payment of not less than the fair market value. Negotiated sales to public bodies can only be conducted if a benefit, which would not be realized from competitive sale or authorized public benefit conveyance, will result from the negotiated sale. Terms of negotiated sales are subject to review by Congress.

C2.6.3.4. Advertised public sale. Under an advertised public sale, the party that submits the highest bid, provided it is not less than the fair market value, may purchase the property.

C2.6.3.5. Environmental responsibilities conveyance. This type of conveyance is made to a party that enters into an agreement to perform all environmental responsibilities, including remediation for the property.

C2.6.3.6. Economic development conveyance. An EDC is made to an LRA for purposes of generating jobs. A Military Department may approve an EDC, but it must seek to obtain fair market value for the property. There is also authority for no-cost EDCs.

C2.6.3.7. Depository institution facility. This type of conveyance involves the sale of a facility at fair market value to the operating depository institution that constructed or substantially improved the facility.

C2.6.3.8. Conservation. A Military Department can convey property that is suitable and desirable for conservation purposes to states, political subdivisions of states, or nonprofit organizations that exist for the primary purpose of conservation of natural resources.

C3. CHAPTER 3

WORKING WITH COMMUNITIES AND STATES TO FACILITATE TRANSITION AND BASE REDEVELOPMENT

C3.1. GENERAL

C3.1.1. To ensure that the Department of Defense maximizes its savings and communities maximize their opportunities from BRAC actions, the Department of Defense works closely with affected jurisdictions and State agencies to achieve mutual goals of rapid disposal and redevelopment of installation property. In recognition of the impact that BRAC can have on local communities, the Department of Defense makes every effort to soften the effects of closures and realignments. It also recognizes that the jobs created through the economic redevelopment of facilities can be critically important to mitigating the impact of installation closures or reductions.

C3.1.2. Civilian redevelopment of a former military installation is often the single most important opportunity for a community to overcome the effects of a closure or realignment. To ease the economic effects on communities, the Department of Defense seeks rapid conveyance of property to new owners so they can achieve the community's redevelopment objectives, such as job creation, providing housing, increasing the local tax base, and improving the overall quality of life within the community. In addition, the Department of Defense recognizes the uniqueness of each community and is prepared to provide a combination of resources to respond to different circumstances. The Military Department provides detailed information on the condition of the installation's land and facilities so that redevelopment planners and potential users can take baseline conditions and environmental cleanup plans into account. While job creation and tax base expansion are common community redevelopment goals, public facilities are also often part of base redevelopment plans. Federal property laws provide a variety of property conveyance authorities to satisfy diverse redevelopment scenarios.

C3.1.3. This chapter outlines how the Department of Defense works with local communities and the States to effect a smooth transition of BRAC installations to alternative uses. For further information on property disposal, see Chapter 5, and for environmental actions, see Chapter 8.

C3.2. LOCAL ECONOMIC ADJUSTMENT RESPONSE

C3.2.1. The base closure and realignment notification will prompt community leaders to act, especially when the BRAC action is likely to have a direct and significantly adverse consequence for the community. Ideally, community leaders will quickly begin taking steps to develop a feasible plan for the future use of the installation's property. In accordance with the BRAC law reference (c), affected jurisdictions should quickly create an LRA and direct it to develop a redevelopment plan for the property that will foster long-term economic recovery for the community after the installation closes.

C3.2.2. The LRA, established by a State or local governments, is formally recognized by the Secretary of Defense, acting through the OEA. It serves as the primary link between DoD and the

installation and the community and Federal and State agencies for all base closure matters. The LRA is the single entity responsible for identifying local redevelopment needs and preparing a redevelopment plan for the Military Department to consider in the disposal of installation property. In this context, the term "redevelopment plan" means a plan that (1) represents local consensus on the redevelopment with respect to the installation and (2) provides for redevelopment of the property that becomes available because of the installation closure or realignment. For further information, see the document "Organizing for BRAC" (reference (ac)).[1]

C3.2.3. Initially, the LRA should focus on crafting the base redevelopment plan. During the base closure process, it is not uncommon for one entity to be recognized as the LRA for reuse planning purposes, and a follow-on entity designated to coordinate and oversee implementation of the plan. In some cases, the LRA also may want to implement all or part of the redevelopment plan. Not all communities will choose to create an implementation LRA. Implementation responsibilities, including restructuring or dissolving the planning LRA, should await completion of the redevelopment plan and a financial feasibility analysis of alternative scenarios for actual redevelopment. OEA will formally recognize an implementation LRA only if the LRA pursues an EDC.[2]

C3.2.4. OEA will assign a project manager to work in cooperation with the Military Department in establishing a long-term working relationship with the LRA, to provide guidance on how to organize and proceed, and to coordinate provision of available Federal resources. In accordance with provisions of Section 2915 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160 (reference (ad)), the Military Department must appoint a Base Transition Coordinator (BTC) for each closing installation. The BTC assists in coordinating many of the installation closure actions that have implications for the LRA's redevelopment plan. The Military Department may designate one of its personnel, who already has other base closure and disposal responsibilities, to serve as the BTC.

C3.2.5. The Military Department representatives and the BTC should expect the LRA to often request information, consultation, and assistance. This relationship is vital to a successful transition of the surplus property. Cooperation and coordination are essential. In addition, providing complete, early, and accurate technical and environmental information about the surplus property and improvements to the LRA is essential to enable redevelopment plans to take realistic account of existing property conditions.

C3.2.6. There is no single approach or template that fits all aspects of every base realignment or closure situation. Just as each installation has unique aspects, so do the communities and States for economic adjustment activities and base redevelopment. Through close cooperation and coordination among the Military Department, OEA, and LRA, the best approach can be realized to suit each given situation.

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[1] It may be obtained by visiting OEA's home page at http://www.oea.gov.

[2] For more information on EDCs, go to the OEA website, http//www.oea.gov, or see Chapter 5.

C3.3. DEFENSE ECONOMIC ADJUSTMENT PROGRAM AND OEA

The Defense Economic Adjustment Program was established in 1961 to help communities respond to economic impacts caused by significant defense program changes, including major base realignments and closures. OEA implements the provisions of this program in cooperation with the Military Departments. Direct technical assistance through the OEA project manager and planning grants may be provided to affected, eligible communities to help the LRA organize and develop economic adjustment strategies and base redevelopment plans. This assistance is coordinated through the President's Economic Adjustment Committee (EAC), which is composed of representatives from 22 Federal departments and agencies that administer assistance programs. OEA personnel serve as the staff of the EAC. Requests for OEA assistance can be made by local elected leaders, the LRA, members of Congress, or a governor. OEA maintains more specific guidance on all aspects of local economic adjustment through a series of written documents and on its Website.[3]

C3.4. BASE REDEVELOPMENT PLANNING PROCESS

C3.4.1. The opportunity to merge all or parts of former military installations into the community and to reuse or redevelop the facilities can provide communities with a unique opportunity to shape their physical, economic, and social future. While BRAC decisions usually present a negative economic effect in the short term, the assumption of responsibility for base property often provides opportunities to create new jobs and satisfy unmet public facility and service needs. In some cases, the installation offers a "once-in-a-lifetime" chance for a community to make major changes in local land use and economic redevelopment and other development strategies because of the unique character of the installation and its facilities. An effective redevelopment planning process is crucial to realize these opportunities.

C3.4.2. The BRAC law prescribes a tightly drawn timeline for LRAs to plan. The needs of the local homeless must be addressed during the planning process, and community consensus on base redevelopment is essential for success. The redevelopment plan is not only a vision and blueprint for the future, it also serves as a major decisional input for the Military Department's NEPA analysis.

C3.5. IDENTIFYING INTERESTS IN SURPLUS PROPERTY

After the Military Department identifies the real and personal property that is surplus to Federal needs, the LRA must quickly begin its outreach program for uses of that property. Within 30 days of the notice of surplus, the LRA must publish a notice in the local newspaper soliciting interest from representatives of the homeless. The LRA also should solicit interest from other interested parties that are eligible for conveyance of property under various public benefit conveyances. This solicitation must be accomplished within a subsequent 90 to 180 days. In parallel with this outreach, the LRA must determine feasible uses for the base that consider the

[3] (http://www.oea.gov).

market attraction, physical and environmental conditions of the property, and public needs. The LRA shall consider requests for property from representatives of the homeless when preparing the redevelopment plan for the property and enter into legally binding agreements to provide property to assist the homeless, contingent upon Military Department decisions on property disposal. (See Chapter 5 for more information on the property disposal process, outreach and homeless accommodation requirements, and conveyance options.)

C3.6. PREPARING THE REDEVELOPMENT PLAN AND ACCOMMODATING HOMELESS ASSISTANCE NEEDS

C3.6.1. The redevelopment plan should address numerous factors, including the following:

C3.6.1.1. Sustainable redevelopment, supported by a coordinated management plan.

C3.6.1.2. Overall redevelopment of the installation in a comprehensive and coordinated manner.

C3.6.1.3. Proposed land uses, including development controls, such as zoning.

C3.6.1.4. Possible future property recipients or tenants.

C3.6.1.5. Public involvement and comments throughout the process.

C3.6.1.6. Current and projected market demand for different potential land uses.

C3.6.1.7. Balance between homeless-assistance needs and community and economic redevelopment needs of the community.

C3.6.1.8. Sources and uses of available funding or revenue.

C3.6.1.9. Personal property necessary to support redevelopment.

C3.6.1.10. How the redevelopment plan takes account of past land uses and current property conditions including environmental conditions.

C3.6.2. The redevelopment plan is to be completed not later than 270 days after the outreach process was completed. The LRA must submit an application containing the redevelopment plan and a homeless assistance submission to HUD and the Military Department. A copy also must be sent to the local HUD field office. (See Chapter 5 for further information.)

> Public Law 101-510, section 2905(b)(7)(K)(iii)—"The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned."

C3.6.3. The redevelopment plan (see the above quote from the BRAC law) is important because the Military Department will use it to conduct the property disposal environmental analysis required by NEPA. The Military Department treats the plan as part of the proposed Federal action for the installation. (See Chapter 8 for a detailed discussion of the NEPA process.) The plan also will serve as a basis for consideration of public benefit conveyances or an EDC if the LRA or other entities seek to obtain property by those property disposal methods. As the LRA develops the redevelopment plan, it is critical that the environmental condition of the property be a factor considered in the redevelopment planning process. Planning reuses with all the information available can allow for LRAs to determine the most appropriate reuse for the property given environmental, economic, and other conditions and to avoid delays in the process.

C3.6.4. The LRA should participate in public scoping meetings during the NEPA environmental analysis process and in public meetings of the Restoration Advisory Board (RAB), which provides community input into the installation's environmental restoration efforts. (See Chapter 8 for a detailed discussion of environmental actions.)

C3.7. REALIGNMENTS THAT CAUSE SIGNIFICANT PERSONNEL REDUCTIONS OR EXPANSIONS

BRAC 2005 decisions that call for a major reduction in installation personnel, without surplus property being made available, can pose a significant challenge to communities. Other communities may need to absorb a significant influx of personnel associated with realignment actions that bring additional or expanded missions to an installation. Significant personnel increases also have the potential to stress the capacities of some off-base community services and facilities. (See Chapter 9 for detailed discussion of these realignment situations.)

C3.8. FEDERAL DOMESTIC AGENCY RESOURCES

In addition to OEA assistance, other Federal technical and financial assistance is available to communities for planning and implementing local economic adjustment strategies. This assistance is mainly provided by the Economic Development Administration (EDA) within the Department of Commerce; the Employment and Training Administration of the Department of Labor (DOL); and agencies with oversight of public benefit property disposal programs, such as for public airports, seaports, prisons, educational and healthcare facilities, and recreation and conservation projects. OEA coordinates the use of these resources in its role as the staff of the EAC. The following subsections outline some of the assistance available in three vital areas: personnel, property transfer, and planning and implementation.

C3.8.1. Personnel Assistance

C3.8.1.1. The closure of an installation will result in the loss of both military and civilian jobs. Military personnel will be transferred as their positions are eliminated, while the civilian employees may leave the area in search of work at any time after the initial BRAC announcement. In addition, their dependents also could transfer, potentially leaving major openings in the

community labor force. The LRA should consider the impacts associated with personnel reductions during redevelopment planning.

C3.8.1.2. Both the Department of Defense and the DOL (Retraining and Readjustment Services for Dislocated Workers) offer placement assistance to affected workers through the DoD Priority Placement Program (PPP) and DOL's retraining and placement services through local Workforce Investment Boards. (See Chapter 4 for a detailed discussion of the Department of Defense's personnel assistance programs.)

C3.8.2. Property Transfer Assistance. Those Federal agencies—including the Federal Aviation Administration (FAA), the Maritime Administration (MARAD), and the Federal Highway Administration (FHWA) within the Department of Transportation, the Department of Housing and Urban Development, the Department of Education, the Department of Health and Human Services, and the National Park Service under the Department of the Interior—that have public benefit conveyance authorities provide assistance with the evaluation of property acquisition proposals under the respective public benefit programs and preparation of applications for property. Significant amounts of surplus property have been conveyed during prior BRAC cycles through these programs.

C3.8.3. Planning and Implementation Assistance.

C3.8.3.1. While the primary source for economic adjustment planning is OEA, the Department of Commerce's EDA can provide funds for more detailed economic adjustment planning, such as specialized analysis. Historically, EDA has been a primary source for implementation funding, including business development. Examples include infrastructure reengineering, building demolition, business development revolving loan funds, and local loan guarantee programs.

C3.8.3.2. Many military installations have airfields, which can be readily converted to civilian airports. The FAA's Airport Improvements Program and Military Airports Program can potentially provide substantial funding for airport feasibility studies, development of master plans, and airport conversion projects. Other agencies also may have assistance programs that can be applied to local economic adjustment needs. OEA project managers can help the LRA identify Federal assistance programs suited to meeting its planning and implementation needs.

C4. CHAPTER 4

PERSONNEL MANAGEMENT

C4.1. GENERAL

C4.1.1. One of the biggest challenges for the commander of an installation facing realignment or closure actions is the fair and effective management of human resources. The purpose of this chapter is to review some of the human resource issues that commanders may face, describe some of the techniques that have been effectively used to address those issues, and highlight assistance programs designed to help employees affected by the realignment or closure. The programs presented in this chapter also are discussed at length in other publications and documents. In any cases of confusion or inconsistency with other documents, readers are encouraged to consult with their servicing human resources office (HRO) advisor for clarification.

C4.1.2. After the installation receives the order to close or realign, the commander and staff begin planning for the drawdown of personnel. In that planning, they must consider both the military and civilian workforce that remain after any unit relocates. Ideally, commanders will phase this drawdown of personnel to coincide with the transfer or inactivation of the installation's units and staff activities. This chapter highlights the actions and issues that should be considered in drawing down the military force and then addresses those related to the drawdown of civilian personnel. However, these actions must be taken in concert with the Military Department's policies, rules, and practices for closing or realigning installations and moving organizations. These Department-specific rules provide guidance for military personnel distribution and include well-tested management timelines that can be very useful.

C4.2. MILITARY PERSONNEL

C4.2.1. Preparation begins early. Commanders should identify critical people to remain on the installation to help plan, coordinate, and carry out the closure. Military personnel commands will assist to ensure that the critical people remain assigned to the installation. After preparation of the drawdown plan and schedule of deadlines for transfers and inactivation, commanders should continue to work closely with the local military personnel command. They should focus on managing the flow of replacements and reassignments, stemming the stream of replacements to units inactivating or relocating, and ensuring that the flow of departing personnel does not unduly sap the ability of remaining units to do their jobs before the installation's mission is formally terminated.

C4.2.2. Commanders also should be mindful of those people at the installation completing their military careers and entering civilian life. They, and their family members, should be encouraged to take advantage of the assistance available to them through the Military Department's transition program. These programs, which are also open to civilian employees, provide job search workshops, resume assistance, and career counseling.

C4.2.3. Due to the nature of this BRAC, which involves significant realignment of existing military personnel, there will be a significant impact on military spouse employment as well. In addition to being an important indicator of quality of life for military families, military spouse employment plays a major role in retention. Frequent permanent changes of station (PCS) moves associated with the military lifestyle create challenges for spouses and family members to maintain stable careers and job tenure, and to obtain and receive training and education. Many resources have been developed by the Departments of Defense and Labor to help address the workforce challenges of military spouses. For example, www.Milspouse.org is an electronic tool detailing educational, employment and training, and other relevant community resources available to military spouses (e.g., child care and transportation). Militaryspousejobsearch.org is a job search tool that connects spouses of U.S. military members with employers committed to hiring military spouses. Local programs for helping military spouses also have been developed through ongoing collaboration between Family Support Centers and One-Stop Career Centers. Partnerships with these two entities will be a valuable resource for aiding military spouses impacted by BRAC.

C4.3. CIVILIAN PERSONNEL

C4.3.1. In contrast to military personnel management, civilian personnel are hired and separated at the installation level. However, one of the primary changes within the Department of Defense since previous BRAC rounds is that much of the human resource (HR) function for civilian personnel, such as processing personnel actions, maintaining records, recruiting for vacancies, and administering RIFs, now occur at regional service centers. HR specialists remain at Human Resources Offices to provide advisory services to management and employees. The Department of Defense is taking advantage of current technologies, such as the Internet, to ensure that HR guidance and information are readily available.

C4.3.2. In some base closures and realignments, it is impossible to avoid separating civilian employees. To ensure these separations occur in a considerate and effective manner, the Department of Defense uses a variety of placement and transition assistance programs. These include employee placement programs, civilian voluntary separation and early retirement incentives, retraining initiatives and outplacement assistance, and post-separation benefits and entitlements. In addition, installations may use hiring freezes and filling jobs on a temporary basis to reduce the impact of a RIF. Some of the key provisions of the Civilian Assistance and Re-Employment (CARE) Program, are summarized below. Also, a useful reference is the DoD BRAC HR website,[1] which contains links to the most current guidance on personnel actions at BRAC installations. This website also contains information on specific programs available to help DoD nonappropriated fund (NAF) employees who are affected by base closure that are not addressed elsewhere in this chapter.

[1] http://www.cpms.osd.mil/bractransition

C4.3.3. Placement Programs.

C4.3.3.1. DoD Priority Placement Program. The DoD Priority Place Program, or PPP, is an automated system for the referral and mandatory placement of displaced employees when well qualified for other DoD vacancies. Registration is mandatory for employees entitled to severance pay during the RIF notice period and for 1 year following separation. For employees not entitled to severance pay, registration is voluntary. At the discretion of the installation commander, employees may voluntarily register prior to the RIF notice for up to 1 year before the effective date of the RIF or base closure. Installation commanders must carefully analyze the impact of early registration against the continuing needs of the installation's mission. PPP registrants are frequently picked up at other DoD installations within weeks of registration, so commanders need to have a plan for continuing to get the work done as installation employees accept PPP placements and other employment offers. The DoD CARE Office may approve up to 1 additional year of early registration at the request of the activity. Employees may be eligible to register outside the commuting area, and the downsizing organization will reimburse moving expenses within the limits allowed by the Joint Travel Regulations, Volume 2 (reference (ae)).

C4.3.3.2. Reemployment Priority List. The Reemployment Priority List (RPL) is a government-wide program that is required by law and subject to Office of Personnel Management (OPM) regulations. Career or career-conditional employees in receipt of a RIF separation notice or certificate of expected separation may voluntarily register in the RPL. Referral through this program, which is separate from the PPP, provides employees priority over certain non-DoD job applicants for DoD jobs within the commuting area.

C4.3.3.3. Defense Outplacement Referral System. The Defense Outplacement Referral System (DORS) is a voluntary referral system for DoD employees seeking positions at other installations. Unlike the PPP, DORS does not provide mandatory placement rights or guarantee reimbursement of moving expenses. Employees may not register in both PPP and DORS at the same time. However, the spouse of an employee registered in PPP also may register in DORS.

C4.3.3.4. Interagency Career Transition Assistance Plan. The Interagency Career Transition Assistance Plan (ICTAP) is a government-wide program available to employees separated by RIF, or because of declining relocation outside of the commuting area. Under this program, employees receive selection priority when they apply and are well qualified for vacancies in other Federal agencies. Eligibility for ICTAP begins on receipt of a specific separation notice or a notice of proposed removal for declining a management-directed reassignment or transfer of function outside the commuting area. It continues for up to 1 year after separation, or up to 2 years for those with veterans' preference if separated by RIF from a restricted position.

C4.3.3.5. Department of Labor One-Stop Career Centers. A wide array of services and training is available to civilian employees and military spouses who lose their jobs and must seek new employment due to BRAC. State Workforce Agencies along with local One-Stop Career Centers are positioned to coordinate, train, and provide outplacement services for displaced

civilian employees. Any of the 3,400 nationwide One-Stop Career Centers can be located by calling the toll-free help line at 1-877-872-5627 (1-877-US2-JOBS) (TTY: 1-877-889-5627).[2]

C4.3.4. Separation Incentive Programs.

C4.3.4.1. Voluntary Separation Incentive Pay (VSIP). VSIP, commonly known as a "buyout," is a permanent DoD authority that may be used to encourage displaced employees to separate voluntarily by resignation or retirement as a way of avoiding an involuntary separation of another employee. Employees declining a transfer of function are not eligible for a buyout. Under this program, cash payments are made in lump sum or approved installments, and they are based on the severance pay formula and currently may not exceed $25,000 before taxes.

C4.3.4.2. VSIP Phase II. The VSIP Phase II program expands the use of buyouts beyond the boundaries of individual activities within the continental United States and authorizes managers at non-downsizing activities to use buyouts to create vacancies to place PPP registrants facing RIF separation at downsizing DoD activities. Operated through the PPP, VSIP Phase II buyout and relocation costs are paid by the downsizing activity where the eligible PPP registrant is displaced. This program is particularly effective when there are participating non-downsizing DoD activities in the same commuting area as the closing installation.

C4.3.4.3. Voluntary Early Retirement Authority (VERA). The VERA program is a permanent DoD authority that allows eligible employees to retire early and receive a reduced annuity. It may be used to reduce the number of personnel employed by the Department of Defense. The reasons for approving VERA include RIF or transfer of function. Eligible employees must be at least 50 years of age with 20 years of service, or at any age with 25 years of service.

C4.3.4.4. Voluntary Reduction in Force (VRIF). The VRIF program allows employees not affected by RIF to volunteer for separation to save another employee from being affected by RIF. VRIF volunteers may receive RIF separation benefits (such as severance pay or temporary continuation of Federal Employee Health Benefits (FEHB) coverage) if otherwise eligible, but they are not eligible for PPP registration or VSIP.

C4.3.4.5. Outplacement Subsidy. The Department of Defense has authorized activities discretionary authority to pay up to $20,000 Permanent Change of Station relocation expenses when another Federal agency hires and relocates a surplus employee in receipt of a RIF separation notice. Eligible employees are responsible for applying for vacant positions in other Federal agencies, and for advising those agencies of the available outplacement subsidy. Employees who decline valid job offers through the DoD PPP are ineligible for outplacement subsidies.

[2] Or at www.servicelocator.org. In addition, online services are available at www.careeronestop.org.

C4.3.5. Retraining Initiatives and Outplacement Assistance.

C4.3.5.1. Workforce Investment Act Eligibility. Through the Workforce Investment Act (WIA), the DoL provides funding for retraining and readjustment assistance to displaced Federal employees, including nonappropriated fund (NAF) employees. This assistance, which includes retraining, counseling, testing, placement assistance, and other support activities, is available to employees through State Employment Security Agencies. Employees assigned to DoD installations approved for closure or realignment may apply for WIA assistance up to 24 months in advance of the effective date of the closure or realignment.

C4.3.5.2. Hiring Preference for Contractor Jobs. As required by Part 52-207-3, Federal Acquisition Regulation (reference (af)), employees at closing installations have the right of first refusal for certain jobs with private contractors hired to prepare the installation for closure or to maintain it after closure. The contractor must afford eligible and qualified DoD employees right of first refusal before hiring from any other source. Normally, these jobs are in areas of environmental restoration, utilities modification, roads and grounds work, security, and fire protection.

C4.3.5.3. Funds for Outplacement Assistance. The Department of Defense may authorize use of appropriated funds for outplacement (placement outside the Department of Defense including private industry) assistance when the outplacement benefits the Department and costs are reasonable. Installation commanders may authorize outplacement assistance for various activities, including the following:

C4.3.5.3.1. Career transition and remedial training.

C4.3.5.3.2. Contractor placement services, in which there is no job placement fee.

C4.3.5.3.3. Administrative support, such as use of computers, copiers, and other equipment.

C4.3.5.3.4. Clerical support to prepare job applications or resumes.

C4.3.6. Post Separation Benefits and Entitlements.

C4.3.6.1. Extended Employment for Retirement and Health Benefits Eligibility (FEHB). Downsizing organizations must retain eligible civilian employees in an annual leave status beyond their scheduled separation date (provided they have adequate annual leave balances) to attain first eligibility for immediate retirement or to become eligible for continued health benefit coverage during retirement. This provision also covers NAF employees to the extent they become eligible for their retirement and health benefits programs.

C4.3.6.2. Temporary Continuation of Federal Employee Health Benefits Coverage. Under the FEHB program, downsizing organizations will pay the government's share of an eligible employee's health insurance premium (and applicable administrative fees) for a period of up to 18 months after involuntary separation from a position or voluntary separation from a surplus position. This provision applies to employees enrolled in the FEHB Program at the time of separation and are separated by RIF, resign after receipt of a RIF separation notice, volunteer

for RIF, or resign from a surplus position. Employees serving on temporary appointments receiving a government contribution to their FEHB coverage, and whose appointment terminates (or is allowed to expire) because of RIF, are also eligible. Employees declining a transfer of function are not eligible.

C4.3.6.3. Automatic Waiver of FEHB Minimum Participation Requirement. To continue FEHB coverage as a retiree, employees must normally be enrolled in the program for at least 5 years immediately prior to separation. However, OPM has granted pre-approved waivers of the 5-year requirement to DoD employees covered under the FEHB program who:

C4.3.6.3.1. Have been covered continuously since October 1 for each succeeding fiscal year;

C4.3.6.3.2. Retire during the DoD VERA and VSIP period; and

C4.3.6.3.3. Receive a VSIP; or

C4.3.6.3.4. Take early optional retirement; or

C4.3.6.3.5. Take discontinued service retirement based on an involuntary separation due to RIF, directed reassignment, reclassification to a lower grade, or abolishment of position.

C4.3.6.4. Unemployment Compensation. Most employees who become unemployed due to BRAC will have the protection of unemployment compensation. To file a claim, an employee should contact the nearest State Workforce Agency in the state in which they became unemployed to determine eligibility.[3] When separating a civilian from DOD employment, the HRO should provide the employee with Standard Form 8 ("Notice to Employees about Unemployment Insurance") and/or Standard Form 50 ("Notification of Personnel Action"). The information contained in these forms is necessary to process and pay unemployment compensation claims.

C4.3.6.5. Severance Pay. Severance pay is based on a formula that includes years of Federal service, basic pay at the time of separation, age, and previous severance pay. It also includes an adjustment for employees over age 40. Employees who receive a buyout and/or those who will be eligible for an immediate civil service or military annuity on or before their separation date are not eligible for severance pay. Severance pay eligibility also terminates if an employee declines a reasonable job offer prior to separation. A job offer is considered reasonable if it is from a DoD installation in the commuting area, has the same tenure and work schedule as the current position, and is no more than two grades or pay levels below the current position. Severance pay may be paid on a bi-weekly basis or in a lump sum.

[3] A link to all State Workforce Agencies can be found at http://workforcesecurity.doleta.gov/map.

C4.3.7. Continuation of Operations.

C4.3.7.1. Reassignment or Promotion to Critical Vacancies. The Department of Defense has waived the applicable provisions of the PPP to permit the permanent reassignment or promotion of employees to vacancies that are critical to operations. See the section on "Drawdown Considerations" within this chapter for further information regarding critical vacancies.

C4.3.7.2. Job Exchanges. Job exchanges are concurrent reassignments excepted from the PPP to accommodate the placement of a displaced employee from a closing activity to a non-closing activity. Specifically, reassignments are authorized for a job exchange between an employee eligible for optional or discontinued service retirement at an activity not scheduled for closure and an employee (not eligible for retirement) at a closing activity. Both activities must agree to the exchange. Employees placed at the closing activity must agree to remain in the position until released by the installation, and they must forfeit PPP registration. The closing installation pays all permanent change of station relocation expenses for both reassigned employees.

C4.3.7.3. Annual Leave Restoration. Employees permanently assigned to an installation designated for closure may have the right to accumulate annual leave without regard to existing "use-or-lose" limitations. Leave in excess of the statutory limit is restored and placed in a separate leave account. This provision does not apply to employees assigned to organizations or functions located at closing installations, but designated to continue after closure or when such organizations or functions are relocating within the commuting area of the closing activity. Lump sum payment for this leave is required when the employee is assigned to a position in a Federal agency outside the Department of Defense or to another position at a DoD installation that is not being closed or realigned.

C4.3.7.4. Employment of Annuitants. 5 U.S.C. 9902(j) (reference (ag)) gives the Secretary of Defense authority to hire and set the salary of newly appointed annuitants, that is, individuals receiving an annuity from the Civil Service Retirement and Disability Fund, without a reduction in pay or of the annuity. According to DoD policy, this authority may be delegated to installation commanders and annuitants hired under this policy serve at the will of the appointing authority. Delegated officials may elect to reemploy annuitants in positions, including those at closing installations, subject to the following criteria:

C4.3.7.4.1. In positions that are hard to fill as evidenced by historically high turnover, a severe shortage of candidates, or other significant recruiting difficulty; or positions that are critical to the accomplishment of the organization's mission, or the completion of a specific project or initiative.

C4.3.7.4.2. Individuals with unique or specialized skills, or unusual qualifications that are generally not available.

C4.3.7.4.3. In positions for not more than 2,087 hours (e.g., 1 year full-time or 2 years part-time) to mentor less experienced employees or provide continuity during critical organizational transitions.

C4.3.7.5. Temporary Appointment Time Limit Exception. Commanders at installations scheduled to close within 2 years may approve exceptions to the regulatory requirements regarding the 2-year maximum service limit for temporary appointments and to the restrictions on successive temporary appointments to the same or successor positions.

C4.3.7.6. Elimination of 120-Day Detail Limitation. As authorized by 5 U.S.C. 3341(b)(2) (reference (ah)), the 120-day limitation on details does not apply to those made in connection with the closure or realignment of a military installation pursuant to a base closure law.

C4.4. HOMEOWNERS ASSISTANCE PROGRAM

C4.4.1. In recognition of the importance of home ownership and financial security to military and civilian employees and their families, the Homeowners Assistance Program (HAP) provides some financial relief to military and civilian homeowners whose homes lose value as a result of an installation closure or realignment. This relief can be provided through a variety of methods after a program has been authorized for an impacted area.

C4.4.2. Eligibility.

C4.4.2.1. To qualify, applicants must be one of the following:

C4.4.2.1.1. A military member (including the Coast Guard) or Federal civilian employee assigned or employed at or near the installation announced for closure or realignment.

C4.4.2.1.2. A NAF employee who was assigned to the installation on the closure or realignment announcement date.

C4.4.2.1.3. Personnel transferred or terminated within 6 months prior to the announcement who were owner-occupants at the time of transfer.

C4.4.2.1.4. Civilian and military personnel on an overseas tour who transferred within 3 years prior to the announcement and are homeowners in the area.

C4.4.2.1.5. Civilian employee homeowners on an overseas tour with reemployment rights in the area affected by the closure.

C4.4.2.1.6. Any military member homeowner ordered into on-post housing within 6 months prior to the announcement.

C4.4.2.2. In addition, applicants must be relocating beyond commuting distance from the area. Commuting distance varies due to location, major highways, and other factors and is determined by a market impact study conducted by the U.S. Army Corps of Engineers. All applicants must have been the owner-occupant of the home for which assistance is being requested on the announcement date. These are the general eligibility requirements, but other qualifying criteria exist.

C4.4.3. Description. HAP is authorized in Section 1013, Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754 (reference (ai)), as amended. It provides for some monetary relief for eligible Federal personnel—both military (including Coast Guard) and civilian—faced with losses on the sale of their primary residence when, as a result of the actual or pending closing of such base or installation, in whole or in part, or if as the result of such action and other similar action in the same area, there is no present market for the sale of such property upon reasonable terms and conditions.

C4.4.3.1. HAP offers four general forms of assistance:

C4.4.3.1.1. Reimbursement for part of the loss from selling a home.

C4.4.3.1.2. Assistance if there are not enough proceeds from the sale of a home to pay off the mortgage.

C4.4.3.1.3. Purchase of a home by paying off the mortgage.

C4.4.3.1.4. Assistance if there has been a default on the mortgage.

C4.4.3.2. Military and civilian personnel should be aware that the program requires a lengthy timeframe to assess the impact of a base closure or realignment on a local real estate market. As a result, implementation of this program is often subsequent to the closure of an installation.[4]

C4.4.4. Process.

C4.4.4.1. Before HAP can be authorized, the Department of Defense must make an official announcement of a base closing or realignment action that affects a community. In addition, the Army Corps of Engineers must determine that real estate values have dropped as a direct result of the base closing or realignment. If these conditions are met, the local command may submit a request for approval and implementation of HAP.

C4.4.4.2. Individuals can help support the command's request with signed and dated statements describing their efforts to sell their homes, along with copies of listing agreements, newspaper ads, or other evidence. If a property was sold to another party, the owner should include one copy of the deed transferring the property to the buyer and one copy of the closing and settlement statement.

C4.4.4.3. If the mortgage is either a Department of Veterans Affairs (VA) guaranteed or Federal Housing Authority (FHA) insured and the house was transferred on a private sale by an assumption of the existing mortgage, the seller should request a release of liability from either VA or FHA. If the buyer is not acceptable to VA or FHA, the seller will not receive HAP benefits until a release of liability is obtained.

[4] For more detailed information, go to http://www.hq.usace.army.mil/hap/.

C4.4.5. Final Determination. The Army Corps of Engineers will analyze the community situation, conduct market surveys, and make recommendations to the Deputy Assistant Secretary of the Army (Installations & Housing) for final determination and program approval. If the conditions are met, and a program is approved, the Army Corps of Engineers will establish a HAP program that will be administered by real estate specialists within the Army Corps of Engineers in coordination with the installation commander.

C4.5. DRAWDOWN CONSIDERATIONS

C4.5.1. In summary, the following major concerns are paramount at closing and realigning installations:

C4.5.1.1. Providing equitable and humane treatment of employees.

C4.5.1.2. Maintaining high morale among the workforce.

C4.5.1.3. Keeping employees informed during every step of the process.

C4.5.1.4. Retaining key personnel as long as their services are needed.

C4.5.1.5. Meeting mission requirements as the size of the workforce decreases.

C4.5.1.6. Taking care of employees and their families.

C4.5.2. The programs and authorities described in this chapter are designed to help commanders and leaders through this process. Affected personnel who want more information are encouraged to visit the DoD BRAC Human Resources web site.[5]

[5] http://www.cpms.osd.mil/bractransition.

C5. CHAPTER 5

REAL PROPERTY DISPOSAL

C5.1. INTRODUCTION It is in the best interest of the Department of Defense and the affected communities to complete the disposal of real property at closed or realigned installations as rapidly as possible to expedite its reuse. The Department of Defense is committed to using the most appropriate real property conveyance authorities to achieve rapid disposal.

C5.2. PREPARING FOR SCREENING AND DISPOSAL

C5.2.1. The Military Department must examine the installation's property records to determine the full extent of property interests and rights. There are often restrictions on property that will affect its disposal and future uses. Portions may be subject to long-term easements for utilities or access; other parts of the installation may be located on leased property. Property may be subject to reversionary interests, public trust doctrine, or public land withdrawal terms. In each case, the Military Department must determine the effect of such interests prior to initiating the property disposal process. It also must determine the legislative jurisdiction status of the property and, if appropriate, initiate prompt action to retrocede jurisdiction to the State.

C5.2.2. Contracts for privatization of housing and utilities, as well as other agreements such as cable television franchises, must be examined to evaluate the impact of closure and realignment on those contractual relationships. In addition, water, air, and mineral rights and other natural infrastructure assets at the installation must be identified because they may affect the value of the property.

C5.2.3. Reversionary Rights. In some cases, the deed for the government's acquisition of the property may contain a provision stating that the property will revert to the former owner in the event it ceases to be used for military purposes. The terms of the reversion clause in the deed will determine whether the property is available for use by another Military Department or Federal agency, reverts to the former owner upon the operational closure of the installation, or can be disposed of under other processes.

C5.2.4. Property Subject to the Public Trust Doctrine. Many installations are located in coastal areas and portions of the base may have been constructed on filled land. As long as the Federal Government owns such property, it can be used for any government purpose. If the Federal Government acquired the property from a State or local government (the trustee), it may be subject to the public trust doctrine. The property acquisition documentation must be examined to determine whether the State's interest was extinguished by Federal acquisition. This issue should be resolved before property is screened for other DoD or Federal interest.

C5.2.5. Property Subject to Legislative Disposal Provisions. Federal laws should be checked to determine if any law obligates the Department of Defense to dispose of the property to a specific recipient or in a specific manner.

C5.3. IDENTIFYING DOD AND FEDERAL PROPERTY NEEDS

C5.3.1. The Military Department shall issue official notices of availability to other DoD Components and Federal agencies. The notices will generally describe the number of acres and the improvements on the property; the reservations or restrictions relating to the title; and provide available environmental information on the condition of the property. The notices will inform agencies that they:

C5.3.1.1. Will be required to pay fair market value (Military Departments and Coast Guard are eligible for no-cost transfers) as determined by the Secretary, and that the Department of Defense will not ordinarily agree to waive this requirement per FMR 41 CFR 102.75 (reference (ab));

C5.3.1.2. Must agree to accept custody of the property when offered; and

C5.3.1.3. Must agree to accept the property in "as-is" condition, and that the Military Department will not agree to retain continuing liability for the environmental condition of the property post-transfer or otherwise "indemnify" the receiving agency.

C5.3.2. Agencies will be informed that they must express initial interest in the property within 30 days of the date of the notice of availability and submit a completed General Services Administration (GSA) Form 1334, "Request for Transfer of Excess Real and Related Personal Property," reference (aj), signed by the head of the agency or department within 60 days of the date of the notice of availability. Other Military Departments must submit a completed DD Form 1354 (reference (ak)) within the same timeframe. Figure C2.F1. gives an overview of the entire process.

C5.3.3. Withdrawn Public Domain Lands.

C5.3.3.1. Withdrawn lands are public domain lands (usually in the western United States or Alaska) that are under the jurisdiction of the Department of the Interior (DOI) for which use for military purposes has been authorized for a period of time. The property may have been withdrawn for military use by an Executive Order (EO) or by an Act of Congress. For such lands, the Military Department responsible for the closing installation will provide the Bureau of Land Management (BLM) with the notice of availability, as well as information about which, if any, public domain lands will be affected by the installation's closing. Before the date of approval of the closure, the Department should request that BLM review its land records to identify any withdrawn public domain lands at the closing installation. Any property record discrepancies between BLM and the Military Department should be resolved during this time period. The BLM will notify the Military Department of the final agreed-upon description of the public domain lands.

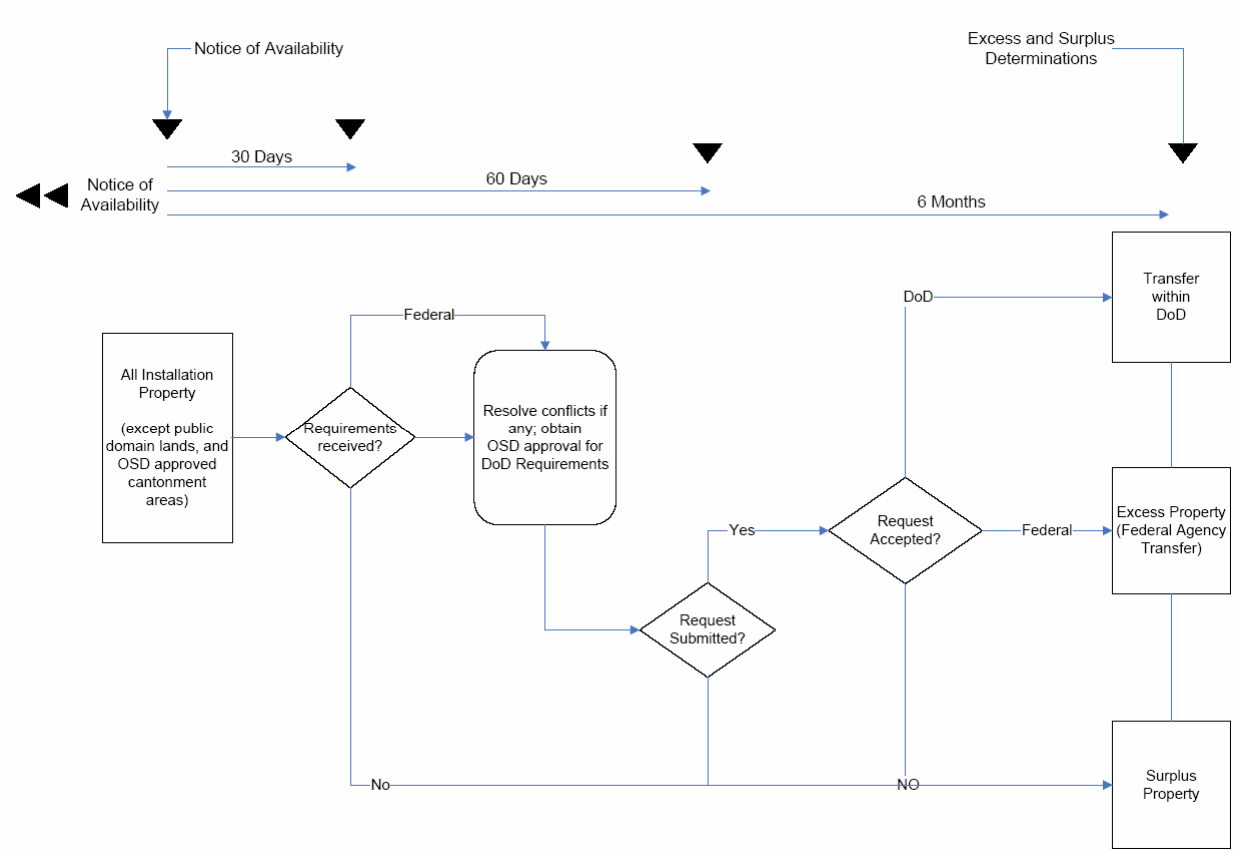
43 CFR 2372—"(a) Agencies holding withdrawn or reserved lands which they no longer need will file, in duplicate, a notice of intention to relinquish such lands in the proper office (see Sec. 1821.2-1 of this chapter). (b) No specific form of notice is required, but all notices must contain the following information: (1) Name and address of the holding agency. (2) Citation of the order which withdrew or reserved the lands for the holding agency. (3) Legal description and acreage of the lands, except where reference to the order of withdrawal or reservation is sufficient to identify them. (4) Description of the improvements existing on the lands. (5) The extent to which the lands are contaminated and the nature of the contamination. (6) The extent to which the lands have been decontaminated or the measures taken to protect the public from the contamination and the proposals of the holding agency to maintain protective measures. (7) The extent to which the lands have been changed in character other than by construction of improvements. (8) The extent to which the lands or resources thereon have been disturbed and the measures taken or proposed to be taken to recondition the property. (9) If improvements on the lands have been abandoned, a certification that the holding agency has exhausted General Services Administration procedures for their disposal and that the improvements are without value. (10) A description of the easements or other rights and privileges which the holding agency or its predecessors have granted over the lands. (11) A list of the terms and conditions, if any, which the holding agency deems necessary to be incorporated in any further disposition of the lands in order to protect the public interest. (12) Any information relating to the interest of other agencies or individuals in acquiring use of or title to the property or any portion of it. (13) Recommendations as to the further disposition of the lands, including where appropriate, disposition by the General Services Administration."

C5.3.3.2. When the Military Department agrees with BLM's findings, BLM will begin determining whether the lands are suitable for DOI programs. The Military Department will transmit a Notice of Intent to Relinquish (see above quote from 43 CFR 2372, reference (al)) to BLM as soon as the property is identified as excess to DoD needs. BLM will complete its suitability determination within 30 days of receiving the Notice of Intent to Relinquish. If public domain lands are to be used by a DoD Component, BLM will determine whether the existing authority for DoD use must be modified. If BLM determines that the land is suitable for return to the public domain, it notifies the Military Department that the Secretary of the Interior will accept the Military Department's relinquishment of the land. If the land is not found to be suitable for return to the public domain, BLM will so notify the Military Department, which will then dispose of the property pursuant to the applicable real property disposal authorities described in this chapter.

C5.3.4. Air Traffic Control and Air Navigation Equipment. Within 90 days of the notice of availability, FAA will survey any air traffic control and air navigation equipment at the installation to determine what is needed to support the continuing air traffic control, surveillance, and communications functions supported by the Military Department. FAA also will identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System are not subject to the application process described in paragraph C5.3.6; instead, FAA will work with the Military Department to prepare an agreement to take over the facilities and obtain the real property rights necessary to control the air space being relinquished.

C5.3.5. Property for Indian Tribes. As part of Federal screening, the Bureau of Indian Affairs (BIA) will have an opportunity to request that property be held in trust on behalf of Federally recognized Indian tribes. Property that is held in trust for Indian tribes is exempt from local planning and zoning requirements as well as taxation, as with Federal property. It is DOI's responsibility to contact the federally recognized tribes in the vicinity of the installation after it receives the Notice of Availability and to determine whether to submit a Request for Transfer of Excess Real and Related Personal Property on behalf of a tribe. Such requests must be signed by the Secretary of the Interior or an authorized designee. The Military Department will evaluate these requests using the same criteria applied to other Federal agency transfer requests. Indian tribes may not acquire excess real property directly by Federal agency transfer from the Military Department; they need to make their interests known through the BIA. An Indian tribe also may seek to acquire surplus property through a public benefit conveyance for education, public health, or other applicable public benefit purposes through the appropriate sponsoring agency, as well as through public sale, in accordance with the regulations applicable to those conveyance authorities. An Indian tribe interested in a public benefit conveyance should consult with the LRA and applicable Federal sponsoring agency in preparing this request.

C5.F1. Property Determinations



C5.3.6. Receiving and Evaluating Requests for Excess Property from Military Departments and Federal Agencies

C5.3.6.1. Requests for transfer of real and related personal property may be made by a

Military Department (for its own requirements or those of DoD Components whose property requirements it supports) or by other Federal agencies. The closure or realignment of an installation (whether leased or owned) does not preclude a DoD component (even the component currently utilizing the installation) from using that installation for missions or functions other than those that were the subject of the closure or realignment recommendation. The Military Department will keep the LRA informed about DoD and Federal agency interests. Federal agencies are also strongly encouraged to consult with the LRA on the compatibility between Federal uses and the LRA's redevelopment planning.

C5.3.6.2 A request from a DoD Component or Federal agency must contain the following:

C5.3.6.2.1. A completed GSA Form 1334 (reference (aj)). This form must be signed by the head of the department or agency requesting the property, or by an authorized designee. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form (for requests from other Military Departments, a DD Form 1354 (reference (ak)) is required instead of GSA Form 1334).

C5.3.6.2.2. A statement from the head of the requesting Component or agency that the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action).

C5.3.6.2.3. A statement that the requester has reviewed its real property holdings and cannot satisfy its requirement with existing property. This review must include all property under the requester's accountability, including permits to other Federal agencies and outleases to other organizations.

C5.3.6.2.4. A statement certifying that the requested property would provide greater long-term economic benefits than acquisition of a new facility or other property for the program.

C5.3.6.2.5. A statement that the program for which the property is requested has long-term viability.

C5.3.6.2.6. A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility.

C5.3.6.2.7. A statement certifying that the size and location of the property requested are consistent with the actual requirement.

C5.3.6.2.8. A statement that reimbursement to the Military Department, at fair market value as determined by the Military Department, will be made at the later of January 2008 or the date of transfer. This requirement does not apply to requests from other Military Departments or the Coast Guard.

C5.3.6.2.9. A statement that the requesting agency agrees to accept the care, custody, and costs for the property on the date the property is available for transfer, as determined by the Military Department.

C5.3.6.2.10. A statement that the requesting agency agrees to accept transfer of the property in its existing condition, including environmental, and further accepts all future government liabilities for conditions on the property, such as remediating releases of hazardous substances, pollutants, or contaminants, as of the date of transfer.

C5.3.6.3. The Military Department will use the following criteria when reviewing applications from DoD and Federal requesters:

C5.3.6.3.1. The requirement upon which the request is based is both valid and appropriate.

C5.3.6.3.2. The proposed Federal use is consistent with the highest and best use of the property. (See the text box below for the definition of "highest and best use," which pertains to both Federal and non-Federal requesters.)

C5.3.6.3.3. The requested transfer will not have an adverse impact on the transfer of any remaining portion of the installation.

C5.3.6.3.4. The proposed transfer will not establish a new program or substantially increase the level of an agency's existing programs.

C5.3.6.3.5. The application offers fair market value for the property (does not apply to the Department of Defense and Coast Guard).

C5.3.6.3.6. The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department, in accordance with the "as-is" transfer policy.

C5.3.6.3.7. The proposed transfer is in the best interest of the Federal government.

> 41 CFR Part 102-71.20 "Highest and best use" means the most likely use to which a property can be put, which will produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g., zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

C5.3.6.4. The Secretary of the Military Department responsible for the installation will forward requests by other Military Departments to the Deputy Under Secretary of Defense

(Installations and Environment) for review before making a final decision. If competing demands arise (e.g., two Federal agencies submit acceptable applications for the same property), the Military Department will resolve the conflict considering first the paramount needs of the national defense mission, followed by the homeland defense mission, followed by the views of the LRA and other appropriate factors.

C5.3.7. Making Final Determinations on Military Department and Federal Agency Transfer Requests.

C5.3.7.1. The Military Departments will make the final determination regarding DoD and Federal property needs for excess property at closing and realigning installations no later than 6 months after the date of approval of closure or realignment. Consistent with DoD policy that rapid property disposal is normally in the best interest of all parties including the affected local communities, the time period for making final determinations regarding DoD and Federal property needs will be extended only by the Secretary of the Military Department in circumstances demonstrating good cause.

C5.3.7.2. The transfer of property to the receiving Military Department or Federal agency should be completed as quickly as possible following final approval of transfer requests. At a minimum, the head of the Component or agency requesting the property must make a firm commitment to accept the property, in accordance with the provisions of this chapter, under the terms that the Military Department has offered before the remainder of the installation is declared surplus. This should occur within the same 6-month period.

C5.3.8. If a requesting agency decides not to accept the transfer of a portion of the installation after the rest of the property has been determined surplus and redevelopment planning is underway, it significantly complicates the planning process and the identification of surplus property for use by the homeless, and it increases costs for all participants. Similarly, if an agency makes an untimely property transfer request after the property has already been determined surplus, it can also delay and frustrate redevelopment planning and increase costs to all participants.

C5.3.9. Accordingly, such untimely requests to withdraw previously approved transfer requests or submit new transfer requests after surplus determinations may only be approved by the Secretary of the Military Department and then only in cases with an unusually compelling and unforeseen public interest that was not known when the surplus determination was made. After the Military Department has made final determinations on the transfer requests, it will publish a formal surplus property determination, as further discussed in Section C5.4.

C5.4. IDENTIFYING INTERESTS IN SURPLUS PROPERTY

C5.4.1. Base closure makes the identification of property for use by the homeless an integral part of the redevelopment planning process for the entire installation. This section describes how the Military Department and the LRA will apply this process to identify interests of State and local governments, representatives of the homeless, and other interested parties in surplus Federal property at the closing or realigning installation.

C5.4.2. Publicizing the Availability of Property.

C5.4.2.1. Establishment and Recognition of a Local Redevelopment Authority. As soon as practicable after the list of installations recommended for closure or realignment is approved, the Department of Defense will recognize an LRA for each installation where there is surplus real property for disposal. The LRA, an entity established by a State or local government, is recognized by the Secretary of Defense as the entity responsible for preparing the redevelopment plan for any property made surplus by closure or realignment of an installation. State and local governments are urged to create a redevelopment authority that includes the governmental body or bodies, if any, with land-use planning (i.e., zoning) authority over the installation, because the redevelopment plan that is prepared by the LRA may not be able to be implemented if the land-use planning authority is unwilling to enact zoning ordinances that are consistent with the redevelopment plan. OEA, after consulting with the Military Department, is responsible for officially recognizing an LRA and assisting LRAs in their redevelopment planning responsibilities. After it recognizes an LRA, OEA will publish information about it (including name, address, telephone number, and point of contact) in the Federal Register and in a newspaper of general circulation in the vicinity of the installation.

C5.4.2.2. Surplus Property Notice. As soon as possible after the surplus determination has been made, the responsible Military Department shall:

C5.4.2.2.1. Provide information on the surplus real property to HUD and the installation's LRA. If there is no recognized LRA at the time of the surplus determination, the Military Department will provide this information to the governor of the State and the heads of local governments concerned.

C5.4.2.2.2. Publish information about the surplus real property in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation. The published information should be similar to that furnished to DoD Components and Federal agencies in the notice of availability. The surplus notice will include information about the LRA if one has been recognized, along with the Military Department's determination, based on a highest and best use analysis, concerning availability of some or all of the surplus real property for conveyance to State and local governments and other eligible entities for public benefit purposes. Examples of such purposes include education, health, parks and recreation, historic monuments, public airports, highways, correctional facilities, ports, self-help housing, and wildlife conservation. The Military Department will send a copy to the Federal agencies that sponsor or approve such conveyances.

C5.4.3. Soliciting Notices of Interest.

C5.4.3.1. The base closure law (reference (c)) requires that the LRA publish the time period that the LRA will receive notices of interest from State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the installation ("interested parties"). A representative of the homeless need not be located in the vicinity of the installation as long as the representative proposes to serve the homeless population in the vicinity of the installation. It is in the LRA's interest to identify all interests in the property before preparing the redevelopment plan. If the Military Department receives any

notices of interest, it should provide them to the LRA for consideration in its redevelopment planning.

C5.4.3.2. The LRA and the Military Department will provide interested parties with information regarding surplus property, including the condition of existing structures and the availability of utilities. The Military Department will also arrange for the LRA and other interested parties to have the opportunity to inspect the property.

C5.4.3.3. The LRA will give public notice and hold hearings to allow interested parties and members of the public to provide their views regarding the proposed land-use plan and redevelopment of the base, including consideration of the needs of the homeless.

C5.4.3.4. Representatives of the Military Department, OEA and HUD will be available to assist the LRA in identifying interests in base property (including how to conduct outreach efforts) and addressing expressions of interest in its redevelopment plan.

C5.4.4. Local Timeframes. Although DoD encourages communities to begin planning early, the local redevelopment planning process and identification of interests in surplus property must begin no later than the completion of Federal screening—the date of the Federal Register publication of available surplus property. Within 30 days after the Military Department publishes the Determination of Surplus, the LRA shall publicize its notice for expressions of interest in a local newspaper, and through other means as deemed appropriate. The deadline for expressing interest is set by the LRA, but it can be no earlier than 3 months and no later than 6 months after publication of the LRA's notice for expressions of interest. The LRA notice shall inform interested parties of its process, including the required format, content, deadline, and address for submitting formal notices of interest.

C5.4.5. Outreach.

C5.4.5.1. The Military Department and LRA shall assist State and local governments, representatives of the homeless, and other interested parties in evaluating surplus property at the installation by providing information on the condition of the property, hosting site visits, and so forth. The LRA should coordinate these evaluations with the installation commander to ensure that they do not disrupt any ongoing military activities. Furthermore, the LRA is required to conduct outreach efforts to provide information on the surplus real property to representatives of the homeless. The LRA should contact the local HUD field office for an updated list of persons and organizations that are representatives of the homeless in the vicinity of the installation. The LRA should then invite these representatives to participate in the redevelopment planning process. This participation should occur in conjunction with a workshop, seminar, or forum in which the LRA and representatives of the homeless discuss homeless needs in the vicinity of the installation and whether there is appropriate property at the installation to meet those needs. The LRA is responsible for formulating and undertaking this outreach effort to make redevelopment planning as inclusive as possible.

C5.4.5.2. The LRA should, while conducting its outreach efforts, work with Federal agencies that sponsor public benefit conveyances and refer potentially interested parties to the appropriate PBC sponsoring agency. Those agencies can provide information on parties in the

vicinity of the installation that might be interested in and eligible for public benefit conveyances. The LRA should inform such parties of the availability of the property and consider their interests within the planning process. The Military Department will notify sponsoring Federal agencies of surplus property that is available for consideration for public benefit conveyance. It will also keep the LRA apprised of any expressions of interest. Expressions of interest from parties potentially eligible to receive public benefit conveyances are not required to be incorporated into the redevelopment plan, but they must be considered. The appropriate sponsoring Federal agency will determine all public benefit conveyance property recipients.

C5.4.6. Information Required in Notice of Interest from Representative of the Homeless.

C5.4.6.1. The term "homeless person" is defined as an individual who lacks a fixed, regular, and adequate night-time residence; or an individual or family that has a primary nighttime residence that is a supervised publicly or privately operated shelter designated to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill) or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

C5.4.6.2. Organizations that propose to use base property to provide services to the disabled or to low-income persons who are not homeless are not eligible to receive a homeless assistance conveyance. All questions regarding the eligibility of a particular entity should be referred to HUD headquarters base closure team.

C5.4.6.3. The following text box details what must be included in the notice of interest from representatives of the homeless.

32 CFR Part 176.20(c)(2)(ii) "The notices of interest from representatives of the homeless must include:

(A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;

(B) A description of the need for the program;

(C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;

(D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;

(E) A description of the financial plan, the organization, and the organizational capacity of the representative of the homeless to carry out the program; and

(F) An assessment of the time required to start carrying out the program."

C5.4.6.5. Although the LRA may publicly disclose the identity of the representative of the homeless who submitted a notice of interest, pursuant to the base closure law it may not release any information submitted to the LRA regarding the capacity of the representative of the homeless to carry out its program, a description of the organization, or the organization's financial plan for implementing the program without the consent of the representative of the homeless, unless such a release is authorized under Federal law and under the law of the State and communities in which the installation is located.

C5.4.6.6. The notices of interest from entities other than representatives of the homeless should specify the name of the entity and its specific interest in property or facilities, along with a description of the planned use. The LRA may also request that these entities submit a description of the planned use to the sponsoring Federal agency as well.

> Public Law 101-510, Section 2905(b)(7)(E)(ii) -- A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

C5.4.7. Preparing Redevelopment Plan and Accommodating Homeless Assistance Needs.

C5.4.7.1. The LRA will give public notice and hold at least one public hearing to allow interested parties and members of the public to present their views regarding the proposed redevelopment of the installation and property that may be considered to help the homeless. The LRA and the Military Department should provide interested parties information regarding the surplus property, including the condition of existing structures and the availability of utilities, and they should be given an opportunity to inspect the site.

> 32 CFR 176.20(c) Responsibilities of the LRA:
>
> (5) Develop an application, including the redevelopment plan and homeless assistance submission, explaining how the LRA proposes to address the needs of the homeless. This application shall consider the notices of interest received from State and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under either 40 U.S.C. 471 et. seq., or 49 U.S.C. 47151-47153; representatives of the homeless; commercial, industrial, and residential development interests; and other interests. From the deadline date for receipt of notices of interest described at §176.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to the appropriate Military Department and HUD. The application requirements are described at §176.30.
>
> (6) Make the draft application available to the public for review and comment periodically during the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submission to HUD and the appropriate Military Department. A summary of the public comments received during the process of developing the application shall be included in the application when it is submitted.

C5.4.7.2. Within 270 days after the deadline for notices of interest, the LRA is required to complete its redevelopment plan for the closing installation and submit its application (containing the redevelopment plan and homeless assistance submission) to HUD and the Military Department. If the LRA fails to complete the redevelopment plan within the time provided, the Military Department may consider implementing procedures set out in this chapter for identifying property for the homeless and completing the disposal process without a redevelopment plan.

C5.4.8. Considering and Accommodating Notices of Interest.

C5.4.8.1. Under the base closure law, the LRA is required to consider the notices of interest received from the representatives of the homeless and from other interested parties when preparing their plan. The LRA must balance the needs of the communities for economic redevelopment and other development with the needs of the homeless. In considering and accommodating homeless assistance needs, the LRA should be mindful of the criteria that HUD uses in evaluating the homeless assistance provisions of redevelopment plans. The criteria from 24 CFR 586.35 (reference (am)) and 32 CFR 176.35 (reference (e)) are shown in the following text box.

CFR Section 176.35 (b) HUD's review of the application --

Standards of review. The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether the application:

1) *Need.* Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities. HUD will take into consideration the size and nature of the installation in reviewing the needs of the homeless population in the communities in the vicinity of the installation.

(2) *Impact of notices of interest.* Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:

(i) Whether the plan is feasible in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community; and,

(ii) Whether the selected notices of interest are consistent with the Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the political jurisdictions in the vicinity of the installation.

(3) *Legally binding agreements.* Specifies the manner in which the buildings, property, funding, and/or services on or off the installation will be made available for homeless assistance purposes. HUD will review each legally binding agreement to verify that:

(i) They include all the documents legally required to complete the transactions necessary to realize the homeless use(s) described in the application;

(ii) They include all appropriate terms and conditions;

(iii) They address the full range of contingencies including those described at §176.30(b)(3)(i);

(iv) They stipulate that the buildings, property, funding, and/or services will be made available to the representatives of the homeless in a timely fashion; and

(v) They are accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements will, when executed, constitute legal, valid, binding, and enforceable obligations on the parties thereto.

(4) *Balance.* Balances in an appropriate manner a portion or all of the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities.

(5) *Outreach.* Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation and whether the outreach requirements described at §176.20(c)(1) and §176.20(c)(3) have been fulfilled by the LRA.

C5.4.8.2. As part of the planning process, the LRA should consider how specific requests for property by the homeless would affect the redevelopment of the remainder of the installation. It also may propose alternate sites on or off the installation to the representatives of the homeless that would be more compatible with the LRA's plans for redevelopment of the

remainder of the installation. The LRA must provide an opportunity for public comment before submitting its plan to HUD and the Department of Defense.

C5.4.9. Legally Binding Agreements.

C5.4.9.1. If the LRA approves an application by a representative of the homeless for property on the installation and reaches an agreement with the representative on the terms and conditions, the parties shall enter into a legally binding agreement. That agreement may provide for a parcel of installation property to be conveyed either to the representative of the homeless or to the LRA at no cost. If the property is to be conveyed to the LRA, then the LRA will lease or otherwise convey it to representatives of the homeless at no cost. The representative must use the property for homeless assistance purposes, such as homeless shelters, transitional housing, job training, warehousing, and food banks. The property may not be used for unrelated purposes, or sold, to generate revenue for the representative's programs.

C5.4.9.2. During the planning process, the LRA may decide that the presence of a facility for the homeless would be incompatible with the proposed redevelopment plan for the installation. As an example, the LRA may propose a port facility, a civil airport or a shopping mall for the entire installation. In such cases, it may be in the public interest for the LRA, at its expense, to offer property off the installation, or other assistance or resources, to representatives of the homeless, instead of the surplus property at the installation.

C5.4.9.3. The legally binding agreement between the LRA and the representative of the homeless must contain a provision stating that implementation of the agreement is contingent upon the decision regarding the disposal of the buildings and property covered by the agreement by the Military Department. HUD must approve these legally binding agreements. The agreements also must contain a provision that, in the event the representative of the homeless ceases to use the property to assist the homeless, the property will revert to the LRA or another eligible representative of the homeless.

C5.4.10. Determination of Eligibility for Public Benefit Conveyance (PBC).

C5.4.10.1. PBCs, which are authorized by Federal statute, are conveyances of surplus government property to State and local governments and certain nonprofit organizations for a specific public purpose, such as schools, parks, airports, ports, prisons, self-help housing, and public health facilities. For each of these public purposes, there is a sponsoring Federal agency (such as the Department of Education for conveyances for school purposes) with regulations that set forth the criteria it uses for determining whether an applicant is eligible for a public benefit conveyance and whether the applicant has a need for the property. Generally, the applicant must demonstrate that it has the financial resources to improve the property and begin to use the property for the approved purpose within a specific period of time. These transfers can be further categorized as described below:

C5.4.10.1.1. Sponsored public benefit conveyances. These conveyances include PBCs for education, public health, public park or recreation, self-help housing, and port facility purposes. Applications are provided by the sponsoring Federal agency to the interested entity. Sponsoring Federal agencies must officially approve the completed applications and recommend

and submit a request to the Military Department for the transfer on behalf of the applicant. The terms and conditions attached to the use and/or redevelopment and the value (or the discount allowed) of the real property are determined by the sponsoring agency. In this type of conveyance, the Military Department assigns the real property to the sponsoring agency for subsequent transfer to the recipient. The deed includes, by reference, the application or defined planned use for the property, as well as the property description, various disclosure documents, and covenants and conditions provided by the sponsoring agency and the Military Department. Special conditions may be added by the Military Department or the sponsoring Federal agency to protect the government's interest in the property. Properties typically include a discretionary right of reversion for noncompliance with the terms of the transfer. The Military Department may include, at its discretion, the right to revert for national defense purposes, if this requirement is defined in the assignment. The Military Department may transfer related personal property along with the conveyance of real property.

C5.4.10.1.2. Approved public benefit conveyances. These conveyances include PBCs for non-federal correctional facilities, law enforcement, emergency management response, wildlife conservation, historic monuments, airport facilities, and power transmission lines. The terms and conditions attached to the redevelopment are determined by the Military Department, which transfers the qualifying personal property directly to the approved PBC recipient. This may include related personal property as well.

C5.4.10.2. If an entity has expressed interest in a public benefit conveyance during the LRA's outreach process or the Military Department's Determination of Surplus notification, the LRA or the Military Department will refer the entity to the sponsoring agency, which will determine whether the applicant for the property is eligible to acquire the property under its criteria. This screening for public benefit conveyances should be completed before the submission of the redevelopment plan to HUD and the Department of Defense. The redevelopment plan should identify sites where public uses such as schools, parks, or airports would be suitable.

C5.4.11. Completion of Redevelopment Plan. The redevelopment plan should propose land uses that consider past use of the property, existing property conditions, needs of the homeless in the communities in the vicinity of the installation, and needs of the communities in the vicinity of the installation for economic redevelopment and other development. After completion of the redevelopment plan, the LRA must submit an application containing the plan to the Secretary of Defense and the Secretary of HUD. The application must include all of the information required by HUD regulations published at 24 CFR Part 586.30 (reference (am)) and DoD regulations published at 32 CFR Part 176.30 (reference (e)). (See the following summary.)

32 CFR Part 176.30 "LRA application." (Summary -- see actual regulations for full text)

(a) Redevelopment plan. A copy of the redevelopment plan shall be part of the application.

(b) Homeless assistance submission. This component of the application shall include the following:

(1) Information about homelessness in the communities in the vicinity of the installation.
(2) Notices of interest proposing assistance to homeless persons and/or families.
(3) Legally binding agreements for buildings, property, funding, and/or services.
(4) An assessment of the balance with economic and other development needs.
(5) A description of the outreach undertaken by the LRA. The LRA shall explain how the outreach requirements described at §176.20(c)(1) and §176.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless the LRA contacted during the outreach process.

(c) *Public comments.* The LRA application shall include the materials described at §176.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

C5.4.12. Review of Homeless Assistance Application.

C5.4.12.1. Not later than 60 days after receiving the completed application, the Secretary of HUD shall complete the review. That review will determine whether the LRA's application is complete and, with respect to the expressed interests and requests of representatives of the homeless, whether the application meets HUD's criteria. The standards of the review are addressed in 32 CFR Part 176.35 (reference (e)).

C5.4.12.2. The homeless assistance submission is the LRA's opportunity to convince HUD that the LRA complied with the required procedures and took into account all the factors in HUD's standards of review. The LRA should explain in detail why it believes the application appropriately balances the needs of the homeless in the community with economic redevelopment and other development needs of the community. When reviewing the plan, HUD takes into consideration and is receptive to the predominant views of the local communities. HUD may enter into negotiations and consultations if it determines that the plan does not meet the statutory requirements and the LRA may modify the plan after such consultations. Upon completion of its review, HUD must notify the LRA, the Military Department, and the Department of Defense of its determination. If HUD determines that the LRA's redevelopment plan meets the above requirements, the Military Department will complete the disposal decision and proceed with disposal of the property.

C5.4.13. Revision of Application and Redevelopment Plan. If the Secretary of HUD determines that the application of the LRA does not meet the review criteria, the Secretary includes a summary of the deficiencies in the application, an explanation of the determination, and a statement of the actions needed to address the determination. The LRA then has the opportunity to cure the deficiencies identified by HUD. This sequence of events is laid out in the following text box.

32 CFR Part 176.35(c) and (d)

(c) *Notice of determination.*

(1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to §176.15(a), send written notification both the DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of §176.35(b). If the application fails to meet the requirements, HUD will send the LRA:

(i) A summary of the deficiencies in the application;

(ii) An explanation of the determination; and

(iii) A statement of how the LRA must address the determinations.

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in §176.20(c)(5), and the State does not accept within 30 days a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at §176.40.

(d) *Opportunity to cure.*

(1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under §176.35(c)(1) within which to submit to HUD and DoD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination, effective 90 days from the LRA's receipt of the preliminary determination, that the redevelopment plan fails to meet the requirements of §176.35(b).

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission, send written notification of its final determination of whether the application meets the requirements of §176.35(b) to both DOD and the LRA.

C5.4.14. Identification of Property for Use by Homeless without a Redevelopment Plan.

C5.4.14.1. If an LRA does not submit a redevelopment plan or a revised redevelopment plan within the times provided, or if HUD does not approve the LRA’s revised plan, HUD has the responsibility for identifying installation property that could be used to assist the homeless. In carrying out that responsibility, HUD will undertake the following activities (see the following text box).

32 CFR 176.40 Adverse determinations.

(a) *Review and consultation.* If the resubmission fails to meet the requirements of §176.35(b), or if no resubmission is received, HUD will review the original application, including the notices of interest submitted by representatives of the homeless. In addition, in such instances or when no original application has been submitted, HUD:

(1) Shall consult with the representatives of the homeless, if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

(2) May consult with the applicable Military Department regarding the suitability of the buildings and property at the installation for use to assist the homeless; and

(3) May consult with representatives of the homeless and other parties as necessary.

(b) *Notice of decision.*

(1) Within 90 days of receipt of an LRA's revised application which HUD determines does not meet the requirements of §176.35(b), HUD shall, based upon its reviews and consultations under §176.40(a):

(i) Notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless; and

(ii) Notify DoD and the LRA of the extent to which the revised redevelopment plan meets the criteria set forth in §176.35(b).

(2) In the event that an LRA does not submit a revised redevelopment plan under §586.35(d), HUD shall, based upon its reviews and consultations under §176.40(a), notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, either

(i) Within 190 days after HUD sends its notice of preliminary adverse determination under §176.35(c)(1), if an LRA has not submitted a revised redevelopment plan; or

(ii) Within 390 days after the Military Department's Federal Register publication of available property under §176.20(b), if no redevelopment plan has been received and no extension has been approved.

C5.4.14.2. Upon receipt of the notice from HUD, the Military Department completes its NEPA analysis of property disposal, and it disposes of the buildings and property in consultation with HUD and LRA. The Military Department's proposed Federal action for property disposal shall incorporate the notification from HUD regarding buildings and property that would be suitable for use to assist the homeless only to the extent that the Military Department considers appropriate and consistent with the highest and best use of the installation as a whole, taking into consideration the redevelopment plan (if any) submitted by the LRA.

C5.5. PROPERTY DISPOSAL ALTERNATIVES (the "Toolbox")

C5.5.1. After completion of the NEPA process and compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (reference (f)), the Military Department will dispose of all surplus property. As the disposal agency, the Military Department has the authority to select the methods of disposal. It may dispose of surplus real and personal property at the installation as one conveyance, or convey the property in multiple parcels using one or more property conveyance authorities.

C5.5.2. Disposal of Property for Use by Homeless. Property that has been identified for use to assist the homeless as determined by HUD must be conveyed to either the representative of the homeless or the LRA, as provided in HUD's approval of the application. If the property is conveyed to the LRA, it then will make it available to the representative of the homeless. It also will be responsible for monitoring the use of the property and ensuring that the representatives of the homeless comply with the legally binding agreement and provide the services that they agreed to provide for the benefit of the homeless. The conveyance must be for no cost. The deed must include a provision that, in the event the representative of the homeless ceases to provide services to the homeless, the property will revert to the LRA. The LRA must take appropriate action to secure, to the maximum extent practicable, another qualified representative of the homeless to use the property to assist the homeless. If the LRA is unable to find a qualified representative of the homeless to use the property, it will own the property without any requirement to use the property to assist the homeless. If there is no HUD-approved redevelopment plan and no legally binding agreement between the LRA and the representative of the homeless, the deed will provide that the property will revert to the United States in the event that the representative of the homeless fails to use the property for the benefit of the homeless.

C5.5.3. Public Benefit Conveyance (PBC).

C5.5.3.1. PBCs are conveyances of real and personal property to State and local governments and certain nonprofit organizations for public purposes as authorized by statute. These public purposes include schools, parks, airports, ports, public health facilities, law enforcement, emergency management response, correctional facilities, historic monuments, self-help housing, and wildlife conservation. If the Military Department has determined that the best use of a particular parcel is consistent with a specific public benefit conveyance, a Federal sponsoring agency may request assignment of the property for purposes of conveying the property to a designated eligible recipient, such as the Department of Education for schools or the National Park Service for parks and recreation purposes. The sponsoring agencies are responsible for selecting qualified applicants and determining the amount of the discount (if any) from fair market value to be proposed.

C5.5.3.2. With the exception of airport, law enforcement, emergency management response, historic monuments, and wildlife conservation conveyances, the sponsoring agency will normally draft and execute the deeds. The Military Department must inform the sponsoring agency of any land use controls, as defined in "Defense Environmental Restoration Program Management Guidance" promulgated by the DUSD (I&E) in a September 28, 2001, memorandum (reference (an)) that must be included in the deed. The sponsoring agency will include additional deed covenants and restrictions consistent with its authorities and regulations;

the sponsoring agency is also responsible for monitoring compliance with those additional covenants and restrictions.

C5.5.3.3. The sponsoring Federal agency is required to accept the assignment and convey the ownership of the property within 45 days of the Military Department making it available for assignment. Further information about public benefit conveyances can be found in the Federal Management Regulation, 41 CFR Part 102-75 (reference (ab)).

C5.5.4. Conservation Conveyances. 10 U.S.C. 2694a (reference (ao)) (see quote below) authorizes a Military Department to convey surplus property that is suitable for conservation purposes to a State or local government, or to a nonprofit organization that exists primarily for the purpose of natural resource conservation. The deed may permit the recipient to convey the property for the same purpose and conduct incidental revenue-producing activities. The deed also must contain a clause that the property shall revert to the United States in the event that it ceases to be used for conservation purposes.

> 10 U.S.C. 2694a —"Authority to Convey — The Secretary of a military department may convey to an eligible entity described in subsection (b) any surplus real property that —
>
> (1) is under the administrative control of the Secretary;
>
> (2) is suitable and desirable for conservation purposes;
>
> (3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and
>
> (4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property disposal processes and authorities under subtitle I of title 40."

C5.5.5. Transfer Authority in Connection with Payment of Environmental Remediation Costs.

C5.5.5.1. Public Law 101-510, Section 2905(e) (reference (c)) authorizes the Military Departments to convey property to an entity that will undertake the responsibility for all environmental actions on the property. If the fair market value of the property is more than the restoration cost, the purchaser must pay the Military Department the difference. If the fair market value is less than the restoration cost, the Military Department may pay the purchaser the difference. The proposed purchaser will be selected through a two-step competitive negotiation process. The solicitation will include the qualification requirements for bidders, a description of the property for sale, proposed land use controls, zoning classification (if the property has been zoned), environmental condition of the property, and requirements for an early transfer and a Section 2905(e) conveyance. The Administrator of the Environmental Protection Agency (EPA) and the governor of the State should be notified of the intent by the Military Department to request a CERCLA covenant deferral. The Military Department will request a statement of qualifications from prospective purchasers. Because the purchaser will be responsible for completing the restoration, the Military Department must confirm that prospective purchasers

have the technical expertise and financial capability to complete the restoration before considering them for award. The Military Department will evaluate the responses to the solicitation, determine which bidders meet the qualification requirements, and notify all bidders of its decision.

C5.5.5.2. Qualifying bidders will be given a specific period of time to review the terms of Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences previously received from regulators. Bidders must consider the terms of previous agreements and concurrences in their bids. If a remedy has not been selected, bidders may base bids on remedies that they believe will meet the applicable standards and achieve regulator concurrence. The qualifying bidders will then submit their bid packages, setting out their bids for the property. The Military Department may negotiate with the bidders, provided their prices are at or above the fair market value for the property (taking into consideration the cost of all environmental restoration, waste management, and environmental compliance activities assumed by the offeror). If none of the bidders offers fair market value for the property, the Military Department will terminate the bidding process and consider other options for disposal of the property. Once a winning bidder has been determined by the Military Department, EPA (and a state as appropriate) will negotiate an enforceable cleanup agreement with that party, after which a covenant deferral request could be submitted to the Regional Administrator, who has been delegated the authority by EPA's Administrator.

C5.5.5.3. If the Military Department selects a winning bidder, it will submit a covenant deferral request to the Governor of the State (regardless of the installation's National Priorities List (NPL) status), and to the Administrator of EPA if on the NPL. The covenant deferral request should adequately address all of the requirements in CERCLA 120(h)(3)(C) for EPA and the State to approve the deferral. The EPA's "Guidelines on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3)__ Early Transfer Authority Guidance" (reference (ap)) and appropriate state guidance can be valuable aids when developing the covenant deferral request.

C5.5.5.4. Once the requested deferral has been approved by the regulatory agency(ies), the Military Department can enter into a binding purchase agreement. At closing, the Military Department will tender a deed that includes the land-use controls. The restoration cost credited in this transaction must be the lesser of the costs incurred by the recipient of the property for restoration or the amount the Secretary of Defense would otherwise have incurred. The Secretary also must certify these costs to Congress. Upon completion of the restoration by the recipient, the Military Department will give CERCLA (reference (f)) 120(h)(3)(A)(ii)(I) covenants (CERCLA 120(h)(3)(A)(i) and (ii)(II) covenants will have been given at the time of conveyance).

C5.5.6. Public Sales. The Military Department, in consultation with the LRA, will determine when public sale is the best method to dispose of a parcel. The Department of Defense believes that market-based property conveyance using public sales is an effective means of achieving the mutual goal of rapidly putting the property back into productive uses by new owners. In preparing for public sale, it is necessary to decide whether the property would be more marketable as a single parcel or whether it should be subdivided for sale. The amount of advertising and the method of sale will depend upon the value of the property and the potential

market. The Department of Defense has successfully employed a number of different public sale approaches, including sealed bid, Internet auction, and auction on the site to the highest responsible bidder. Further information about public sales can be found in the Federal Management Regulation, 41 CFR Part 102-75 (reference (ab)).

C5.5.7. Economic Development Conveyances.

C5.5.7.1. The BRAC law (reference (c)) authorizes a Military Department to convey real and personal property to an LRA for the purpose of job generation on the installation. Only an LRA is eligible to acquire property under an EDC. The LRA must demonstrate in its application that the proposed uses for the property will generate sufficient jobs to justify an EDC conveyance, and that the proposed land uses are realistically achievable given current and projected market conditions. The Military Department is required to seek to obtain fair market value consideration for EDC conveyance of property on installations that were approved for closure or realignment after January 1, 2005. On a case-by-case basis, the Military Department may grant an EDC without consideration, subject to the following statutory requirements:

C5.5.7.1.1. The LRA agrees that the proceeds of sale or lease of the property received during at least the first 7 years after the initial conveyance shall be used to support the economic redevelopment of, or related to, the installation.

C5.5.7.1.2. The LRA agrees to take title to the property within a reasonable time after the Military Department makes its surplus determinations.

C5.5.7.2. The following uses of proceeds by the LRA support economic redevelopment as required above:

C5.5.7.2.1. Road construction and public buildings.

C5.5.7.2.2. Transportation management facilities.

C5.5.7.2.3. Storm and sanitary sewer construction.

C5.5.7.2.4. Police and fire protection facilities and other public facilities.

C5.5.7.2.5. Utility construction.

C5.5.7.2.6. Building rehabilitation.

C5.5.7.2.7. Historic property preservation.

C5.5.7.2.8. Pollution prevention equipment or facilities.

C5.5.7.2.9. Demolition.

C5.5.7.2.10. Disposal of hazardous materials generated by demolition.

C5.5.7.2.11. Landscaping, grading, and other site or public improvements.

C5.5.7.2.12. Planning for or the marketing of the development and reuse of the installation.

C5.5.7.3. Before investments made off the installation can be considered allowable uses of proceeds, the LRA must demonstrate that they are related to those uses listed above and directly benefit the economic redevelopment and long-term job generation efforts on the installation.

C5.5.7.4. EDC agreements must require the LRA to submit an annual financial statement certified by an independent certified public accountant. This statement should cover the LRA's use of proceeds from a sale, lease, or equivalent use of EDC property. The agreement also must provide that the Military Department may recoup from the LRA any proceeds that are not used for economic development within, at minimum, the 7-year period following initial EDC conveyance. The Military Department may require a longer recoupment period if it determines that a longer period is warranted.

C5.5.7.5. The Military Department may convey property to the LRA using EDC authority subject to a requirement that it subsequently lease one or more portions of the property to a Federal agency. Such conveyance authority shall not be used when the Secretary concerned determines that the mission requirement of the benefiting Federal agency can reasonably be met by direct transfer of property. Conveyances under this authority will be at fair market value and the associated lease shall include the following conditions:

C5.5.7.5.1. Be for a term of not more than 50 years, but may have options.

C5.5.7.5.2. Not require payment of rent by the United States.

C5.5.7.5.3. Permit another Federal agency to complete the lease term.

C5.5.8. Negotiated Sales. The Military Department may dispose of property by negotiated sale only under limited circumstances. Negotiated sales to public bodies can only be conducted if a public benefit, which would not be realized from competitive sale or authorized public benefit conveyance, will result from the negotiated sale. The most common exception to the requirement for a competitive public sale is a negotiated sale to a State or local government for a public purpose (such as acquiring property for a new city hall) that does not qualify under one of the public benefit conveyance authorities. The grantee must pay not less than fair market value based upon highest and best use and an appraisal. An Explanatory Statement detailing the circumstances of the proposed sale must be sent to the appropriate Congressional committees and there is a 30-day waiting period after notification before the property may be conveyed. The deed must include an excess profits clause that requires the grantee to remit all proceeds in excess of its costs if it sells the property within 3 years. Further information about negotiated sales may be found in the Federal Management Regulation, 41 CFR Part 102-75 (reference (ab)).

C5.5.9. Disposal to Depository Institutions. The Military Department may convey the property and improvements to a bank or credit union that conducted business on a closed installation and constructed or substantially renovated the facility with its funds. The Military Department must offer the land on which the facility is located to the financial institution before offering it to another entity; however, the depository institution must agree to pay fair market

value. If the institution constructed the facility at its expense, it must pay fair market value for just the underlying land. If the institution substantially renovated a structure belonging to the Military Department, it must pay fair market value for the structure as well as the land, less the value of the renovations. The Military Department may not convey the property to the institution if the operation of a depository institution would be inconsistent with the redevelopment plan.

C5.5.10. Exchanges for Military Construction. Section 2869 of title 10, United States Code (reference (aq)), provides an alternative authority for disposal of real property at a closing or realigning installation. That authority allows any real property at such an installation to be exchanged for military construction at that or another location. This authority may be exercised at any time after the date of approval of the closure or realignment. The Military Department may seek offers of military construction in exchange for real property or receive them unsolicited. If the exchange takes place after the property has been determined to be surplus, consultation must take place in accordance with section 2905(b)(2)(D) of the DBCRA (reference (c)).

> 10 U.S.C. 2869—"(a) Conveyance Authorized; Consideration.— The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, located on a military installation that is closed or realigned under a base closure law to any person who agrees, in exchange for the real property—
> **(1)** to carry out a military construction project or land acquisition; or
> **(2)** to transfer to the Secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both.
>
> (b) Conditions on Conveyance Authority.— The fair market value of the military construction, military family housing, or military unaccompanied housing to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the military construction, military family housing, or military unaccompanied housing is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values."

C5.6. PROPERTY DISPOSAL CONSIDERATIONS

C5.6.1. Property Disposal Planning. The Military Department may develop an installation summary report that considers all property assets, market conditions, and potential disposal options. The purpose of this summary report is to help identify the highest and best use of the property to assist in formulating a property disposal strategy, taking into account all property assets and property conditions.

C5.6.2. Appraisals.

C5.6.2.1. The Military Department must obtain appraisals of the fair market value of the property prior to conveyance under an EDC, negotiated sale, public sale, sale under Section 2905(e) of the DBCRA (reference (c)), or conveyance to a depository institution. A Military Department does not need to obtain appraisals for parcels that will be conveyed at no cost to assist the homeless, by a public benefit conveyance, or for property with an estimated value less than $300,000 that will be disposed of by competitive public sale. The Military Department must use only experienced and qualified real estate appraisers familiar with the types of property being appraised. Appraisals must be based upon the highest and best use of the property, taking account of all property conditions that are relevant to fair market value. After the Secretary concerned has made a determination of fair market value pursuant to the DBCRA (reference (c)), the Military Department shall share the appraisals with the LRA when considering an EDC application. The purpose of sharing the appraisal is to fully inform the LRA regarding the Military Department's determination of the fair market value; it is not to promote or allow "negotiation" of the fair market value. The determination of fair market value is statutorily assigned to the Secretary and the appraisal represents, when adopted by the Secretary, his determination of the fair market value. The fair market value is not itself to be negotiated.

C5.6.2.2. In preparing the estimate of fair market value, the Military Department will use the most recent edition of the Uniform Appraisal Standards for Federal Land Acquisitions. The Military Department will consult with the LRA on valuation assumptions, guidelines, and instructions given to the appraiser where fair market value estimating is being conducted for an EDC.

C5.6.3. Environmental Covenant Deferral Process.

C5.6.3.1. CERCLA (reference (f)) requires Federal agencies to include a covenant in the deed conveying property to a non-federal party that provides certain warranties regarding completion of environmental remediation. It also authorizes a procedure for the deferral of this covenant (known as 'early transfer') to enable property conveyance before environmental remediation is complete. The following text box addresses the covenant deferral authority.

42 USC 9620(h)(3)(C)(i), "Deferral.--

(i) In general.-- The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determines that the property is suitable for transfer, based on a finding that--

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property."

C5.6.3.2. In furtherance of the goal of rapidly putting property back into productive uses by new owners, the Military Department should identify early in the property disposal planning process all property that appears to be suitable for an "early transfer" conveyance by using the process authorized in CERCLA (reference (f)) for deferral of the normal deed covenant that all actions needed to protect human health and the environment have been taken. This covenant deferral process can be used in combination with any of the property disposal authorities. The Military Department must obtain the approval of the Administrator of EPA, with concurrence of the governor of the State, for property listed on the NPL, or approval from the governor for property not listed on the NPL. The Military Department must publish notice of the proposed CERCLA covenant deferral in a local newspaper, complete a 30-day waiting period for public comment, and address and incorporate any comments received, as appropriate.

C5.6.4. Complying with National Historic Preservation Act (reference (u)).

C5.6.4.1. Section 106 of the National Historic Preservation Act, or NHPA (see the following excerpt), requires Federal agencies to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. To comply with those requirements, installations must follow the provisions of the ACHP regulations, 36 CFR 800, "Protection of Historic Properties" (reference (ar))[1].

[1] Detailed guidance is available on the ACHP Web site in "The Section 106 Regulations Users Guide" at http://www.achp.gov/usersguide.html. A flowchart for the Section 106 process is at http://www.achp.gov/regsflow.html

Section 106, National Historic Preservation Act of 1966 (NHPA) —"The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking."

C5.6.4.2. If historic properties will be adversely affected by a Federal undertaking, the Federal agency generally enters into a memorandum of agreement with appropriate interested parties. The NHPA (reference (u)) is a procedural statute; it does not require a specific outcome. Whenever practicable, the Federal agency should conduct the Section 106 process concurrent with NEPA, 36 CFR 800.8 (reference (t)). (Chapter 8 provides more information on NEPA.)

C5.6.4.3. BRAC activities, such as realignment, transfer, lease, or sale, constitute an "undertaking" as defined in the ACHP regulations (36 CFR 800, (reference (ar)), see quote below) and require compliance with Section 106. Any conveyance, lease, or sale of historic property out of Federal ownership or control constitutes an "adverse effect" (unless the property is protected by legally enforceable restrictions or conditions), as defined in the ACHP regulations, see 36 CFR 800.5(a)(2)(vii) (reference (ar)). Depending on its conditions, a lease also may constitute an adverse effect. Any ongoing requirement, such as a survey or recordation, in existing memoranda of agreement or purchase agreements must either be completed prior to BRAC transfer or accounted for in an updated BRAC-specific consultation.

36 CFR 800, "Protection of Historic Properties." —"(a) *Purposes of the Section 106 process*. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties."

C5.6.4.4. ACHP broadly defines the term "historic property" to include any "prehistoric or historic district, site, building, structure, or object included, or eligible for inclusion, in the National Register of Historic Places," see 36 CFR 800.16(l)(1) (reference (ar)). The term also includes properties of traditional religious and cultural importance (generally referred to as "traditional cultural properties" or TCPs) to a Federally recognized Indian tribe or Native Hawaiian organization.

C5.6.4.5. The installation's Integrated Cultural Resources Management Plan should include information on historic and TCP properties on the installation. Any property 50 years or more in age, regardless of use or condition, as well as Cold War-era assets less than 50 years in age, must be evaluated for eligibility for inclusion in the National Register of Historic Places (National Register). The National Register process, including eligibility criteria, is found in 36 CFR 63 (reference (as)).

C5.6.5. Complying with Native Americans Grave Protection and Repatriation Act (NAGPRA) (reference (s)).

C5.6.5.1. NAGPRA requires Federal agencies to protect, inventory, and repatriate Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations. It defines Native American "cultural items" as:

C5.6.5.1.1. Native American human remains.

C5.6.5.1.2 Funerary objects.

C5.6.5.1.3 Sacred objects.

C5.6.5.1.4 Objects of cultural patrimony.

C5.6.5.2. Although most installations have started the NAGPRA process, they must complete it or otherwise provide for its completion prior to closure. In addition to existing collections, NAGPRA also applies to cultural items intentionally excavated or inadvertently discovered during ground disturbing activities, including the process of completing archeological inventories as part of BRAC.

C5.6.6. Complying with Executive Order (E.O.) 13007, "Indian Sacred Sites" (reference (at)). An installation that has known sacred sites must comply with reference (at). This order requires that, where practicable and appropriate, Federal agencies must ensure reasonable notice is provided to Federally recognize Indian tribes of proposed actions or land management policies (which include BRAC actions) that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. Executive Order 13007 (reference (at)) defines sacred sites.[2]

C5.6.7. Options to Buy and Purchase Agreements. Purchase agreements or memoranda of agreement, whether for EDCs, negotiated sales, or other forms of negotiated conveyances, shall not include options to buy. Those documents should not bind the Military Department to hold the property for a period of time after it is otherwise ready for conveyance while the prospective grantee has an opportunity to decide whether it wants to acquire the property. The purchase agreement or memorandum of agreement must be a binding contract that identifies the buyer and

[2] More information on the connection between reference (as) and Section 106 can be found at http://www.achp.gov/eo13007-106.html.

the seller, the property to be conveyed, the consideration, and all material terms and conditions including the time for performance of the obligations there under.

C5.6.8. Leasing of BRAC Property. The goal of the Military Department is to dispose of any surplus property as promptly as possible. Prompt disposal reduces caretaker costs and helps the local community by expediting the redevelopment of the property. The extensive real property and environmental requirements to ensure that property is suitable for interim lease can detract from the Military Department's ability to accomplish actions needed to dispose of the property. As a result, whenever the leasing of property might delay the disposal of the property, the military department will not lease base closure property. It may, however, lease surplus property pending final disposition if the Military Department determines that the lease would facilitate State and local economic efforts and not interfere with or delay property disposal. The Military Department may accept less than fair market value if it determines that such acceptance would be in the public interest and fair market rent is unobtainable or not compatible with such public benefit. Before entering into a lease, the Military Department must consult with EPA to determine whether the environmental condition of the property is such that a lease is advisable. The Military Department must assure compliance with the requirements of 10 U.S.C. 2692 (reference (au)) prior to authorizing a lessee to store, treat, or dispose of any toxic or hazardous material on leased property.

C5.6.9. Proceeds from Sales and Leases of BRAC Property. All proceeds from the sale of BRAC property and the rent from property that has been closed under BRAC must be deposited in the BRAC Account. However, if any real property or facility was acquired, constructed, or improved with commissary or non-appropriated funds, a portion of the proceeds from the transfer or disposal of property at that installation shall be deposited into a reserve account. The amount deposited shall be equal to the depreciated value of the investment made with such funds as of the date of closure.

C6. CHAPTER 6

PERSONAL PROPERTY

C6.1. INTRODUCTION

C6.1.1. The Department of Defense will dispose of personal property at a closing installation in a timely and orderly fashion, in consideration of the continuing military needs for the equipment and the redevelopment needs of the community. This task will be accomplished in consultation with the LRA. The needs of the Military Department to continue using the personal property to support its relocating units or other military missions and functions at another installation are of paramount consideration in determining the ultimate disposition of the property. The Department of Defense recognizes that personal property not required by the Military Department can have an important impact on the local community's prospects for economic recovery. After considering military needs, the Military Department should make every effort to find the best and most cost-effective use for the property while making every reasonable effort to assist the LRA in obtaining the available personal property needed to implement its redevelopment plan in a timely fashion. The procedures described in this chapter only apply to realigning installations to the extent that their real property becomes surplus and available for redevelopment.

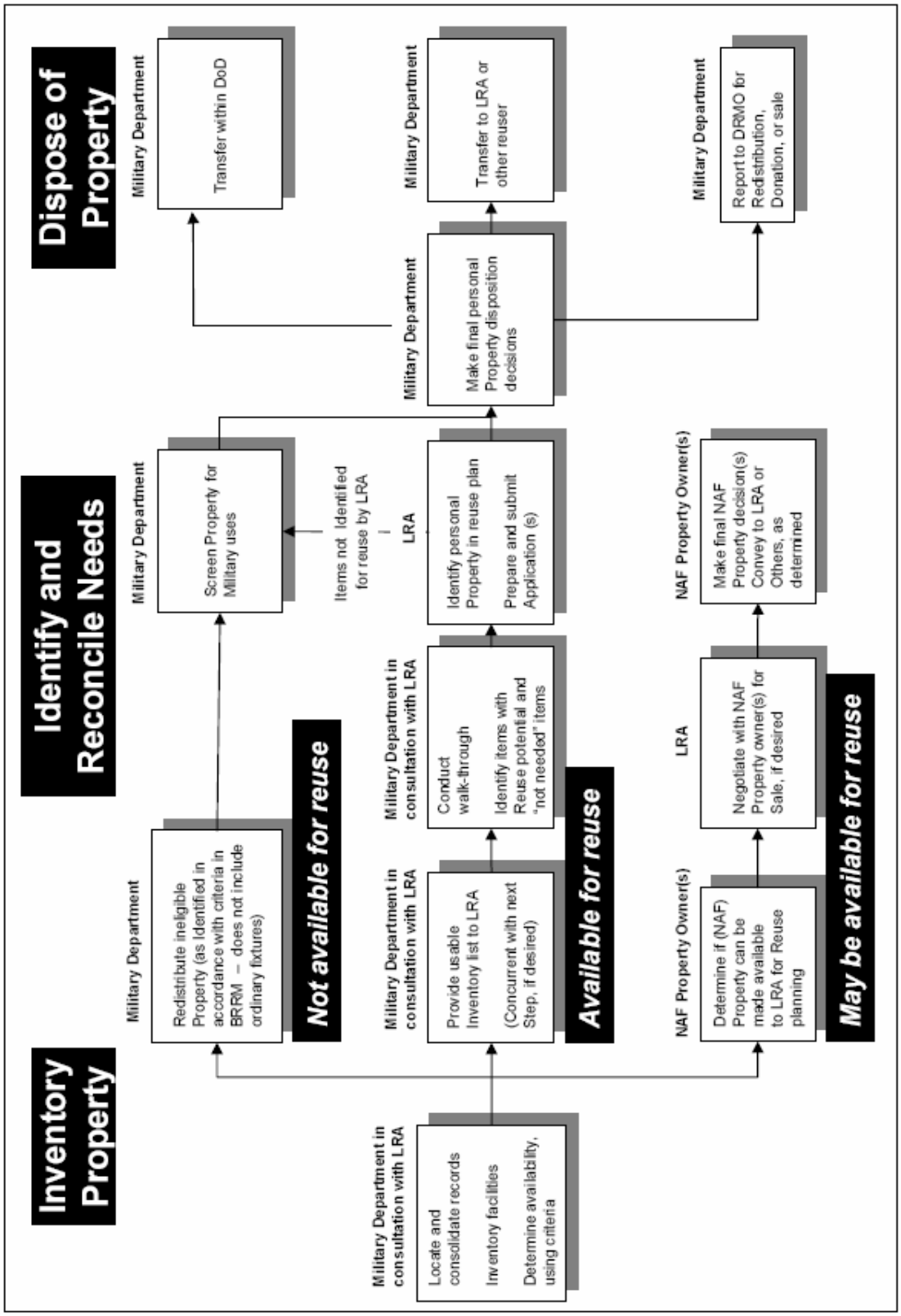
C6.1.2. Definition of Personal Property. Personal property includes all property except land and fixed-in-place buildings, naval vessels, and records of the Federal government. Personal property does not normally include fixtures.

C6.1.3. General Practice. Personal property is often useful to the redevelopment of real property, but is also important to the functioning of the military mission. Figure C6.F1. shows the general practice by which personal property is identified for reuse and subsequently disposed of at a closing installation. This process can be summarized as follows:

C6.1.3.1. The installation commander will inventory the personal property at the installation no later than 6 months after the date of closure or realignment approval and prepare usable inventory records.

C6.1.3.2. The installation commander will consult with the LRA on property not required by the military, which will help the LRA identify assets with reuse potential. That consultation should include a walk-through of the installation so LRA officials can view available personal property and continue during redevelopment planning. The Military Department will be sensitive to the planning needs of the LRA and not move available property likely to be suitable for reuse during redevelopment planning. However, personal property necessary to meet military requirements or non-Military Department-owned property may be relocated off base.

FIGURE C6.F1. BRAC Personal Property General Practice Flow Chart



C6.1.3.3. The Military Department should advise the LRA to identify in its redevelopment plan the personal property necessary for the effective implementation of the plan. Personal property may be conveyed to an LRA or other recipients under various authorities, including public sale, negotiated sale, or an EDC. The LRA may negotiate for NAF-owned property separately.

C6.1.3.4. Payment for personal property may be at fair market value or at no cost, depending on the conveyance authority used.

C6.2. PERSONAL PROPERTY INVENTORY

C6.2.1. Inventory Requirement. The installation commander must conduct an inventory of all property owned by the Department of Defense on the installation, including any non-contiguous parcels of property to be disposed of in conjunction with the main site, within 6 months after the approval date of closure or realignment. The goal of the inventory is to establish the status of property required for continuing military missions and to identify, as early as possible, personal property that will be made available to the LRA for reuse planning purposes.

C6.2.2. Procedure. Personal property records should be assembled and made available as soon as possible after the date of approval. After the property records are available, a physical inspection and count should be made to determine the condition and quantity of personal property that will be made available to the LRA for reuse planning purposes. That inventory should be performed under the direction of the installation commander, with input from tenant commanders, if applicable, and in consultation with the LRA. The inventory should:

C6.2.2.1. Include all DoD tenant organizations, including the National Guard and Reserves, if applicable (see section on eligibility criteria for personal property items identified as “not available for reuse” or “not needed for redevelopment” later in this chapter). DoD tenant organizations must provide the physical inventory documentation to the installation commander and prepare to support the personal property consultation and walk through for all tenant personal property.

C6.2.2.2. Exclude non-DoD tenant organizations and transient property (e.g., other Federal agency offices, GSA vehicles, and contractor equipment); property located on any portion of the installation retained by the Department of Defense and not related to the productive capacity or minimum maintenance requirements of the installation; and NAF-owned property.

C6.2.2.3. Identify personal property that is available for redevelopment, or not available for redevelopment. Installation personal property records should be provided to the LRA in available formats. However, if these formats are not easily usable, the installation commander should consider reasonable requests for summary data or other similar simplified formats.

C6.2.3. Personal Property Categories.

C6.2.3.1. The following descriptions and categories of personal property should facilitate LRA and Military Department dialogue during the redevelopment planning period. This information is also provided to help installation and tenant commanders determine items of personal property that will be made available for redevelopment purposes. Personal property should be identified according to the following categories:

C6.2.3.1.1. Available for redevelopment and not available for redevelopment. The installation commander will identify both accountable and non-accountable personal property as either available or not available for redevelopment in accordance with paragraph C6.2.4.

C6.2.3.1.2. Ordinary fixtures. This category includes items commonly referred to as fixtures in typical real estate transactions. It includes, but is not limited to, such items as sprinklers, lighting fixtures, electrical and plumbing systems, built-in furniture, and fuse boxes that are usually affixed to a facility. These items are normally considered part of, designed for, and integral to the function of the real property. Removal of these items could significantly diminish the value of the real property. Commanders may consider designating items in this category as personal property normally only if they have possible historic or artistic value.

C6.2.3.1.3. Not needed for redevelopment. After the inventory and LRA consultation (see paragraph 6.3), the inventory list or other identification records should be updated to include items not needed for redevelopment (see also paragraph C6.2.4). This determination can be made at any time.

C6.2.3.1.4. Federally owned archeological collections. These collections include prehistoric and historic material remains, and associated records, recovered under the authority of the Antiquities Act, the Reservoir Salvage Act, Section 110 of the National Historic Preservation Act, or the Archaeological Resources Protection Act (references (av), (aw), (u), and (ax), respectively).

Antiquities Act (16 U.S.C. 431- 433) — "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court."

Reservoir Salvage Act (16 U.S.C. 469-469c) — "It is the purpose of sections 469 to 469c–1 of this title to further the policy set forth in sections 461 to 467 of this title, by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program.

Section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2) — "a) (1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

Archaeological Resources Protection Act (16 U.S.C. 470aa-mm) — "Amended the 1960 Reservoir Salvage Act; provided for the preservation of significant scientific, prehistoric, historic, and archeological materials and data that might be lost or destroyed as a result of federally sponsored projects; provided that up to one percent of project costs could be applied to survey, data recovery, analysis, and publication."

C6.2.3.2. If an installation has an agreement with a repository off the installation to preserve and store Federal archeological collections, it must ensure that the agreements with these repositories are transferred to another military entity.

C6.2.3.3. Additionally, all personal property is either accountable or non-accountable. This distinction affects the level of detail required for the inventory records to be provided to the LRA. These categories of personal property are defined below:

C6.2.3.3.1. Accountable personal property. Property for which a continuously updated itemized inventory is maintained. Inventorying accountable property should be straightforward, using installation inventory procedures and records.

C6.2.3.3.2. Non-accountable personal property. Property for which an updated itemized inventory is not maintained. For example, some office furnishings (e.g., desks, chairs, and file cabinets) and consumables (e.g., paper and pencils) not attached to the buildings are non-accountable. All non-accountable personal property determined to be available for redevelopment should be inventoried. Consumables do not have to be included, however. The level of detail of inventory information to be provided to the LRA should be determined by the installation in consultation with the LRA. Non-accountable personal property may be inventoried on a gross basis by facility and provided to the LRA in summary format, as the two examples below illustrate:

C6.2.3.3.2.1. Bachelor Officers' Quarters (BOQ)—25 rooms and offices, furnished.

C6.2.3.3.2.2. Administration Building—10 offices, furnished.

C6.2.3.3.3. Unserviceable but repairable personal property. Certain items of personal property may be in unserviceable but repairable condition. These items should be specifically noted on the inventory record, including any safety precautions that apply to them.

C6.2.3.4. All transferred personal property will be conveyed to the recipient in an "as-is" condition and will not be repaired by the Military Department, regardless of condition at the time of conveyance.

C6.2.4. Eligibility Criteria for Personal Property Items.

C6.2.4.1. The installation commander may initially identify items as not available for redevelopment if they meet one of the following criteria:

C6.2.4.1.1. Property Required for the Operation of a Unit, Function, Component, Weapon, or Weapon System at Another Installation. This category includes property belonging to a unit or activity relocating to another installation where equivalent property does not exist. For example, a unit being transferred to another location may take with it any property it needs to function properly as soon as it arrives at its new location. That property may include any personal property, both accountable and non-accountable, that is required for continuing military operations at an installation not necessarily involved in a BRAC action. In any case, it should be economical and cost-effective to relocate the personal property to the new location.

C6.2.4.1.2. Property Required for the Operation of a Unit, Function, Component, Weapon, or Weapon System at Another Installation within the Military Department or Defense Agency. This category includes all personal property, both accountable and non-accountable, that is required for continuing military operations and is economical to relocate to the new location.

C6.2.4.1.3. Property Uniquely Military in Character and is likely to have No Civilian Use (other than use for its material content or as a source of commonly used components). Such property includes classified items; nuclear, biological, and chemical items, weapons and munitions; museum-owned property, military heritage property, and items of significant historic value that are maintained or displayed on loan from a museum or other entity; and similar military items.

C6.2.4.1.4. Property Stored at the Installation for Distribution**.** This category includes spare parts or stock items, such as materials or parts used in a manufacturing or repair function, but not maintenance spare parts for equipment that will be left in place.

C6.2.4.1.5. Property Meets Known Requirements of an Authorized Program of another Federal Agency that would otherwise have to purchase similar items and the property has been requested in writing by the head of the agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. The requesting Federal agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property.

C6.2.4.1.6. Property is Needed Elsewhere in the National Security Interest of the United States**.** For any personal property located on the installation, the property can be

relocated or otherwise designated as not available for redevelopment if the Secretary of the Military Department determines that it is needed in the national security interest of the United States. In exercising this authority, the Secretary of the Military Department may transfer the property to any DoD Component or other Federal agency. This authority may not be delegated below the level of an Assistant Secretary.

C6.2.4.1.7. Federally Owned Archeological Collections. Installations must comply with 36 CFR 79 (reference (ay)), which contains the definitions, standards, procedures, and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records. While the Federal government can transfer custody of collections and records to non-federal government repositories, it cannot transfer ownership. If an installation has an agreement with an off-installation repository to store or display Federal archeological collections, it must ensure that responsibility for maintaining the agreement with the repository is transferred to another military entity. A closing installation must ensure collections and records are transferred to the custody of an appropriate repository and the agreement with that repository is maintained by another military entity.

C6.2.4.1.8. Property Belongs to NAF Instrumentalities or Other non-DoD Entities. Several situations could be encountered:

C6.2.4.1.8.1. NAF property. This category includes property purchased with funds generated by government personnel and their dependents for religious activities; morale, welfare or recreational activities; post exchanges; ship stores; military officer or enlisted clubs; or veterans' canteens. This property is not owned by the Military Department. Disposal of consecrated items must be in accordance with faith requirements of the distinctive faith groups who consecrated them. Arrangements to purchase NAF property (including negotiating the purchase price) must be made with the property owner through the Military Department.

C6.2.4.1.8.2. Non-DoD personal property. This category consists of personal property that belongs to, for example, a lessee renting space on the active installation, a contractor, or a government employee. As a result, it is not the property of the Military Department and cannot be identified as being available for redevelopment. This property will not be subject to availability for planning purposes or for transfer to the LRA or any other recipient.

C6.2.4.1.8.3. State-owned National Guard property. At installations hosting National Guard units, some items of personal property may have been purchased with state funds. These items are not available for redevelopment planning or subject to transfer for redevelopment purposes, unless so identified by the State property officer. However, certain items of personal property used by National Guard units at closing installations have been purchased with Federal funds. These items are subject to inventory and may be made available for redevelopment planning purposes.

C6.2.4.2. Personal property that is available for redevelopment will be designated as Not Needed for Redevelopment based on the following criteria:

C6.2.4.2.1. The LRA indicates it does not need the property (e.g., during the installation walk-through).

C6.2.4.2.2. The LRA does not include the property in its redevelopment plan.

C6.2.4.2.3. The LRA indicates it will not submit a redevelopment plan.

C6.3. LRA CONSULTATION

C6.3.1. Initial LRA Consultation. Consultation between the installation commander and the LRA should occur throughout the redevelopment planning period. The following guidelines should be used to facilitate that consultation.

C6.3.1.1. Consult early. The installation commander should coordinate all personal property-related decisions with the LRA early in the redevelopment planning process.

C6.3.1.2. Provide a usable inventory record. The installation commander will provide a usable inventory record to the LRA and should consider all reasonable requests for personal property information from the LRA within the Military Department's standard inventory management process. This record should help the LRA identify the personal property to support its redevelopment plan. All property should be identified. However, property to accompany a realigning unit need be only broadly identified.

C6.3.1.3. Offer a walk-through. As part of the personal property inventory and consultation process, the installation commander should invite the LRA to walk-through the installation. The installation commander will determine the timing of this walk-through. The walk-through will help the LRA identify items of personal property it wants to include in the redevelopment plan.

C6.3.1.4. Identify items no longer required for military use. The installation commander and applicable tenant commanders should identify personal property that is no longer required for military use and available for redevelopment. The identification of those items should be made to the LRA following the inventory and be updated as necessary.

C6.3.1.5. Resolve disagreements as they arise. The Military Department should strive to respond within 30 days to all requests by the LRA to reconsider an issue related to personal property availability or disposal decisions made by the installation commander. Final authority for resolving personal property issues rests with the Military Department.

C6.3.2. Follow-Up LRA Consultation. The installation commander will continue to consult with the LRA throughout the redevelopment planning period. The objectives of that consultation include the following:

C6.3.2.1. Ensure the LRA knows which items of personal property are available to it for incorporation in its redevelopment plan and which items are being relocated off-base or disposed of by other means.

C6.3.2.2. Allow for timely disposal of personal property identified by the LRA as not needed for its redevelopment planning.

C6.3.3. Off-base Movement of Personal Property. Except for property subject to the exemptions in paragraph C6.2.4, personal property that is available for redevelopment shall remain at the installation being closed or realigned until one of the following events occurs:

C6.3.3.1. One week after the Secretary of the Military Department receives the redevelopment plan.

C6.3.3.2. The date on which the LRA notifies the Military Department that it will not submit a redevelopment plan.

C6.3.3.3. Twenty-four months after the date of approval of the closure or realignment of the installation.

C6.3.3.4. Ninety days before the date of the closure or realignment of the installation.

C6.4. PERSONAL PROPERTY TRANSFER METHODS

C6.4.1. Principal Authorities Affecting Personal Property Transfers. Several authorities guide the transfer of personal property, including the following:

C6.4.1.1. 32 CFR Parts 174 and 176 (Base closure community assistance and homeless assistance conveyances to LRAs or representatives of the homeless) (reference (e)).

C6.4.1.2. 41 CFR Part 102–75 (Special disposal provisions for public airports; historic monuments; education and public health uses; shrines, memorials or religious uses as part of another public benefit conveyance; public park or recreation uses; housing for displaced persons; and non-federal correctional facility uses) (reference (ab)).

C6.4.1.3. 41 CFR Part 102–75 (Negotiated sales and public sales) (reference (ab)).

C6.4.1.4. 41 CFR Part 102–14 through 102-220 (Utilization of personal property) (reference (az)).

C6.4.1.5. 41 CFR Part 102–37 (Donation of personal property) (reference (ba)).

C6.4.1.6. 41 CFR Part 102–38 (Sale, abandonment, or destruction of personal property) (reference (bb)).

C6.4.1.7. Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96-480, as amended (15 U.S.C. 3710(i)) (reference (bc)) (Donation of research equipment to educational institutions and nonprofit organizations).

C6.4.1.8. Executive Order 12999 (reference (bd)) (Donation of personal property to further math and science education).

C6.4.2. Personal Property Disposition and Disposal Strategy. The Military Department should develop personal property disposal plans that coincide with its real property disposal plans. The Military Department must determine how to convey the personal property needed for redevelopment to the intended recipient. In accordance with the available actions below, the personal property that supports the intended reuse and adds value to the real property should be conveyed at fair market value unless otherwise authorized (e.g., PBC and homeless conveyances) along with the real property. Personal property that does not support or add value to the real property should be conveyed at fair market value through a Defense Reutilization and Marketing Office (DRMO) or one of the conveyance methods listed below at fair market value to the LRA. Installation commanders should consult with local DRMO officials and the LRA when determining personal property disposal methods for property identified by the LRA in support of redevelopment. Only the personal property identified as required for redevelopment by the LRA, and not being conveyed in conjunction with a real property conveyance, can convey separately to the LRA via an EDC. All personal property conveyance to an LRA should occur at fair market value unless the conveyance meets the established criteria for a no-cost EDC.

C6.4.2.1. Leases. Personal property associated with a lease will typically be included in the leasehold (see Chapter 5 for additional information on leasing). However, that property cannot be used outside the leasehold premises.

C6.4.2.2. Public Sales of Personal Property with Real Property. Under a public sale, personal property is sold and conveyed as an economic unit with the realty to the highest bidder at no less than fair market value. The Federal disposal agent is not obligated to accept less than fair market value bids.

C6.4.2.3. Negotiated Sales of Related Personal Property to Public Entities. Under a negotiated sale, related personal property should be valued with the realty as an economic unit. Negotiated sales are at no less than the appraised fair market value.

C6.4.2.4. Public Airport Conveyances. Surplus personal property may be transferred as part of an airport conveyance. The Military Department may transfer personal property that is desirable for developing, improving, operating, or maintaining a public airport or is needed for developing sources of revenue from non-aviation businesses at a public airport (and the public interest is not best suited for industrial use). The FAA must approve all public airport transfers.

C6.4.2.5. Public Benefit Conveyances and Similar Approved, Sponsored, or Requested Conveyances. When personal property is required for the redevelopment of real property subject to a PBC, it may be related and treated as part of the real property conveyance. These transfers can be further categorized as described below:

C6.4.2.5.1. Sponsored public benefit conveyances. These conveyances include PBCs for education, public health, public parks or recreation, and port facility purposes. Surplus personal property may be transferred by the sponsoring Federal agency in accordance with its rules for implementing authorized programs. The terms and conditions attached to the redevelopment and the value (or the discount allowed) of the personal property are determined by the sponsoring agency. In this type of conveyance, the Military Department assigns the real,

related, and other qualifying personal property to the sponsoring agency for transfer to the sponsored applicant.

C6.4.2.5.2. Approved public benefit conveyances. These conveyances include PBCs for non-federal correctional facilities, law enforcement, emergency management response, wildlife conservation, historic monuments, and power transmission lines. The terms and conditions attached to the redevelopment are determined by the Military Department, which transfers the qualifying personal property directly to the approved PBC recipient.

C6.4.2.6. Homeless Assistance Conveyances.

C6.4.2.6.1. Personal property may be transferred to an LRA or a homeless assistance provider for homeless assistance purposes (see Chapter 5). Property transferred under this authority may be used by a homeless assistance provider either on or off the installation.

C6.4.2.6.2. After providing the LRA with the personal property inventory, the installation commander should recommend to the LRA that the following strategy be used for identifying and transferring personal property intended for use by homeless assistance providers:

C6.4.2.6.2.1. Coordinate with the proposed providers to identify any personal property to be conveyed.

C6.4.2.6.2.2. Incorporate the agreed-to disposition of all personal property identified in any binding contracts negotiated between the LRA and selected representatives of the homeless.

C6.4.2.6.2.3. Include identification and intended use of the personal property in the homeless assistance portion of the adopted redevelopment plan.

C6.4.2.7. Economic Development Conveyances. Economic development conveyances must satisfy the following conditions:

C6.4.2.7.1. Personal property may be transferred as part of an EDC of the real property (see Chapter 5 for more details).

C6.4.2.7.2. Personal property EDCs can be made only to the LRA. Any proceeds from the sale of BRAC personal property to EDCs must be deposited into the BRAC Account.

C6.4.2.7.3. Personal property EDCs are subject to the provisions of reference (c), which governs personal property disposal at closing and realigning installations.

C6.4.2.7.4. Personal property may not be acquired by the LRA under a no-cost EDC solely for the purpose of immediately leasing or reselling it to finance base redevelopment. However, the LRA may provide the property at no cost to others for use in accordance with the redevelopment plan for the installation.

C6.4.2.8. Special Transfer Categories. If a NAF personal property owner makes the property available for disposal, the LRA or other interested parties must negotiate purchase terms with the property owner.

C6.4.2.9. Sale and Donation of Surplus Personal Property. Personal property designated as available for redevelopment and not needed by the LRA in support of its redevelopment plan should be sold or otherwise disposed through the DRMO.

C6.5. AIR EMISSION RIGHTS TRADING GUIDANCE

C6.5.1. Clean Air Act. The Clean Air Act (reference (d)) amendments of 1990 (CAAA) calls for a reduction in emissions by both military and civilian activities to meet the national ambient air quality standards for clean air. The Act introduced the marketplace into emission control regulations. To further emission reductions through market trading, the CAAA and implementing State regulations may allow movement or transfer of emission rights between parties at the same site, to other locations within the State, or, in some instances, to other States. It also contains the following provisions:

C6.5.1.1. Non-attainment. The CAAA designates acceptable ambient levels of selected ("criteria") pollutants. Areas that exceed those levels are designated as "non-attainment" areas and the State's control plan ("State Implementation Plan" or SIP) must be adequate to reach attainment within a specified time. The required reduction controls and the time required to achieve those reductions depend on the severity of the air pollution problem.

C6.5.1.2. Economic incentive programs. To encourage innovative approaches to reduce air pollution, the CAAA authorizes development of programs to trade emission rights, which are rights to emit specific amounts of criteria pollutants. Various State trading programs have been developed such as cap-and-trade allocation and emission reduction credit (ERC) banking. In addition, some States have entered into agreements that allow interstate trades.

C6.5.1.3. Emissions trading programs. A variety of individual trading programs have been created throughout the country. Some allow trading reductions from stationary, mobile, and area sources, and even intrastate and interstate trading. Generally, if an approved program is in place, when an owner permanently shuts down an emission source, ERCs can be created by submitting an application and fee to the State or air quality control region (AQCR). The AQCR may discount or retain some of the ERCs as part of a reserve bank to support future economic growth or to meet attainment requirements. Even in States that do not have a formal program for ERCs (including mobile source emission reductions), the Department of Defense has successfully quantified and traded these "offsets" to other DoD Components or Federal agencies to support conformity requirements. Because programs differ among the States and regulatory changes are frequent, consultation with experts within the Military Department is strongly encouraged. The trading and transfers of mobile source emissions raise special considerations, including transfers that support conformity, and should be referred to the Secretary of the Military Department.

C6.5.1.4. Permit transfers. Stationary sources may be issued air permits by the State or AQCRs to emit specific levels of criteria pollutants during a year. Regulators usually allow the transfer of these air permits with transfer of the stationary source.

C6.5.1.5. General conformity. The CAAA requires a Federal agency to demonstrate that a new Federal action, or a federally approved or supported action, will not cause deterioration of air quality or impact attainment status in a non-attainment or maintenance (former non-attainment) area. Because military installations that gain units, functions, or weapons systems as a result of a BRAC action are required to comply with conformity, they need to determine whether emission reductions or offsets, which are needed to demonstrate conformity, can be transferred from closing or realigning installations.

C6.5.2. Guidance and Implementation.

C6.5.2.1. Emission credits can have substantial value and the Military Department should consider these assets in its overall property disposal plan. Decisions on the distribution of any such emission credits will be made by the Secretary of the Military Department in accordance with the BRAC law (reference (c)), Section 2905(b).

C6.5.2.2. When a receiving installation is located in an area that could be awarded credits, offsets, or allowances from a closing installation, the receiving installation should determine its emission needs as early as possible.

C7. CHAPTER 7

MAINTENANCE, UTILITIES, AND SERVICES

C7.1. INTRODUCTION

Surplus facilities and equipment at installations that have been closed or realigned can be important to the eventual reuse of the installation. Each Military Department is responsible for protecting and maintaining such assets in order to preserve the value of the property in accordance with the law.

C7.2. GENERAL PRACTICE

C7.2.1. The Military Department will seek to minimize caretaker costs while supporting redevelopment. However, if no redevelopment plan is prepared, or if no reuse is actively being pursued for parts or all of the installation, the Military Department may reduce maintenance levels to the minimum levels required for similar surplus government property considering potential return to the government on such expenditures.

C7.2.2. The Military Department will follow a general practice for closing installations that protects and maintains the asset. That practice consists of the following elements:

C7.2.2.1. The Military Department, in consultation with the LRA and within the limits described in paragraph C7.3.2, will determine the initial maintenance levels for real property and their durations on a facility-by-facility basis. Such levels of maintenance may be adjusted over time as circumstances warrant.

C7.2.2.2. Maintenance of personal property will generally be limited to physical security in the expectation that this property will quickly be conveyed. (See Chapter 6 for more information on personal property.)

C7.2.2.3. Personal and real property will be transitioned from its active mission maintenance level to its initial maintenance level after the property is no longer put to military use or the active mission departs (see Section C7.3).

C7.2.2.4. The Military Department will relinquish its responsibility when possession and control of the property has been transferred to another entity pursuant to an agreement to transfer such property. To ensure caretaker funds are allocated appropriately, the Military Department should specify a time for closing on the transfer of such property, usually no more than 60 days from execution of the transfer agreement. At that time, the Military Department will cease its caretaker funding of such property. It also should not agree to delay or phase the transfer of any facility solely for the purposes of continuing to protect or maintain the facility.

C7.2.2.5. Maintenance functions that are the responsibility of the Military Department can be performed by a variety of service providers. All such maintenance providers will sustain the maintenance levels agreed to and funded by the Military Department.

C7.2.2.6. The Military Department will notify the LRA of any intended change in an established initial maintenance level for a facility, or part thereof, or item of personal property, if such a change becomes necessary (e.g., closure or change in mission, no reuse apparent for the property, or expiration of the maintenance periods identified in paragraph C7.3.2). This notice will occur prior to the reduction in maintenance level and give the LRA a reasonable period of time, as determined by the Military Department, in which to submit comments on the proposed reduction.

C7.2.2.7. Procedures and responsibilities for obtaining common services, such as fire protection, security, utilities, telephones, roads, and snow or ice removal, must be discussed and resolved in the earliest stages of the closure or realignment process. The Military Department cannot guarantee continued provision of these common services. For example, the Military Department will not be responsible for funding particular needs of new tenants or new owners of facilities, such as augmentation of fire response times.

C7.2.2.8. Maintenance levels of privatized utilities and housing will be determined by their associated contracts.

C7.3. ESTABLISHING INITIAL MAINTENANCE LEVELS

C7.3.1. Determining Initial Maintenance Levels. The Military Department will meet with the LRA after approval of the installation for closure or realignment (and again periodically during the redevelopment planning process, if necessary) to discuss the LRA's reuse plans and to work toward establishing initial and ongoing maintenance levels. Initial maintenance levels for all real property vacated as a result of BRAC will be to levels required to support the use of any such facilities or equipment for nonmilitary reuse purposes, but not exceed the standard of maintenance in effect at the approval of the closure or realignment.

C7.3.2. Initial Maintenance Levels and their Duration.

C7.3.2.1. The Military Department will set initial maintenance levels at a minimum that will ensure weather tightness for buildings, limit undue facility deterioration, and provide physical security. The Military Departments have developed specific maintenance levels that consider several factors, including the following:

C7.3.2.1.1. Required operational status of the facility and the level of effort and scope of work necessary to sustain that status.

C7.3.2.1.2. Anticipated time until facility reuse.

C7.3.2.1.3. Location-specific climatic conditions (e.g., air conditioning, dehumidification, and heat).

C7.3.2.2. The initial maintenance levels shall not:

C7.3.2.2.1. Exceed the standard of maintenance and repair in effect on the date of closure or realignment approval.

C7.3.2.2.2. Be less than maintenance and repair required to be consistent with Federal government standards for excess and surplus properties (see 41 CFR Parts 102-75.945 and 102-75.965) (reference (ab)).[1]

C7.3.2.2.3. Require any property improvements, including construction, alteration, or demolition, except when required for health, safety, or environmental purposes, or is economically justified in lieu of continued maintenance expenditures.

C7.3.2.3. The Military Department may not reduce initial maintenance levels until one of the following events occurs:

C7.3.2.3.1. One week after the LRA submits the redevelopment plan to the Secretary of the Military Department.

C7.3.2.3.2. The date on which the LRA notifies the Military Department that it will not submit a redevelopment plan.

C7.3.2.3.3. Twenty-four months after the date of approval of the closure or realignment of the installation.

C7.3.2.3.4. Ninety days before the date of the closure or realignment of the installation.

C7.3.2.4. The Military Department may extend the period for initial or adjusted maintenance levels for property still under its control if the Secretary of the Military Department determines such levels of maintenance are justified. Examples may include:

C7.3.2.4.1. Where there is a benefit to the government to do so; or

C7.3.2.4.2. When it will clearly benefit redevelopment and property conveyance is delayed by the government.

C7.3.2.5. The continued maintenance of physical infrastructure (i.e., utility systems) presents a unique challenge in that water supply, electrical power, and sewage disposal facilities may need to be operated after mission departure at rates far below their designed capacity. The Military Department will perform an engineering analysis to determine what structural and operating changes are necessary (e.g., valve closures in water supply systems or power shutoff in unused facilities) to ensure lawful and cost-effective operation. It also should address conversion of utilities as early as possible in the disposal process.

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[1] Guidelines for protection and maintenance are in the GSA Customer Guide to Real Property Disposal, http://propertydisposal.gsa.gov/ResourceCenter/laws_regs_all/letters/csg.PDF.

C7.3.2.6. All periods of initial maintenance will be terminated when ownership or control of the property is turned over to another party by deed or lease. In the case of Federal agency transfers, the Military Department and the receiving agency will coordinate the transition of maintenance responsibilities, but the receiving agency will be expected to assume this responsibility as soon as the Military Department makes the property available for transfer or assignment. The Military Departments will work with public benefit conveyance sponsoring agencies on transfer of responsibility to public benefit conveyance recipients.

C7.3.3. Disagreements. If the LRA disagrees with the Military Department's determination of initial or subsequent maintenance level, the Military Department should make every effort to resolve that disagreement at the lowest possible level within its chain of command. Final authority for resolving disagreements rests with the Secretary of the Military Department.

C7.4. FACILITY MAINTENANCE AND COMMON SERVICES

C7.4.1. Maintenance Providers. Protection and maintenance of property can be performed by several different entities, depending on the particular phase of base closure and disposal. In general, funding for maintenance of property not in reuse will be provided by the Military Department. In addition, property no longer under the Military Department's control will be maintained at the expense of the user or new owner. The following guidance also applies:

C7.4.1.1. Funding of protection and maintenance activities can occur through several mechanisms, including the following:

C7.4.1.1.1. Caretaker contract. Under such a contract, a military-procured contractor performs protection and maintenance.

C7.4.1.1.2. Cooperative agreement. Under this agreement, the LRA or another qualified community entity performs protection and maintenance caretaking on a nonprofit, cost-reimbursement basis through an agreement with the Military Department. These agreements also may be used to provide for protection and maintenance of properties that will be disposed of at a realigning installation.

C7.4.1.1.3. Support agreement. Under this agreement, another military organization provides the required support.

C7.4.1.1.4. Residual work force. Under this arrangement, a residual government work force provides the required protection and maintenance.

C7.4.1.2. After expiration of the time periods identified in paragraph 7.3.2, the Military Department will normally reduce its maintenance to the minimum level for surplus government property, as required by 41 CFR Parts 102-75.945 and 102-75.965 (reference (ab)). This regulation states that facility maintenance must provide only those minimum services necessary to preserve the government's interest and realizable value of the property considered and render

safe or destroy aspects of excess and surplus property that are dangerous to the public health or safety.[2]

C7.4.1.3. Leased property. The lease will specify the lessee's responsibility for protection and maintenance of the property during the term of the lease.

C7.4.1.4. Post-disposal. After the property has been conveyed, the Military Department will not perform nor pay for protection and maintenance. Protection and maintenance of conveyed property will be the sole responsibility of the transferee.

C7.4.2. Maintenance Activities. Maintenance of real property, facilities, and equipment can entail a wide range of activities, determined by the Military Department, including the following:

C7.4.2.1. Interior and exterior physical inspections of buildings, including building shells and exterior windows and doors, to verify security and structural soundness.

C7.4.2.2. Scheduled operational inspections and routine maintenance for utilities including heat, air conditioning, water supply and plumbing, electricity, sewage, gas, and fire protection systems.

C7.4.2.3. Maintenance and inspection of elevators and other installed mechanical equipment.

C7.4.2.4. Pest control, such as periodic termite inspections.

C7.4.2.5. Grounds maintenance, including grass mowing and fire breaks.

C7.4.3. Activities Not Considered Maintenance.

The following activities are not considered normal maintenance responsibilities:

C7.4.3.1. Building and other facility demolition, unless necessary to protect public health and safety.

C7.4.3.2. Asbestos abatement and lead-based paint removal beyond those actions required by law and regulation.

C7.4.3.3. Installation of facility-specific utilities or utility meters.

C7.4.3.4. Construction or modifications to meet Federal, State, or local building or utility infrastructure codes.

C7.4.3.5. Property improvements or alterations that are not necessary to protect public health and safety.

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[2] Guidelines for protection and maintenance are in the GSA Customer Guide to Real Property Disposal, http://propertydisposal.gsa.gov/ResourceCenter/laws_regs_all/letters/csg.PDF.

C7.4.4. Common Services.

C7.4.4.1. The Military Department will arrange for common services that are necessary to support initial maintenance levels of government facilities. These common services may include the following:

C7.4.4.1.1. Road maintenance (including snow and ice removal)

C7.4.4.1.2. Physical security.

C7.4.4.1.3. Utility services.

C7.4.4.1.3.1. Electricity.

C7.4.4.1.3.2. Water and sewage.

C7.4.4.1.3.3. Telecommunications.

C7.4.4.1.3.4. Gas.

C7.4.4.1.4. Fire and emergency services.

C7.4.4.2. Users of common services, including LRA tenants, will pay for the services provided by the Military Department at rates established to fully recapture the costs of providing such services. After expiration of the initial maintenance period, and in consultation with the LRA, the Military Department may elect to discontinue performance of any common services not required to support its residual military mission or protection and maintenance activities.

C7.5. EQUIPMENT AND PERSONAL PROPERTY MAINTENANCE

The Military Department will generally follow a standard approach for establishing and maintaining minimum levels of maintenance for items of equipment and other personal property. This approach is based on the general practice described in Section C7.2. Some additional guidelines for equipment and personal property maintenance include the following:

C7.5.1. Equipment and personal property will be transitioned to initial maintenance levels as their mission use ceases or the active mission departs.

C7.5.2. Equipment and personal property will be physically secured, at the Military Department's option in consultation with the LRA, either in a central location or in individual facilities.

C7.5.3. Maintenance of installed equipment and related personal property will be at the initial levels for the associated real property, as set by the Military Department in consultation with the LRA. Duration of initial maintenance will be as specified in paragraph C7.3.2, after which time only physical security will be provided.

C7.5.4. Maintenance of non-installed equipment and non-related personal property is normally restricted to physical security.

C7.5.5. The Military Department will stop all personal property maintenance upon transfer or reuse.

C7.5.6. The Military Department will notify the LRA of any intended change in an established maintenance level for equipment or personal property, if such a change becomes necessary, due to factors that may include closure or change in mission, no reuse apparent, or expiration of maintenance periods as specified in paragraph C7.3.2. This notice will occur prior to the reduction in maintenance level.

C7.5.7. The Military Department will not repair or replace any personal property that is damaged or lost.

C7.6. DoD-OWNED UTILITY SYSTEM MAINTENANCE AND OPERATION

C7.6.1. The Military Department will consider and address the operation, maintenance, and conveyance of utilities and the effects of mission drawdown and closure on utilities service contracts or other agreements early in the disposal planning process. Utilities include the following:

C7.6.1.1. Water and sewage.

C7.6.1.2. Storm water.

C7.6.1.3. Electricity.

C7.6.1.4. Energy plants (heating and cooling).

C7.6.1.5. Waste collection and recycling.

C7.6.1.6. Gas (natural and liquid propane).

C7.6.1.7. Telecommunications lines, including telephone and cable TV.

C7.6.2. The Military Department should find a mechanism and willing recipient to help in transferring a closing installation's utility systems to local entities (public or private) before the date of operational closure, or as soon as practicable after closure, to provide continuity of service. It is the Department of Defense's view that the community is best served when the Military Department transfers utility systems to local control early in the closure process. For example, the sooner a public concern accepts transfer of the utility systems, the sooner it can apply for assistance, such as Economic Development Administration grants, to upgrade or rework systems to meet its specific requirements. Moreover, if the LRA or local utility company operates the utility systems, prospective tenants will have confidence that utility services will continue to be provided.

C7.6.3. All utility systems will be transferred in an “as is” condition and will not be improved to comply with local code or for other reasons before transfer.

C7.6.4. Operation of utility systems by the Military Department at a closed installation will normally be at the minimum level required to sustain caretaker operations. Any operation to support reuse in excess of that required for caretaker operations will be the responsibility of the LRA. The Military Department may agree to provide such increased services to support reuse prior to property conveyance only if it is fully reimbursed and there is no impact on the Department’s operational readiness. A Military Department may not agree to continue operating utility systems after real property conveyance.

C8. CHAPTER 8

ENVIRONMENTAL ACTIONS

C8.1. KEY OBJECTIVES

The Department of Defense has established four key environmental objectives when closing or realigning installations:

C8.1.1. Ensure protection of human health and the environment on BRAC properties.

C8.1.2. Expeditiously transfer BRAC property to new owners.

C8.1.3. Maximize the utility of BRAC property by making wise public policy and business decisions regarding environmental actions.

C8.1.4. Maximize the use of all available tools to expedite response actions and redevelopment, including integration of early transfer authorities and privatization of response actions with redevelopment.

C8.2. COMPLYING WITH NATIONAL ENVIRONMENTAL POLICY ACT (reference (t))

An important feature of the BRAC process is compliance with NEPA. Under NEPA, the Military Departments must identify and consider the proposed action and reasonable alternatives and their respective environmental impacts. Actions to be analyzed include operational activities, proposed disposal and reuse actions, and planned community redevelopment.

C8.2.1. Application.

C8.2.1.1. The NEPA process is intended to help Federal officials make environmentally informed decisions. It also encourages and incorporates public comment and participation into the decision-making process.

C8.2.1.2. During the BRAC process, NEPA must be applied to the property disposal and relocation of functions at the receiving installation. However, Public Law 101-510, as amended (reference (c)), provides that the Military Department does not have to consider

C8.2.1.2.1. The need for closing or realigning the military installation, which has been recommended for closure or realignment by the BRAC Commission;

C8.2.1.2.2. The need for transferring functions to a military installation that has been selected as the receiving installation; or

C8.2.1.2.3. The alternative military installations to those recommended or selected.

C8.2.2. Process.

C8.2.2.1. To accomplish this, a formal environmental impact analysis is prepared, either in the form of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), depending on the level of analysis required. In some cases, a Categorical Exclusion may be used for Military Department actions.

C8.2.2.2. The preparation of an EA is used to provide sufficient evidence in determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an EIS. A FONSI is a determination that, based on the EA, the proposed action will not significantly affect the environment and a full EIS is not necessary. Public comments can be received on the EA and the applicability of a FONSI. Upon issuance of a FONSI, the Military Department can move forward with the final disposal decision.

C8.2.2.3. The preparation of an EIS is more involved and engages the public in a more formal process, which can be summarized as follows:

C8.2.2.3.1. The Military Department publishes a Notice of Intent in the Federal Register that a property disposal action may be undertaken and an EIS will be prepared.

C8.2.2.3.2. A public scoping meeting will be held to obtain initial public comments about the proposed disposal action.

C8.2.2.3.3. A Draft EIS (DEIS) is developed and published, and made available for public review and comment. Public hearings are held in or near the affected communities.

C8.2.2.3.4. The Final EIS (FEIS) is then completed after considering the public comments received on the DEIS. A Notice of Availability (NOA) of the FEIS will be published in the Federal Register.

C8.2.2.3.5. No less than 30 days after publication of the FEIS, a Record of Decision (ROD) is issued. The ROD indicates what disposal action has been selected, the alternatives considered, the potential environmental impacts, and any specific mitigation activities to support the decision.

C8.2.2.3.6. The FEIS should be completed no later than 12 months after the submittal of the LRA's redevelopment plan.

C8.2.3. Documentation.

C8.2.3.1. The Military Department is required to analyze the potential environmental effects at the receiving installation or installations. This analysis will determine the condition of the environment, facilities, and natural or historic, and cultural resources. With such information, the Military Department will know which parts of the receiving installation can accept relocated functions and which areas need to be avoided or protected.

C8.2.3.2. The NEPA analysis will be conducted according to the regulations of the host Military Department, including assignment of funding responsibility by its regulations. See Appendix AP.4 for Military Department NEPA regulations.

C8.2.3.3. Before disposing of any real property, the Military Department must analyze the environmental effects of the disposal action. In preparing that analysis, the Military Department must develop the proposed Federal action, which will include the redevelopment plan, and then consider a range of reasonable disposal alternatives and assess their environmental effects in the context of the reasonably foreseeable reuse of the property. In the record of decision, the LRA's redevelopment plan will be given substantial deference. The Military Department will work closely with the LRA in preparing the NEPA analysis.

Public Law 101-510, § 2905(b)(7)(K)(ii)&(iii).

"(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned."

C8.2.3.4. In the event that the LRA fails to prepare an acceptable (as determined by HUD) or timely redevelopment plan, the Military Department will prepare the NEPA analysis using reasonable assumptions about foreseeable reuse based upon market conditions, current property use, surrounding land use, community needs, and other factors that typically are used to determine the highest and best use under GSA Federal Management Regulations, 41 CFR 102-75 (reference (ab)).

C8.2.3.5. The NEPA analysis and decision documents prepared in connection with this analysis address the military department's decisions with respect to the property based on reasonably foreseeable uses and the potential mitigation actions that may be required for potential environmental impacts. Although the Military Departments may indicate the specific disposal decisions in these decision documents, these decisions do not represent an enforceable commitment to a prospective transferee and can be amended as appropriate.

C8.2.4. Data Gathering. To ensure efficient and effective data gathering in support of the NEPA process, early data collection should be combined with other ongoing processes supporting property disposal actions, such as the preparation of ECP reports. In addition, other environmental studies supporting the NEPA process, such as those involving threatened and endangered species, cultural or historic resources, and wetlands determination, should be started

as early as possible to ensure timely compliance with the applicable regulatory requirements. Every effort will be made to provide the data gathered in the NEPA process to the LRA as soon as it is available to aid in the development and finalization of its redevelopment plan. Data gathering is a neutral activity and should not be confused with preparation or analysis of alternatives, which will not begin until after the closure and realignment recommendations become final.

C8.3. ENVIRONMENTAL CONDITION OF PROPERTY REPORT

C8.3.1. The Military Department with real property accountability shall assess, determine, and document the environmental condition of all transferable property in an ECP report (see Appendix AP2). The primary purposes of that report include the following:

C8.3.1.1. Provide the Military Department with information it may use to make disposal decisions regarding the property.

C8.3.1.2. Provide the public with information relative to the environmental condition of the property.

C8.3.1.3. Assist in community planning for the reuse of BRAC property.

C8.3.1.4. Assist Federal agencies during the property screening process.

C8.3.1.5. Provide information for prospective buyers.

C8.3.1.6. Assist prospective new owners in meeting the requirements under EPA's "All Appropriate Inquiry" regulations when they become final.

C8.3.1.7. Provide information about completed remedial and corrective actions at the property.

C8.3.1.8. Assist in determining appropriate responsibilities, asset valuation, and liabilities with other parties to a transaction.

C8.3.2. The ECP's scope and level of any additional efforts required to complete it will depend upon a number of factors including the following:

C8.3.2.1. The current property use.

C8.3.2.2. The nature and extent of any known contamination or lack thereof from hazardous substances, pollutants, contaminants, or petroleum and petroleum products (for uncontaminated determination, see paragraph C8.5.4).

C8.3.2.3. Any munitions and explosives of concern known or suspected to be present.

C8.3.2.4. The current phase of any remedial or corrective action being taken on the property.

C8.3.2.5. The availability of existing information regarding the storage, release, or disposal on the property of hazardous substances, pollutants, contaminants, or petroleum and petroleum products.

C8.3.2.6. The presence of protected species or cultural assets.

C8.3.3. The ECP report may, based on the installation's individual circumstance, be prepared for an entire installation or for individual parcels.

C8.3.4. The ECP report will also summarize historical, cultural, and environmental conditions and include references to publicly available and related reports, studies, and permits. (Appendix AP.2 provides a format and describes the minimal required elements of the ECP report.) The report shall rely on existing information and, if necessary, new information readily available in order to provide an accurate summary of the environmental condition of the property. If needed, the Military Department will prepare an ECP Update Report based upon new information. This report may include additional site characterization to meet applicable regulatory or planning requirements, or help maximize the value of the property.

C8.3.5. The ECP report and any ECP Update Report shall be made publicly available and electronically accessible as soon as possible after it becomes final. The ECP report will be forwarded for information purposes to the following entities:

C8.3.5.1. Recognized LRAs.

C8.3.5.2. Local governments in each jurisdiction in which an installation having BRAC real property is located.

C8.3.5.3. Environmental agencies with regulatory authority over the matters described in the report.

C8.3.5.4. Any Federal agency seeking a property transfer at the installation.

C8.3.5.5. The Restoration Advisory Board (RAB).

C8.4. COMPLYING WITH LAWS THAT PROTECT NATURAL AND CULTURAL RESOURCES

As part of the NEPA analysis, the Military Department will analyze the impacts on natural and cultural resources. For example, EO 11988 (reference (be)) calls for determinations regarding floodplains and EO 11990 (reference (bf)) calls for determinations regarding wetlands. Additionally and aside from the NEPA requirements, other laws such as the Endangered Species Act and National Historic Preservation Act require the Military Department to analyze the impacts on natural and cultural resources and to consult with Federal and State agencies before making final property disposal decisions.

C8.4.1. Endangered Species Act (ESA) (reference (o)).

C8.4.1.1. The ESA includes both substantive prohibitions and affirmative obligations with which the Military Department must comply. It requires the Military Department to consult with the National Marine Fisheries Service for most marine species and the U.S. Fish and Wildlife Service for all other species before taking any BRAC-related realignment or disposal action that may affect, adversely or beneficially, a listed threatened or endangered species or designated critical habitat. It also requires the Military Department to confer with those agencies for actions that may affect a species that is proposed for listing as threatened or endangered. Regulations implementing the ESA are contained in 50 CFR 402 (reference (bg)), while the lists of endangered and threatened wildlife and plants are contained in 50 CFR 17.11 and 17.12; the designated critical habitats are listed in 50 CFR 17.95 and 17.96 (reference (bh)).

C8.4.1.2. The transfer of BRAC property does not by itself adversely affect listed species, but its reuse could be subject to the take prohibitions in Section 9 of the ESA (reference (o)). The mandatory Section 7(a)(2) consultation process will identify what species are likely to be present on the property, what habitat has been designated as critical, what reuse actions are likely to result in a take, and whether the developer or new owner will be able to use the property as planned.

C8.4.1.3. The Military Department's natural resource staff experts should be consulted when additional advice is required in this area.

C8.4.2. Coastal Zone Management Act (CZMA) (reference (n)). The Coastal Zone Management Act (CZMA) requires that all Federal actions that affect any land or water use or natural resource of the coastal zone be consistent to the maximum extent practicable with the enforceable policies of federally approved State Coastal Management Programs (CMPs). The ministerial act of transferring ownership of property generally will not affect coastal zone resources or uses. However, the new owners will be subject to the State's enforceable policies. In rare instances, restrictive covenants that limit the type of reuse to which property can be put may be inconsistent with the enforceable policies of a State coastal management program. Because such a situation is unlikely, the Military Department disposing of the property should address it with the assistance of legal counsel. In Federal-to-Federal transfers, the receiving agency will be responsible for any required consistency determination under CZMA.

C8.4.3. Historic Preservation.

C8.4.3.1. The transfer, lease, or sale of National Register-eligible historic property to a non-federal entity may constitute an "adverse effect" under the regulations implementing the National Historic Preservation Act (36 CFR 800.5(a)(2)(vii)) (reference (bi)). One way of resolving this adverse effect is to restrict the use that may be made of the property subsequent to its transfer out of Federal ownership or control through the imposition of legally enforceable restrictions or conditions. The Secretary of the Military Department may include such restrictions or conditions (typically a real property interest in the form of a restrictive covenant or preservation easement) in any deed or lease conveying an interest in historic property to a non-Federal entity. Before doing so, the Secretary should first consider whether the historic character of the property can be protected effectively through planning and zoning actions undertaken by units of State or local government. If so, working with such units of State or local government to

protect the property through these means is preferable to encumbering the property with a covenant or easement.

C8.4.3.2. Before including such a covenant or easement in a deed or lease, the Secretary shall consider

C8.4.3.2.1. Whether the jurisdiction that encompasses the property authorizes such a covenant or easement, and

C8.4.3.2.2. Whether the Secretary can give or assign to a third party the responsibility for monitoring and enforcing such a covenant or easement.

C8.4.3.3. In addition, the Military Department should ensure (without providing tax advice) that the recipient is aware of potential tax advantages of receiving the property without enforceable restrictions, thereby enabling the recipient to grant historic preservation easements and obtain available tax advantages.

C8.4.3.4. See Appendix AP1 for other laws that impact natural and cultural resources.

C8.5. COMPLYING WITH LAWS PERTAINING TO CLEANUP OF HAZARDOUS SUBSTANCES AND PETROLEUM PRODUCTS

The Department of Defense must ensure that appropriate response or corrective actions related to petroleum products or their constituents and hazardous substances have been taken, or will be taken, to protect human health and the environment on property that is to be transferred. These response or corrective actions and transfer are intertwined and the requirements can be complex. Refer to Appendix AP1 for a list of the primary Federal laws and regulations that pertain to the cleanup of DoD property.

C8.5.1. Determination of Cleanup Responsibilities.

C8.5.1.1. In coordination with environmental regulatory agencies and the local government, the Military Department will make decisions as early as possible on which contaminated sites on BRAC property will have response actions completed by the Department of Defense or by the new owner in coordination with environmental regulatory agencies and the local government. When a Military Department retains responsibility for response actions, the actions will be completed as soon as possible, consistent with budget parameters and existing response or corrective action permits. As these decisions are being made, the Military Departments must consider Interagency Agreements (IAGs) and other cleanup agreements that are in place at the facility with the environmental regulatory agencies and the effect these decisions will have on those agreements. If any schedule changes are expected for environmental restoration activities, discuss them early in the process with the regulators.

C8.5.1.2. Historically, remedy selection based on current or historic use helps speed cleanup and redevelopment, as does reuse planning that incorporates special environmental conditions (e.g., landfills or industrial areas). A new owner or LRA, when planning how to redevelop BRAC properties, may benefit from these concepts. Response actions at levels that

support less restricted uses of the property are a business decision to be normally made by the new owner of the property with realization that cleanup costs associated with less restricted property usage may be borne by the new owner as part of the redevelopment of the property for new uses. Therefore, for BRAC properties the Department of Defense prefers that Military Department cleanup decisions be based on current use of the property.

C8.5.1.3. For facilities such as former ranges that have unique military characteristics, the Department of Defense prefers the remedy selection be based upon future use as open space. Open space includes wildlife refuges, endangered and threatened species habitat, conservation areas, carbon sequestration areas, and limited recreation areas. The most common types of such properties are impact areas for former ranges and demilitarization areas for open burning or detonation of military munitions.

C8.5.1.4. Where response action responsibilities will be implemented by a new owner, the Military Department shall disclose to the new owner all known information regarding environmental restoration, waste management, and environmental compliance activities relating to the property or facilities. This information shall include a description of any long-term remedies (including land-use controls) and a description of the new owner's responsibility for maintenance and reporting.

C8.5.1.5. The Department of Defense uses RABs to improve communication and cooperation with communities, regulators, and other stakeholders surrounding military facilities requiring environmental restoration. RABs bring together people who reflect the diverse interests within the local community, enabling the early and continued flow of information among the affected community, DoD, and environmental oversight agencies. The Department of Defense utilizes RABs as a forum to share information on the environmental restoration process, remediation technologies, and restoration progress. RABs offer an opportunity for members of communities affected by cleanup to provide advice to decision makers on restoration issues, ask questions, and share ideas. Where there is a DoD-recognized LRA, it should be a RAB participant.

C8.5.2. Obligations for Restoration of Property Being Transferred by Deed.

C8.5.2.1. Whenever a Military Department enters into a transfer of real property outside the Federal government where CERCLA 120(h)(3)) (reference (f)) hazardous substances were stored for 1 year or longer, known to have been released, or disposed of, Section 120(h) of CERCLA (reference (f)) applies. The Department of Defense has no authority under Section 120(h) (reference (f)) to increase or decrease the commitment required by that section.

C8.5.2.2. Any deed transferring title to real property shall contain, to the extent required by law, the notices, descriptions, and covenants specified in Section 120(h) of CERCLA (reference (f)). Check current DoD issuances for additional guidance on the subject of covenants under section 120(h).

C8.5.2.3. While all property must comply with CERCLA 120 requirements for transfer, the cleanup itself may proceed under CERCLA or RCRA, when appropriate. RCRA establishes requirements for operating facilities and provides a comprehensive framework for a cradle-to-

grave hazardous waste management program. In 1984 RCRA was expanded by adding corrective action authority to compel cleanup of past contamination at RCRA facilities. Cleanup conducted pursuant to RCRA corrective action or CERCLA will substantially satisfy the requirements of both programs. EPA, in its "Improving RCRA/CERCLA Coordination at Federal Facilities" policy memorandum issued in December 2005, is committed to the principle of parity between RCRA Corrective Action and CERCLA programs and to the idea that the programs should generally yield similar remedies in similar circumstances.

C8.5.3. Munitions Hazards. Where munitions and explosives of concern are known or suspected to be present on the property and to pose a threat to human health and safety, the Military Department shall take appropriate measures to address such hazards before transferring the property.

C8.5.4. Requirements for Different Types of Response Action/Transfer Scenarios. Described below are a range of likely scenarios and potential approaches for the conduct of response actions and transfer of BRAC property. While the response action scenarios below are written in a CERCLA context, they are equally applicable to RCRA. For this purpose, the term "appropriate regulators" means regulators from whom concurrence is required under a permit, enforcement order, or site-specific binding agreement pertaining to the property.

C8.5.4.1. Uncontaminated Property. In the case of a parcel where no CERCLA hazardous substance or petroleum products or their derivatives are known to have been released or disposed of, the Military Department shall forward a Request for Identification of Uncontaminated Property to EPA (for National Priority List or NPL sites) or the State (for non-NPL sites) pursuant to criteria in Section 120(h)(4) of CERCLA (reference (f)) (see following quote for additional detail). In the case of a concurrence that is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request. EPA must concur not later than 9 months after submittal to the base transition coordinator for a specific proposed use for the parcel, or 18 months after the date of approval of base closure recommendations. Therefore, expeditious action is required by the base transition coordinator. If concurrence cannot be obtained within the specified period of time, the Military Department should elevate the issue to the Component political level for resolution.

P.L. 103-160, Section 2910

"The identification by the Secretary of Defense required under section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)), and the concurrence required under section 120(h)(4)(B) of such Act, shall be made not later than the earlier of—

(1) the date that is 9 months after the date of the submittal, if any, to the transition coordinator for the installation concerned of a specific use proposed for all or a portion of the real property of the installation; or

(2) the date specified in section 120(h)(4)(C)(iii) of such Act."

C8.5.4.2. No Remedial Action Required. In the case of a parcel where:

C8.5.4.2.1. CERCLA hazardous substances or petroleum products or their derivatives have been released or disposed of; and

C8.5.4.2.2. CERCLA or petroleum investigations were completed (for hazardous substances at NPL sites) and a no-action decision document was completed and concurred in by EPA or other appropriate regulators—

no further action is required for transfer of the property.

C8.5.4.3. Remedy Completed by the Department of Defense. In the case of a parcel where:

C8.5.4.3.1. CERCLA hazardous substances or petroleum products or their derivatives were known to have been released or disposed of;

C8.5.4.3.2. CERCLA or petroleum investigations have been completed;

C8.5.4.3.3. an environmental response (removal or remedial action) was found necessary;

C8.5.4.3.4. the required environmental response was completed before property transfer; and

C8.5.4.3.5. remedy completion was concurred in by EPA (for hazardous substances at NPL sites) or other appropriate regulators—

no further action is required for transfer of the property.

C8.5.4.4. Remedy in Place by the Department of Defense. In the case of a parcel where:

C8.5.4.4.1. CERCLA hazardous substance or petroleum products or their derivatives were known to have been released or disposed of;

C8.5.4.4.2. CERCLA or petroleum investigations have been completed;

C8.5.4.4.3. an environmental response (removal or remedial) action was found necessary; and

C8.5.4.4.4. the selected remedy has been constructed and is operating properly and successfully—

the property will be transferred before the environmental response action has been completed, but the remedy is in place and operating successfully.

C8.5.4.4.5. The Military Department should obtain concurrence from EPA before transfer that the hazardous substance remedy is “operating properly and successfully” (OPS) except where Early Transfer/Covenant Deferral applies.

C8.5.4.4.6. An OPS demonstration is not required for transfers from the Department of Defense to other Federal agencies or for responses to petroleum products or their derivatives. After remedy completion, the Military Department should obtain concurrence from EPA (for hazardous substances at NPL sites) or other appropriate regulators that the remedy has been completed.

C8.5.4.5. Early Transfer; the Department of Defense Completes the Response or Corrective Action. In the case of a parcel where:

C8.5.4.5.1. CERCLA hazardous substances or petroleum products or their derivatives were known to have been released or disposed of;

C8.5.4.5.2. CERCLA or petroleum investigations have been completed;

C8.5.4.5.3. an environmental response (remedial or removal) action was found necessary; and

C8.5.4.5.4. the Department of Defense will complete the response or corrective action after property transfer—

the Military Department shall submit to the State and, if an NPL site, to EPA, a Covenant Deferral Request for hazardous substances (not petroleum products).

C8.5.4.5.5. The request shall contain sufficient information to satisfy the criteria in Section 120(h)(3)(C) of the CERCLA (reference (f)). Covenant Deferral Requests are not required for early transfers from the Department of Defense to other Federal agencies. After remedy completion, the Military Department shall seek concurrence from EPA (for hazardous substances at NPL sites) or other appropriate regulators that the remedy is complete. See "Early Transfer Authority: A Guide to Using ETA to Dispose of Surplus Property" (reference (bj)) for guidance.

C8.5.4.6. Early Transfer; Privatization of Response or Corrective Action. In the case of a parcel where:

C8.5.4.6.1. CERCLA hazardous substances or petroleum products or their derivatives were known to have been released or disposed of;

C8.5.4.6.2. CERCLA or petroleum investigations have been completed;

C8.5.4.6.3. an environmental response (remedial or removal) action was found necessary and a remedy was selected; and

C8.5.4.6.4. the new property owner will complete the selected response or corrective action after property transfer, as required by a transfer agreement, contract, or State law cleanup program, and obtain all necessary concurrences—

The Military Department shall submit to the State and, if an NPL site, to EPA, a Covenant Deferral Request for hazardous substances (not petroleum products), to the extent required by CERCLA 120(h)(3) (reference (f)).

C8.5.4.6.5. The request shall contain sufficient information to satisfy the criteria in Section 120(h)(3)(C) of CERCLA (reference (f)). Where there is an existing and enforceable agreement, permit, order, or a response action is proceeding under a State law program, the Military Department shall seek to have the responsibilities transferred to the new owner or operator.

C8.5.4.7. Early Transfer; Privatization of Response or Corrective Selection and Action. In the case of a parcel where:

C8.5.4.7.1. CERCLA hazardous substances or petroleum products and their derivatives were known to have been released or disposed of;

C8.5.4.7.2. CERCLA or petroleum investigations have not all been completed or all remedies have not yet been selected; and

C8.5.4.7.3. the new property owner will complete the required environmental response or corrective action (perform the investigation, implement the remedy, complete the remedial action, and obtain necessary concurrences as required by any transfer agreement, contract, response action agreement with Federal or State regulators)—

the Military Department shall submit to the State and, if an NPL site, to EPA, a Covenant Deferral Request for hazardous substances (not petroleum products), to the extent required by CERCLA 120(h) (3) (reference (f)).

C8.5.4.7.4. The request shall contain sufficient information to satisfy the criteria in Section 120(h)(3)(C) of CERCLA (reference (f)). Where there is an existing and enforceable agreement, permit, or order, or a response action is proceeding under a State law program, the Military Department shall seek to have the responsibilities transferred to the new owner or operator.

C8.5.5. Finding of Suitability to Transfer or Lease.

C8.5.5.1. Before transfer or lease of BRAC property, the Military Department shall ensure all applicable statutory and regulatory requirements have been satisfied. The FOST/FOSL will substantially follow the outline provided in Appendix AP3. The Military Departments may use conforming checklists or questionnaires for this purpose. For matters specifically related to hazardous substances, petroleum products, and other regulated materials (e.g., asbestos) on the property, the Military Department shall prepare a Finding of Suitability to Transfer/Lease (FOST/FOSL) summarizing how the applicable requirements and notifications for these substances and materials have been satisfied in order for DoD to provide the applicable CERCLA 120(h)(3) or CERCLA 120(h)(4) covenants (reference (f)). The FOST/FOSL shall state the property is environmentally suitable for transfer or lease and contain a description of any long-term remedies (including land-use controls) and responsibilities for their maintenance and reporting. The FOSL will document that the property is suitable for lease in that the uses

contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that all necessary remedial action has been taken or will be taken after the execution of the lease.

C8.5.5.2. The FOST shall be forwarded to the State and, if an NPL site or EPA permitted RCRA site, to EPA, for review and comment. While resolving adverse comments is desirable, such resolution is not required for transfer. For leases, providing the FOSL to EPA for comment satisfies the consultation requirement of CERCLA, Section 120(h)(3) (reference (f)), and 10 U.S.C. Section 2667(f)(2) (reference (bk)). While resolving adverse comments from regulators is desirable, such resolution is not required for leases. The process for review and comment on the FOST may be modified if the FOST is used to also satisfy Resource Conservation and Recovery Act (RCRA) (reference (v)) corrective action closure requirements.

C8.5.6. Coordination with Regulatory Agencies.

C8.5.6.1. Installations selected for closure in the BRAC 2005 round may have established relationships with Federal and State regulators for environmental matters. They may also have cleanup programs in progress or completed. Existing procedures and relationships related to regulatory oversight should be maintained for closing installations, and until the property is transferred to a new property owner.

C8.5.6.2. Existing permits and cleanup agreements shall be maintained and responsibilities fulfilled pursuant to the terms of the permit or agreement unless, consistent with such permit or agreement, responsibility is transferred to the new owner, or other arrangements are made with the regulatory agencies. Those other arrangements could include removal of certain property from a RCRA, Part B, or issuance of a closure permit to facilitate property transfer.

C8.5.6.3. The Military Department should maintain oversight reimbursement in both pre- and post-transfer situations where it retains response action responsibilities, such as cleanup after early transfer and 5-year reviews for remedies. Where cleanup actions have been assumed by another party, payment of oversight expenses or fees to environmental regulators may be assumed by the transferee and eventually by the new owner in the case of land-use controls.

C8.6. OTHER PLANNING AND FUNDING CONSIDERATIONS

C8.6.1. Other environmental actions will be required as a consequence of the base closures and realignments. A host of other environmental requirements may apply to a given base. Subject matter experts within the Military Department are available to help determine the applicability and required actions. In the case of interservice realignments, if the new function being relocated to the installation causes an additional expenditure to acquire new permits or to significantly modify existing permits, the Military Department that is being relocated is responsible for providing the resources necessary to satisfy the new permit requirement. Additional potential applicable requirements are summarized in the following subsections.

C8.6.2. Hazardous Waste Generation. The closure of an installation could result in a significant increase in the generation of hazardous waste. The Military Department may need to expand its hazardous waste contract to cover the increase and to remove wastes more frequently and from different locations (including sites not previously listed in the contract.).

C8.6.3. Resource Conservation and Recovery Act Permit. The Military Department may need to close or transfer a hazardous waste treatment, storage, or disposal facility at an installation. Such an action requires formal procedures and written approval from EPA or the State exercising authority under RCRA (reference (v)). If a permit renewal is due prior to the departure of a military unit, facility personnel should consult with the military property disposal office. The property disposal office should attempt to negotiate modifications to the permit, as necessary, to remove as much of the base closure property as possible from the permit to help facilitate future property transfer.

C8.6.4. Above/Underground Storage Tanks. The closure and documentation of closure for underground storage tanks is another important task, particularly tanks that contain hazardous wastes or regulated substances (as defined in the Solid Waste Disposal Act (reference (bl)) hazardous waste or underground storage tank provisions). Regulatory procedures for such closures are set forth in 40 CFR 264 (Hazardous Wastes at Permitted Facilities); 40 CFR 265 (Hazardous Wastes at Interim Status Facilities); 40 CFR 280 (Regulated Substances Subject to the Underground Storage Tank Provisions) (reference (bl)); and in the corresponding provisions of State regulations.

C8.6.5. Clean Air Permits and General Conformity Requirements.

C8.6.5.1. The CAA (reference (d)) establishes a system for identifying and reducing air emissions to protect human health. It requires that permits be obtained for stationary sources of air pollution; typically one overall permit for an installation and one for each new source. Reuse activities must obtain air permits from the local air authority before they can start operating. In some cases, the local air authority may allow the Military Department to transfer existing permits with the source. In other cases, the air authority may require the creation of emission credits, while in still others a pressing military requirement in the area may require support of an ongoing or expanding mission. The Military Department must contact the DoD Regional Environmental Coordinator to coordinate its actions regarding air emissions and emissions credits. Disposition of emission credits is also discussed in Chapter 6 of this Manual. (See Section C6.5 for supporting details.) Some of the Military Department's actions will include surveying and documenting all existing CAA permits, including size and expiration data; conducting inventories of all mobile sources; contacting the local air authority to find out what options and restrictions exist; and coordinating emission issues with the LRA.

C8.6.5.2. CAA General Conformity requirements apply to realignment actions that occur in certain areas of the country. EPA's National Ambient Air Quality Standards Disposal actions are exempt from those requirements. To ensure Federal activities do not hamper local efforts to control air pollution, the CAA prohibits Federal agencies from engaging in, supporting, licensing, or approving any action that does not conform to an approved State air quality plan: the State Implementation Plan or SIP. If the property will be reused by a Federal agency or if Federal agency approval is required for the reuse (such as an FAA-approved airport), the Federal

agency may need to comply with all applicable conformity requirements for the proposed reuse. The air conformity analysis can be complex and time consuming and must be completed before the Federal action can proceed. The conformity analysis and any necessary Conformity Determination is generally included in the NEPA documentation.

C8.6.6. Clean Water Act (reference (m)) and Safe Drinking Water Act (reference (w)) Permits. Utilities such as wastewater collection, treatment, and discharge systems; storm water collection, treatment, and discharge systems; and drinking water reservoir, treatment, storage, and distribution systems and their ancillary fire protection systems often transfer to the local municipality, utility district, or, in the case of some isolated bases, the new owner or developer. Installation personnel in the public works and environmental departments should work with the Federal or State permitting authority and the receiving municipality, utility district, or owner to facilitate the transfer of permits to the new owner or operator. If the closing base will be placed in caretaker status, the permitting authority may require some regulated utilities to be closed and their wastes disposed of in accordance with the requirements established by the permitting authority. For realigning bases that gain missions, the public works and environmental personnel should evaluate if the new missions and increased utility requirements will require applications for new or modifications of existing direct, indirect, or storm water discharge permits or safe drinking water permits. These individuals must coordinate all changes with the permitting authority and receiving municipality or utility district.

C8.6.7. Asbestos Containing Material.

C8.6.7.1. Some buildings and facilities on BRAC property may contain asbestos containing materials (ACM) that must be addressed in accordance with DoD policy as set forth in an Office of USD (AT&L) memorandum dated October 31, 1994 (reference (bm)).

C8.6.7.2. Prior to property disposal, all available information as described in Appendix AP.2 on the existence, extent, and condition of ACM shall be incorporated into the Environmental Condition Property report.

C8.6.7.3. Reference (bm) directs that ACM not in compliance with applicable laws, regulations, and standards or that poses a threat to human health at the time of transfer shall be remediated by the Military Department, or by the transferee under a negotiated requirement of the contract for sale or lease. However, remediation of ACM that poses a threat to human health will not be required when the buildings are scheduled for demolition by the transferee; the transfer document prohibits occupation of the buildings prior to demolition; and the transferee assumes responsibility for the management of any ACM in accordance with applicable laws.

C8.6.8. Lead-Based Paint.

C8.6.8.1. In response to the Lead-Based Paint Poisoning Prevention Act (reference (q)) and Residential Lead-Based Paint Hazard Reduction Act (Title X) (reference (bn)), DoD policy is set forth in the Office of the USD (AT&L) memorandum of January 7, 2000 (reference (bo)), and Lead-Based Paint Guidelines for Disposal of DoD Residential Real Property: A Field Guide (Interim Final-December 1999) (reference (bp)). That policy calls for DoD Components to manage lead-based paint (LBP) in a manner protective of human health and the environment,

and to comply with all applicable Federal, State, and local laws and regulations governing LBP hazards.

C8.6.8.1.1. Abate soil-lead surrounding housing constructed between 1960 and 1978 (Title X requires abatement of LBP hazards in target housing constructed prior to 1960). The transfer agreement may require the purchaser to perform the abatement activities.

C8.6.8.1.2. Evaluate the need for interim controls, abatement, or no action for bare soil lead concentrations between 400 and 2000 ppm (excluding children's play areas) based on the findings of the LBP inspection, risk assessment, and criteria contained in the Field Guide.

C8.6.8.1.3. Evaluate and abate LBP hazards in structures reused as child-occupied facilities located on residential real property. Child-occupied facilities are day care centers, preschools, and kindergarten classrooms visited regularly by children under 6 years of age.

C8.6.8.1.4. Evaluate and abate soil-lead hazards for target housing demolished and redeveloped for residential use following transfer. Under Title X, residential dwellings that are demolished or not intended for occupancy after transfer do not require an inspection and risk assessment or LBP control and hazard abatement. However, DoD requires that the terms of property transfer include a requirement for the transferee to evaluate and abate any soil-lead hazards prior to occupancy of any newly constructed dwelling units.

C8.6.8.2. The Federal requirements for residential structures and dwellings with LBP on BRAC properties differ depending on the date of construction of the residential housing being transferred. These requirements may include inspection, notice, and abatement. However, inspection and abatement are not required when the building is scheduled for demolition, non-residential use, or non-child-occupied facilities, or when the transferee conducts renovation consistent with regulatory requirements for abatement of LBP hazards. Local requirements may also apply and they may be more stringent.

C8.6.9. Polychlorinated Biphenyls. The Toxic Substances Control Act (TSCA) (reference (bp)) generally bans the use, manufacture, processing, and distribution in commerce of polychlorinated biphenyls, or PCBs. While EPA allows transfer prior to cleanup, buyers or sellers need to work with their EPA regional PCB contact to establish a cleanup plan prior to property transfer. The Military Department should review all appropriate electrical equipment on the installation scheduled to be closed or realigned to ensure that they are appropriately classified as PCB, PCB-contaminated, or non-PCB (40 CFR 761.30) (reference (bq)) (see Appendix AP2).

C9. CHAPTER 9

BRAC ACTIONS CAUSING GROWTH

C9.1. GENERAL

This chapter focuses on community considerations, actions, and opportunities where BRAC decisions direct realignment actions that increase military missions and functions and personnel levels at existing bases. At those bases, the community and the installation take advantage of existing capacity to host the additional military missions, personnel and families. The receiving bases may involve moves with minimal impact due to community excess capacity and near-term capability for expansion. Other receiving locations may involve large personnel movements, particularly in relatively isolated locations. These larger relocations require an active and supporting partnership between the gaining military installation and the local community. When a military base experiences significant mission and personnel increases, the associated population increase has the potential to affect the environment, transportation, and other community infrastructure and place direct and significant demands on surrounding community infrastructure and services. This chapter outlines some of the actions that can be taken to minimize the negative effects of these demands.

C9.2. PLANNING FOR GROWTH

C9.2.1. Organizing for Growth.

C9.2.1.1. Large, rapid influxes of personnel and missions create the need for an immediate partnership between community leaders and installation leaders to manage the changes. Coordinated management of change provides an opportunity to minimize the negative effects on the community while enhancing the long-term quality of life environment for defense personnel and community residents. Communities require time to plan, budget for, and construct necessary improvements and facilities. See excerpt from Public Law 109-163 (reference (br)) below.

> Public Law 109-163 Section 2835. Required consultation with State and local entities on issues related to increase in number of military personnel at military installations.
>
> If the base closure and realignment decisions of the 2005 round of base closures and realignments under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) or the Integrated Global Presence and Basing Strategy would result in an increase in the number of members of the Armed Forces assigned to a military installation, the Secretary of Defense, during the development of the plans to implement the decisions or strategy with respect to that installation, shall consult with appropriate State and local entities to ensure that matters affecting the community, including STAT.3522 requirements for transportation, utility infrastructure, housing, education, and family support activities, are considered.

C9.2.1.2. A growth-planning partnership with the military installation is an effective and proven approach to cope with a growing installation (see Section C9.3). Such a partnership can help a community assess its absorption capacity, formulate an adjustment strategy, and develop and implement an action plan to accommodate off-base requirements while maintaining the quality of life for arriving DoD personnel, their families, and the affected community. The strategy should seek to achieve a community-wide consensus on an action plan for managing the influx of new DoD personnel into the community. The key to the success of such a partnership is the inclusion of all relevant interests and stakeholders (i.e., utility, education, childcare, fitness, medical care and housing providers) in the planning and facilities-programming processes.

C9.2.1.3. In base realignments, a single local organization is essential for the coordination of a diverse array of actions and the participation of local governmental bodies and members of the public. Such an organization has historically been an ad hoc advisory council or steering committee. Members come from the public and private sector, plus installation representatives. Sometimes State representatives are involved, especially if school capital budgets for construction come from the State. The organization's role is to assess the likely growth effects, delineate gaps in local development needs, and prepare a strategy and coordination mechanism for meeting these needs and then ensure that community facilities and services will be ready when the influx occurs.

C9.2.2. Issues to Consider. Community leaders and the growth management organization should begin working with installation officials on the timing of the personnel, mission, and demographic changes caused by inbound personnel as soon as the BRAC realignment decisions are final. Community leaders need to appreciate the difficulty and limitations of the BRAC decision process in terms of the detailed scheduling for specific unit moves and the resulting effects on the local community.[3]

C9.2.2.1. Location of Growth. The location of growth can be just as important as the magnitude of growth in terms of impacts. For example, if all growth occurs in already developed areas that have sewer, water, and other infrastructure, the financial, social and environmental impacts of this growth will be very different from growth that occurs in undeveloped areas. Furthermore, the location of growth may have a significant effect on the capacity of the transportation system. For example, residential growth that occurs at the fringe of the community or in outlying communities will put more pressure on the road network than growth that occurs close to the base, as well as stores and services.

C9.2.2.2. Housing.

C9.2.2.2.1. Community leaders should explore housing options for inbound military personnel with the installation commander, who needs to be proactive in this area because there could be a period where demand will exceed supply. During this period, escalating housing

[3] For additional guidance, see the OEA website (www.OEA.gov) guide for the "Managing Growth" technical bulletin.

costs affect not only the military personnel but the civilian personnel moving to the area as well as community residents not associated with the installation.

C9.2.2.2.2. Longstanding DoD policy (see references (bs) and (bt)) requires primary reliance on the private sector for housing military families. Installation commanders should work with local communities to ensure processes are in place to provide incoming personnel with sufficient information to obtain housing upon arrival. The Military Department should conduct a housing requirement market analysis (HRMA) to determine the new housing requirement. The HRMA should take into account the impact the increased military demand will have on the private-sector housing supply and estimate a reasonable market response that is in general greater than historic housing supply growth trends. After completing the HRMA, the Military Department may choose to pursue privatized housing options or may believe that existing housing stocks are, or will be, sufficient.

C9.2.2.3. Schools and Medical and Other Support Facilities.

C9.2.2.3.1. Closely related to the housing analysis planning process are planning needs for schools, medical treatment facilities, support facilities such as child development centers and fitness centers, and recreational support facilities for the military members and families. Local school districts need to be involved. Prompt decisions regarding future housing needs and locations will help school districts in their planning process. States may play a primary role in school construction, while other localities may need to prepare school construction bond proposals for taxpayer consideration. Federal School Impact Aid changes also need to be considered. The installation commander should coordinate with local school districts regarding increases in student populations and advise military personnel that there could be a lag until school districts can respond with increased facilities, teachers, and support facilities. The commander may also need to consider other school options, such as charter and private schools, to support the military and the surrounding communities.

C9.2.2.3.2. Medical treatment facilities are also frequently stressed when large realignments occur in rural or isolated locations. Although military personnel use the TRICARE insurance program (the Department of Defense's worldwide health care program for active duty and retired uniformed services members and their families) to pay for their services, community and military leaders should consider how to address shortages of particular medical specialties and services. Shortages of critical services, unless addressed, could place undue hardships on both military and civilian personnel.

C9.2.2.4. Utility Systems. A large influx of personnel could overtax existing utility systems, if capacity is at or near design limits. Even if electric generating capability is available, installation engineers and local community engineers must also address the transmission network capacities. While military installations place increasing reliance on local services providers for needed utility support, the lead-time to increase capacity (including transmission) modes can be years in planning, design, and construction before the actual increase in capacity is provided. This situation could potentially influence overall success of the realignment and could adversely impact the surrounding civilian community as well if not recognized and planned in advance, with assistance from community and utility providers during the growth management planning process.

C9.2.2.5. New Construction and Facilities. The Military Department will plan for new construction or renovation to meet the additional requirements of missions and personnel transferred to an installation. A primary reliance is placed on the department's standard acquisition and construction practices. However, alternative methods, such as Enhanced Use Leasing (EUL), may give an installation commander the ability to leverage private-sector expertise and financial resources to build or redevelop existing land, buildings, and other real estate assets. EUL, which is part of 10 U.S.C. 2667 (reference (bk)), allows a Military Department to lease real property in exchange for certain services, supplies, and facilities.

C9.2.2.6. Business and Workforce Development. The influx of new residents into a community will likely increase the demand for business and commercial development to provide retail establishments, services, dining, and recreation opportunities. The workforce investment system is a valuable resource for communities experiencing economic growth. In these communities, workforce challenges will surface as businesses need additional workers. Many of these services will also afford job opportunities for spouses and dependents of military and civilian personnel. There may be a new demand for a greater variety and different quality of establishments as well.

C9.2.2.7. Community Planning. Dramatic demographic changes will require a fresh look at local general plans, zoning ordinances, building code requirements, and approval processes so that the increased demand for residential, commercial, and public facility development can be accommodated in a smart, orderly fashion. In some cases, the States may need to give local jurisdictions the authority to plan and implement planning or to create special districts. With good planning and efficient development practices, communities may be able to absorb the new residents and businesses into existing neighborhoods, with little or no expansion of infrastructure. In other cases, local jurisdictions may need to annex adjacent unincorporated areas so that appropriate oversight for development is possible. Changed or increased installation missions also may require attention to compatible land uses near parts of the installation that generate or are affected by noise or other environmental factors.

Public Law 109-163 Section 2836 (b) Sense of Congress.

It is the sense of Congress that the Secretary of Defense should seek to ensure that the permanent facilities and infrastructure necessary to support the mission of the Armed Forces and the quality-of-life needs of members of the Armed Forces and their families are ready for use at receiving locations before units are transferred to such locations as a result of the 2005 round of base closures and realignments and the Integrated Global Presence and Basing Strategy.

C9.2.2.8. Quality of Life. Realignment actions could also influence the overall quality of life associated with the installation and the surrounding community, such as increasing commute times and stimulating development of a wider range of cultural, commercial, housing, and professional services alternatives, benefiting both new and existing residents. Some of the

quality of life factors to be considered that can be affected by an expanding installation include the following:

C9.2.2.8.1. Quality and accessibility to public, private, and charter schools.

C9.2.2.8.2. Housing availability and affordability.

C9.2.2.8.3. Standard of living, service members' ability to support themselves and their families.

C9.2.2.8.4. Recreation and leisure.

C9.2.2.8.5. Fitness.

C9.2.2.8.6. Healthcare.

C9.2.2.8.7. Crime and safety.

C9.2.2.8.8. Spouse employment.

C9.2.2.8.9. Affordable, high-quality childcare.

C9.2.2.8.10. Continuing education for adults.

C9.2.2.8.11. Commercial aviation support.

C9.2.2.8.12. Natural and environmental resources.

C9.2.2.8.13. Accessibility of parks and open spaces.

C9.2.2.8.14. Accessibility to community services, via a range of transportation options (walking, public transportation, biking, automobiles).

C9.2.2.8.15. Level of traffic and access to public transportation.

C9.2.2.9. Security. New missions may change the overall security environment of the installation. The result could be increased time to accomplish previously routine actions such as accessing the installation and visiting support facilities such as the personnel office or exchange.

C9.3. PLANNING ASSISTANCE

There are two primary options for helping the installation commander and local community leaders make effective decisions.

C9.3.1. Internal Military Planning Assistance. As soon as the President forwards his closure and realignment recommendations to the Congress, the installation commander should establish a planning team to address local issues and needs. This team should be charged with proposing

solutions that minimize the effects on both the installation and the community of an expanded mission.

C9.3.2. Community Planning Assistance. An equally important tool for the local community and the installation is the growth management planning assistance available from OEA. Technical and financial assistance to eligible communities can be invaluable in organizing and developing a coordinated community response. This assistance should focus on a single local organization that would partner with the installation's planning activities to develop an overall growth management strategy for addressing local expansion needs. Financial assistance can only be provided where there is a "direct and significantly adverse consequence" resulting from a substantial realignment action and the legislative authorization parameters can be met.

C9.4. NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS (reference (t)).

The Military Department will address the impact of the expanded mission on the installation and the local community as part of complying with NEPA requirements. Under NEPA, the Military Department will not assess the realignment decision, only how to implement the decision. As part of an active partnership with local community leaders, the installation commander can facilitate this process by inviting them to participate in the NEPA process. This includes ensuring they are aware of options about the public notice process, issues identification, and other opportunities for public participation in the process. See Section C8.2 for a more detailed discussion of NEPA requirements.

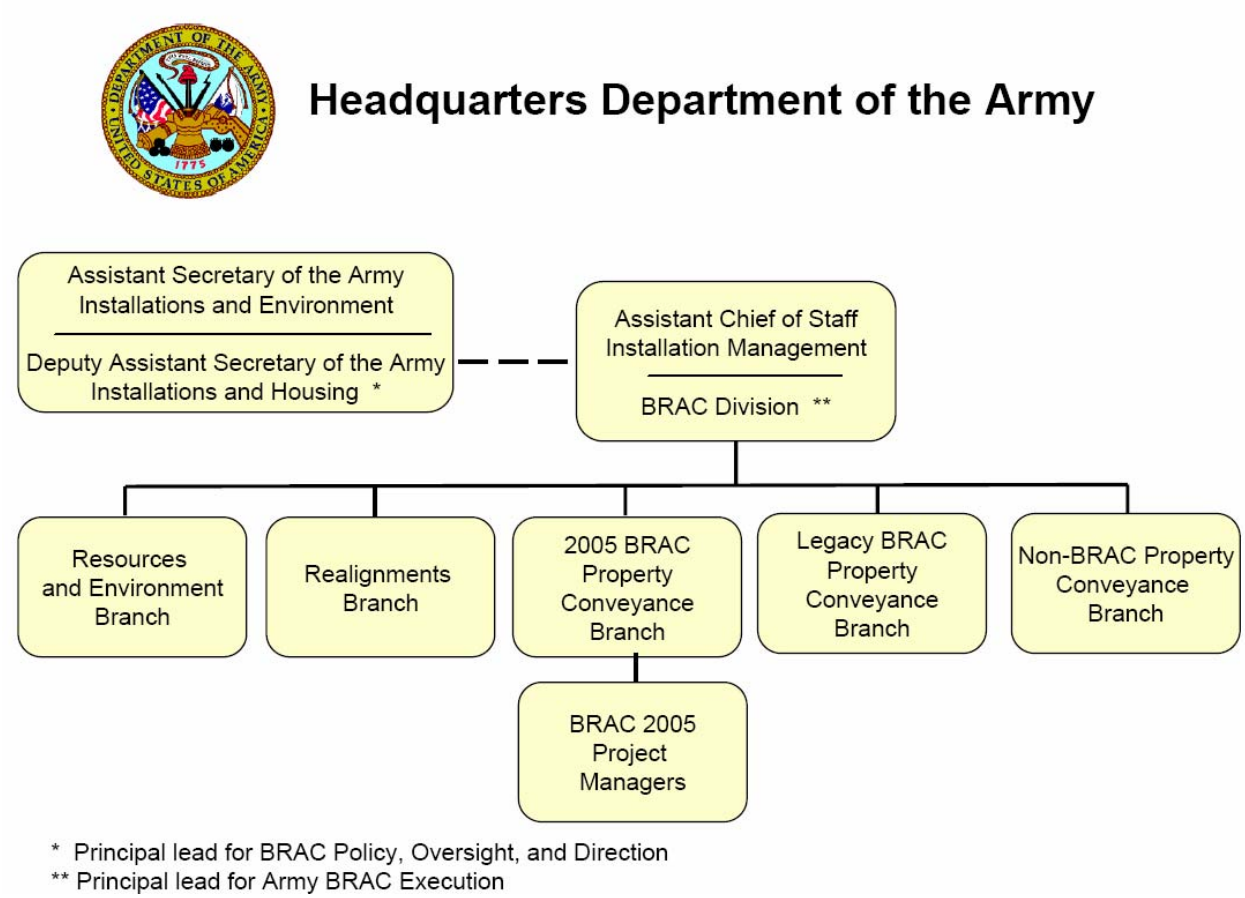
C10. CHAPTER 10

CONTACT INFORMATION

This chapter provides contact information for individuals seeking further information regarding specific aspects of base closure and reuse planning. As a first step, interested individuals should refer to the Web sites for particular organizations. Those sites contain useful data, contact information, and links to additional material. If information is required on specific installation issues, individuals should contact the installation.

C10.1. DEPARTMENT OF THE ARMY

C10.1.1. Organizational Structure.



C10.1.2. Web Site.

http://www.hqda.army.mil/acsim/brac/braco.htm

C10.1.3. E-mail Contact.

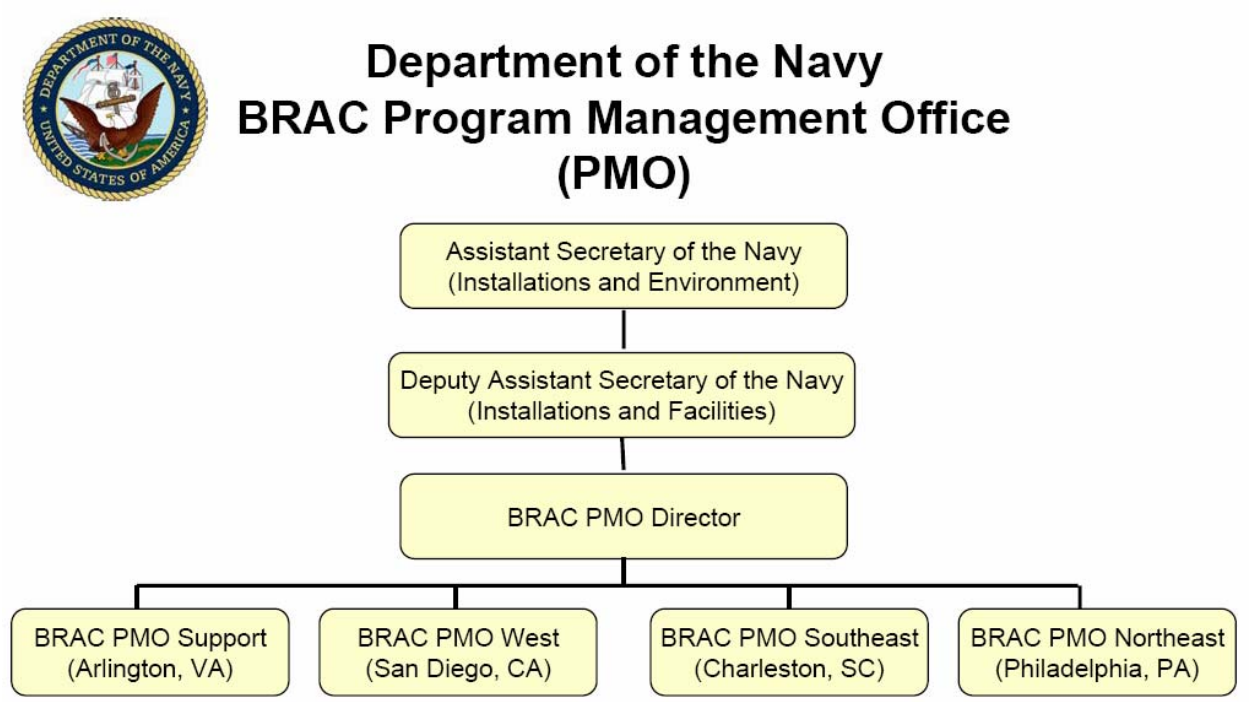
ArmyBRAC2005@hqda.army.mil

C10.1.4. Address.

Army BRAC Division
Assistant Chief of Staff for Installation Management DAIM-BD
600 Army Pentagon
Washington, DC 20310-0600

C10.2. DEPARTMENT OF THE NAVY

C10.2.1. Organizational Structure.



C10.2.2. Web site.

http://www.navybracpmo.org/

C10.2.3. E-mail Contact.

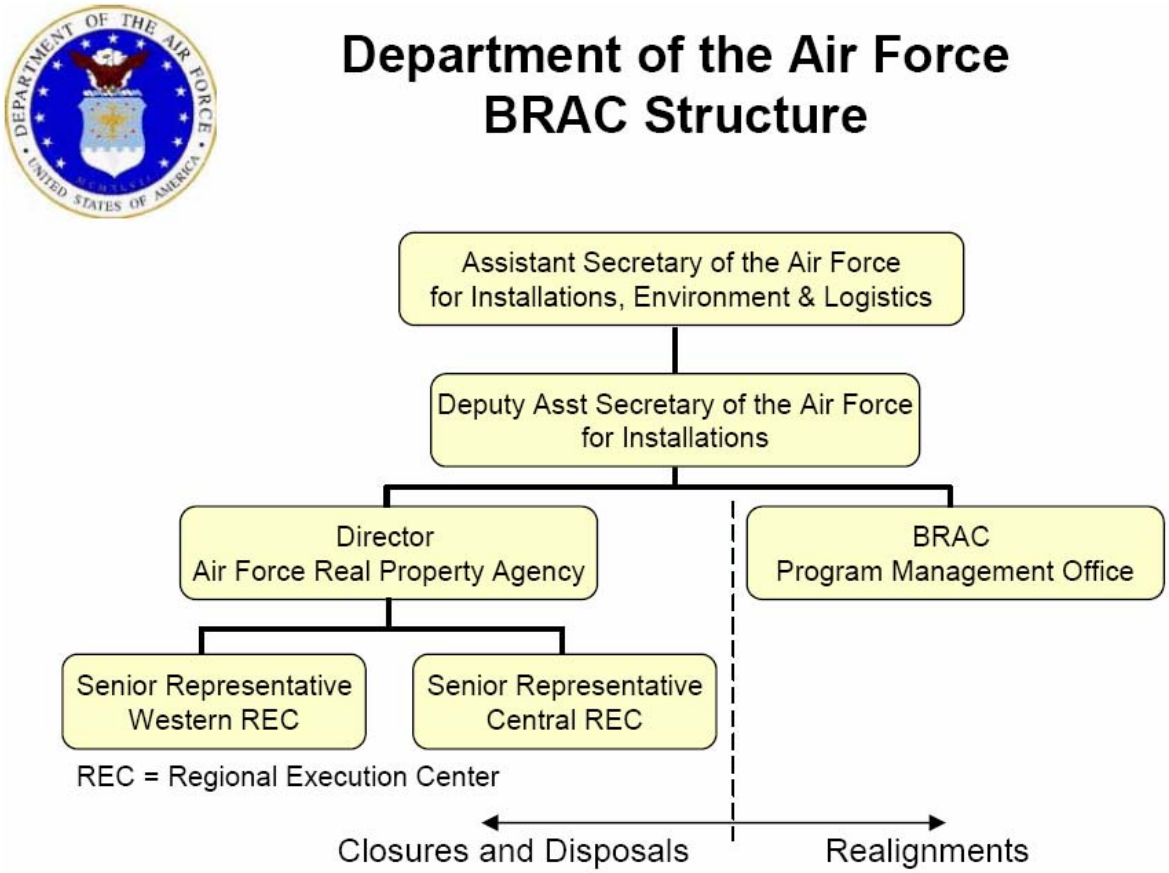
Melanie.Ault@navy.mil

C10.2.4. Address.

Department of the Navy, BRAC Program Management Office
1230 Columbia Street, Suite 1100
San Diego, CA 92101

C10.3. DEPARTMENT OF THE AIR FORCE

C10.3.1. Organizational Structure.



C10.3.2. Web Sites.

Air Force Real Property Agency: http://www.afrpa.hq.af.mil/

Western REC: http://www.afrpa.hq.af.mil/mcclellan/

Central REC: http://www.afrpa.hq.af.mil/kelly/

C10.3.3. Addresses.

BRAC Policy: SAF/IEI, 1665 Air Force Pentagon, Washington, DC 20330-1665

BRAC Disposal: AFRPA/DR, 1700 N. Moore St., Suite 2300, Arlington, VA 22209-2802

BRAC Realignment: SAF/IEI, 1665 Air Force Pentagon, Washington, DC 20330-1665

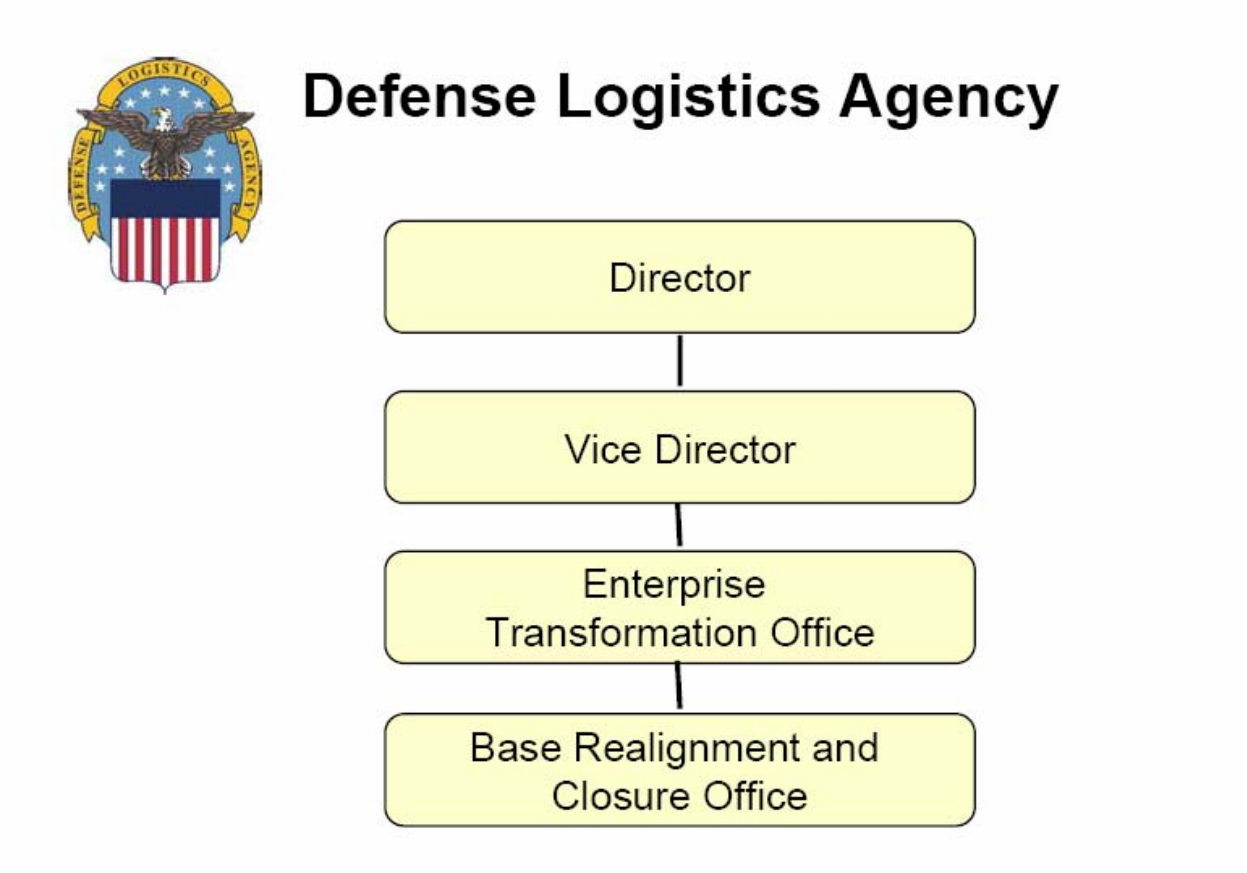
C10.3.4. Telephone Contacts.

BRAC Policy & Realignments: 703-695-3592

BRAC Disposal: 703-696-5501

C10.4. DEFENSE LOGISTICS AGENCY

C10.4.1. Organizational Structure.



C10.4.2. E-mail Contact.

BRAC2005@dla.mil

C10.4.3. Address.

DLA BRAC Office
8725 John J. Kingman Road, Stop 6220
Fort Belvoir, VA 22060-6221

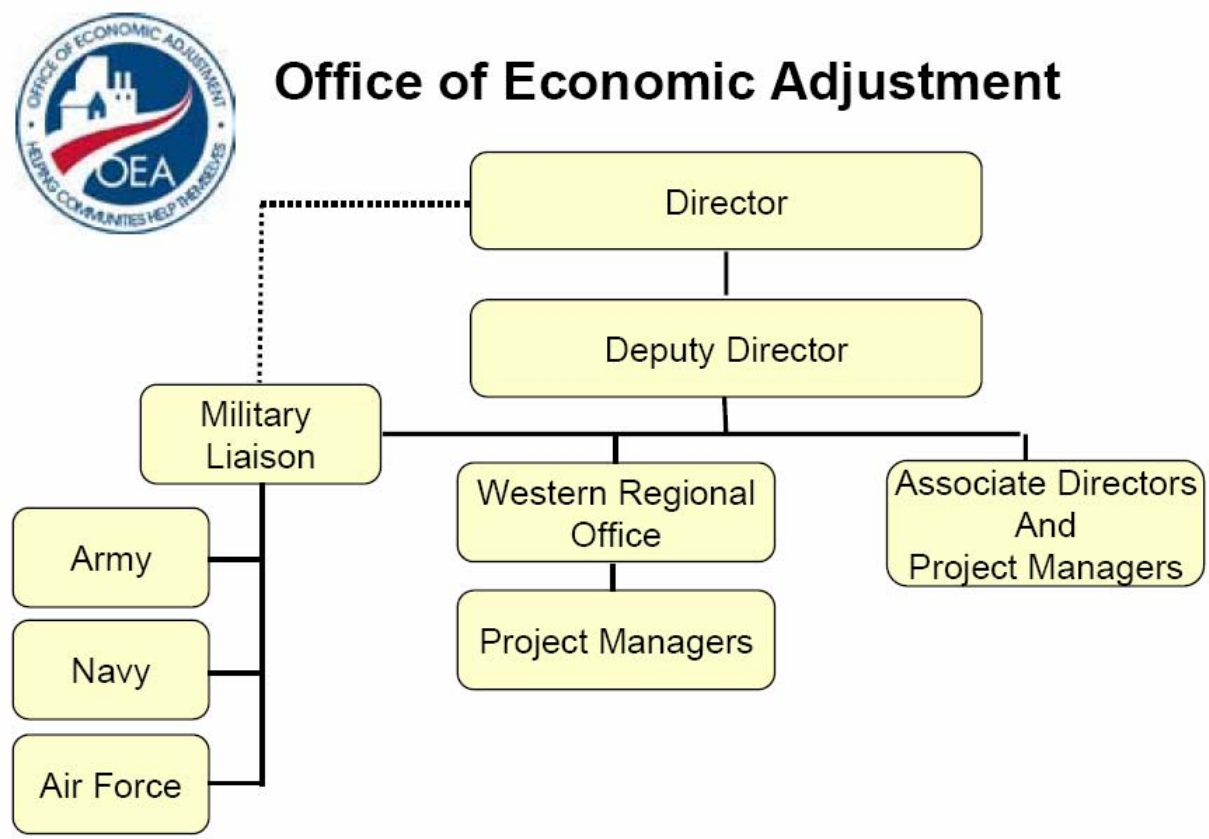
C10.4.4. Telephone Contacts.

703-767-2470

703-767-2672

C10.5. OFFICE OF ECONOMIC ADJUSTMENT

C10.5.1. Organizational Structure.



C10.5.2. Web Site.

http://www.oea.gov/

C10.5.3. General E-mail.

oeafeedback@wso.whs.mil

C10.5.4. Addresses.

Office of Economic Adjustment
400 Army Navy Drive, Suite 200
Arlington, VA 22202-4704

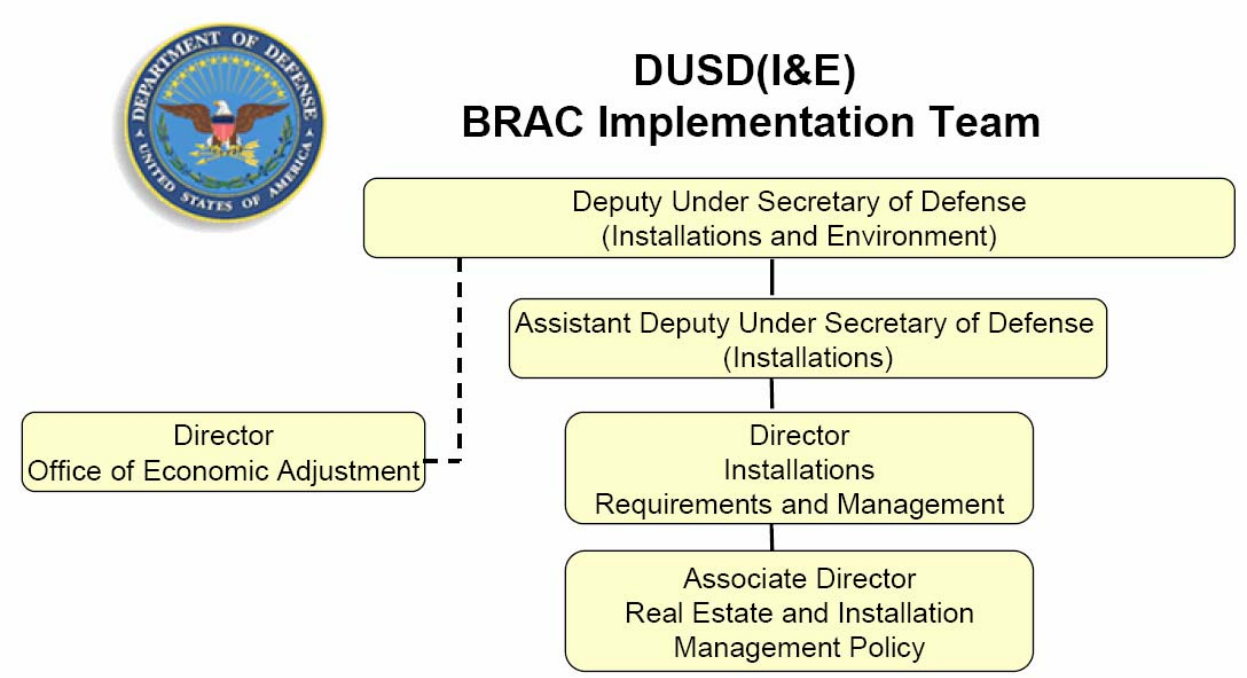
Office of Economic Adjustment
Western Regional Office
1325 J Street, Suite 1500
Sacramento, CA 95814

C10.5.5. Telephone Contacts.

Arlington, VA: 703-604-6020
Western Regional Office: 916-557-7365

C10.6. OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE FOR INSTALLATIONS AND ENVIRONMENT

C10.6.1. Organizational Structure.



C10.6.2. Web Site.

http://www.acq.osd.mil/ie/

C10.6.3. Address.

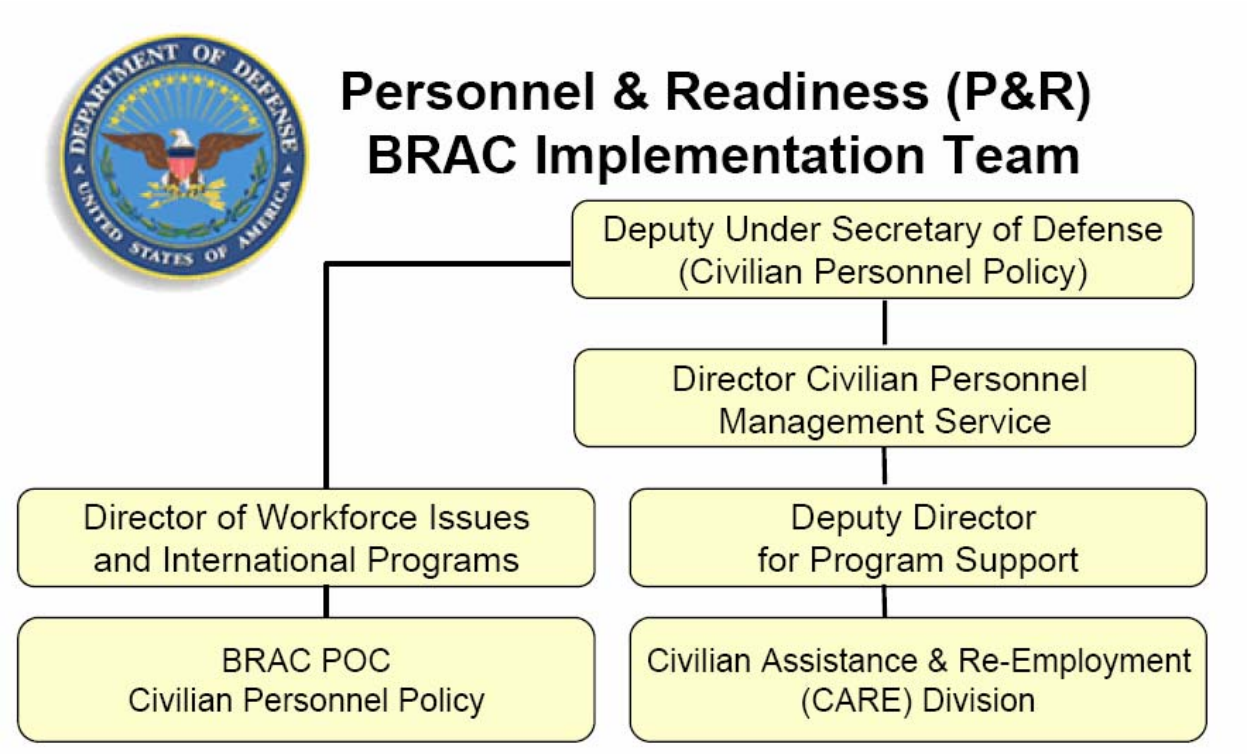
Office of the Deputy Under Secretary of Defense
(Installations and Environment)
3400 Defense Pentagon, Room 5C646
Washington, DC 20301-3400

C10.6.4. E-mail Contact.

Steve.Kleiman@osd.mil

C10.7. OSD PERSONNEL AND READINESS OFFICE

C10.7.1. Organizational Structure.



C10.7.2. Web Site.

http://www.cpms.osd.mil/bractransition/

C10.7.3. Telephone contacts.

Civilian Personnel Policy: 703-571-9287

CARE Division: 703-696-1799

C10.8. HOMEOWNERS ASSISTANCE PROGRAM

C10.8.1. This program is discussed in detail in Chapter 4. Further information can be found at www.hq.usace.army.mil/hap/. The three field offices below are tasked with implementing the Homeowners Assistance Program:

C10.8.1.1. U.S. Army Engineer District, Savannah, CESAS
P.O. Box 889
Savannah, GA 31402-0889
912-652-5020
800-861-8144

The geographic area for this office includes Georgia, North Carolina, South Carolina, Alabama, Mississippi, Tennessee, Florida, Illinois, Indiana, Kentucky, Michigan (except Sawyer and Wurtsmith Air Force Bases), Ohio, Tennessee (Fort Campbell only), Maryland, Delaware, District of Columbia, Pennsylvania, Virginia, Rhode Island, New York, Vermont, New Hampshire, Massachusetts, Connecticut, Maine, New Jersey, West Virginia, and Europe.

C10.8.1.2. Army Engineer District, Sacramento, CESPK
1325 J Street
Sacramento, CA 95814-2922
916-557-6850
800-811-5532

The geographic area for this office includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and the Pacific Ocean.

C10.8.1.3. Army Engineer District, Fort Worth, CESWF
P.O. Box 17300
Fort Worth, TX 76102-0300
817-886-1209
888-231-7751

The geographic area for this office includes Arkansas, Louisiana, Oklahoma, Texas, New Mexico, Colorado, Iowa, Nebraska, Michigan (Sawyer and Wurtsmith Air Force Bases only), Minnesota, North and South Dakota, Wisconsin, Wyoming, Kansas, and Missouri.

C10.8.2. The Department of Defense has appointed the U.S. Army Corps of Engineers to be the executive agent for the Homeowners Assistance Program. The following contact information is provided for the National Program Manager:

National Program Manager
Department of Defense Homeowners Assistance Program
Headquarters, U.S. Army Corps of Engineers
Military Programs/Real Estate (CEMP-DD)
441 G Street, NW
Washington, DC 20314-1000

Phone: 202-761-0967
DSN: 314-763-0967
Fax: 202-761-4891

AP1. APPENDIX 1

PUBLIC LAWS, FEDERAL REGULATIONS, AND OTHER AUTHORITIES.

AP1.1. This Appendix provides a summary of various laws, regulations, and other authorities that direct BRAC efforts.

TABLE AP1.T1. Public Laws, Federal Regulations, and Other Authorities

Law/Regulation/Authority	Summary of Key Provisions	Reference
Defense Base Closure and Realignment Act of 1990 (DBCRA 90), Pub. L. 101-510, 10 U.S.C. § 2687 note	Provides a process designed to result in timely closure and realignment of military installations	(c)
32 CFR Part 174, Revitalizing Base Closure Communities and Addressing Impacts of Realignment	Establishes policy and assigns responsibilities to implement base closures and realignments, including disposal of real and personal property	(e)
32 CFR Parts 176, Revitalizing Base Closure Communities - Community Redevelopment and Homeless Assistance	Implements the Base Closure Community Redevelopment and Homeless Assistance Act, as amended (10 U.S.C. 2687 note), which instituted a new community-based process for addressing the needs of the homeless at base closure and realignment sites	(e)
National Defense Authorization Act for Fiscal Years 1992 and 1993 (NDAA 92/93), Pub. L. 102-190 §§ 334(a), 2821, 2827	Requires draft final RI/FSs for BRAC 88 bases on the NPL be submitted to EPA by 4 December 1993 and draft final RI/FSs for BRAC 91 bases on the NPL must be submitted to EPA by 4 December 1994 Allows for a 6-month extension under certain conditions Amends DBCRA 90 to clarify requirements of the Commission and to establish the BRAC account as the sole source of environmental restoration funding	(bu)
National Defense Authorization Act for Fiscal Year 1993 (NDAA 93), Pub. L. 102-484	Makes funds available to the Economic Development Administration (EDA) for economic adjustment assistance with respect to base closures	(bv)
National Defense Authorization Act for Fiscal Year 1994 (NDAA 94), Pub. L. 103-160, Title XXIX, §§ 2901–2930; 32 CFR Parts 174, 175	Amends BCRA 88, DBCRA 90, 10 U.S.C. § 2667, 10 U.S.C. § 2391(b), FPASA, and NDAA 92/93; amendments are specific to personal property, real property screening, McKinney Act compliance, leasing, contracting with communities or small/disadvantaged businesses, transferring property at less than fair market value, and economic adjustment assistance Contains provisions for base transition coordinators, CERCLA § 120(h)(4) compliance, and NEPA compliance	(ad)
National Defense Authorization Act for Fiscal Year 1995 (NDAA 95), Pub. L. 103-337	Provides assistance for public participation in DoD environmental restoration activities Includes clarifying and technical amendments to BCRA 88 and DBCRA 90	(bw)
National Defense Authorization Act for Fiscal Year 2005 (Sections 2400 of Public Law 108-375, as amended)	Establishes a new process to streamline real property transactions Eliminates delays in the assignment of real property to Federal sponsoring agencies for public benefit conveyances	(bx)

Law/Regulation/Authority	Summary of Key Provisions	Reference
National Defense Authorization Act for Fiscal Year 2006 (NDAA 06), Pub. L. 109-163	Requires consultation with State and local entities on issues related to increase in number of military personnel at military installations	(bs)
Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Redevelopment Act), Pub. L. 103-421	Exempts BRAC 95 installations from the Stewart B. McKinney Homeless Assistance Act Establishes a new process for LRA accommodation of homeless assistance needs during redevelopment planning	(by)
National Defense Authorization Act for Fiscal Year 1996 (NDAA 96), Pub. L. 104-106	Provides for longer term interim leases Amends the Redevelopment Act Establishes a new property transfer authority Allows the Department of Defense to transfer BRAC property in exchange for the construction of family housing	(bz)
National Defense Authorization Act for Fiscal Year 1997 (NDAA 97), Pub. L. 104-201	Allows the Department of Defense to contract for police and fire protection at facilities remaining on property not yet transferred Allows property to be transferred before cleanup is complete	(ca)
Federal Property Management Regulations 41 CFR Part 101-47 (Real Property) and 41 CFR Parts 101-43–101-45 (Personal Property)	Provides a mechanism for: utilizing excess Federal property disposing of surplus Federal property procuring and supplying personal property and non-personal services performing records management	(cb)
Surplus Property Act (SPA), 50 U.S.C. App. § 1622(d) and 49 U.S.C. §§ 47151–47153	Governs power transmission line disposals in cases of surplus Federal property, and provides for conveyance of surplus Federal property for use as a public airport (subject to approval by FAA)	(cc)
Act of May 19, 1948, 16 U.S.C. § 667b-d	Provides for transfer of Federal property to state agencies or the Department of the Interior for wildlife conservation purposes	(cd)
Stewart B. McKinney Homeless Assistance Act (McKinney Act), 42 U.S.C. § 11301 et seq.	Requires DoD Components to identify unutilized, underutilized, excess or surplus property (e.g., housing at installations being closed) that may be suitable for use by the homeless Requires notification to HUD, which informs the Department of Health and Human Services of property suitable for the homeless Does not apply to BRAC 95 bases, which are specifically exempted by the Redevelopment Act	(k)
10 U.S.C. § 2667	Provides authority to lease non-excess DoD property to non-Federal entities. Includes various incentives to allow use of proceeds to obtain certain services, supplies, and facilities.	(bk)
10 U.S.C. § 2694a (Conveyance for Conservation)	Authorizes no-cost conveyances to state and local agencies and nonprofit conservation entities: Includes perpetual conservation restrictions Allows reconveyance, with conservation restriction Permits sale of property, with DOI approval and DOD reimbursement, if property loses conservation value Extends cooperative agreement authority to nonprofit groups to perform site cleanup and monitoring	(ao)
Indian Self-Determination Act, 25 U.S.C. §§ 450f–450n	Provides for grants or contracts with tribal organizations for educational or health purposes or for strengthening tribal governments Authorizes the Secretary of the Interior to acquire property in trust for such purposes	(ce)

Law/Regulation/Authority	Summary of Key Provisions	Reference
Indian Reorganization Act, 25 U.S.C. §§ 461–479	Provides for reorganization of tribal and non-tribal lands Authorizes the Secretary of the Interior to acquire land to be held in trust for tribes	(cf)
Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a–1975d, 2000a– 2000h-6	Provides for enforcement of voting rights Prohibits discrimination in places of public accommodation and public facilities	(cg)
Rehabilitation Act of 1973, 29 U.S.C. §§ 701–709, 720–724, 730–732, 740, 741, 750, 760–764, 770–776, 780–787, 790–794	Guarantees equal opportunity for individuals with handicaps in order to maximize their employability and integration into the workplace and community	(ch)
Stevenson-Wydler Technology Innovation Act of 1980 (Pub. L. 96-480, as amended), 15 USC 3710(i)	Authorizes the transfer of excess research equipment to educational institutions and nonprofit organizations	(bc)
Public Buildings Cooperative Use Act (PBCUA), 40 U.S.C. §§ 490, 601a, 606, 611, and 612a	Encourages reuse of historic buildings as administrative facilities for Federal agencies or activities	(ci)
10 U.S.C. § 2391 (Military Base Reuse Studies and Community Planning Assistance)	Authorizes the Secretary of Defense to make grants to state and local governments, and regional organizations, to assist them in planning community adjustments in response to base closures	(cj)
National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 et seq.	Provides a process to help Federal officials make decisions that are based on an understanding of environmental consequences Requires DoD Components to analyze potential environmental impacts of proposed actions and alternatives for base disposal decisions	(t)
Comprehensive Environmental Response, Compensation and Liability Act of 1980(CERCLA), 42 U.S.C. § 9601et seq.	Requires the conduct of any needed response actions to clean up contamination, threatening risks to human health and the environment posed by past releases of hazardous substances Section 120(h) governs the identification of uncontaminated parcels and covenant requirements for deed transfers of contaminated parcels.	(f)
Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq.	Requires the establishment of management systems for hazardous waste, nonhazardous solid waste, and underground storage tanks Provides corrective action authority for cleanup of solid waste management units	(v)
Clean Water Act (CWA), 33 U.S.C. §§ 1251–1387;	Establishes controls on point source and nonpoint source discharges to surface waters under the National Pollutant Discharge Elimination System	(m)
Executive Order 11990 (Protection of Wetlands)	Establishes permitting requirements for construction activities in waterways and wetlands	(bf)
Clean Air Act (CAA), 42 U.S.C. § 7401 et seq.	Mandates improvements to air quality through establishment of National Ambient Air Quality Standards; nonattainment requirements; technology and risk standards for air toxics; permit requirements for sources of air emissions; state implementation plans for complying with standards; and conformity determinations for Federal agency actions except base closure final disposals	(d)
Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f–300j- 26	Defines substances for which EPA must set drinking water standards Authorizes establishment of underground injection controls on wells used for waste disposal	(w)

Law/Regulation/Authority	Summary of Key Provisions	Reference
Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601–2671	Provides for the specific regulation of PCBs and asbestos Requires maintenance of an inventory of manufactured chemicals and filing of a premanufacture notification for chemicals not in the inventory	(x)
Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §§ 2641–2655; 40 CFR Part 763	Amends TSCA to govern inspection of asbestos containing materials in schools and completion of appropriate response and abatement activities	(ck)
Lead-Based Paint Poisoning Prevention Act (LBPPPA), 42 U.S.C. §§ 4801–4846	Requires establishment of procedures for eliminating immediate hazards related to lead-based paint and for notifying purchasers of the presence of lead-based paint Eliminates use of lead-based paint	(q)
Residential Lead-Based Paint Hazard Reduction Act (RLBPHRA), Title X of Pub. L. 102-550	Governs transfers of pre-1978 Federal property for residential use Requires inspection and notification for post-1960 structures Requires inspection and abatement for pre-1960 housing	(bn)
Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136 et seq.	Establishes a registration program for pesticide and other substances Governs disposal of pesticides and pesticide containers	(p)
American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996	Protects and preserves religious freedoms of Native Americans, including access to religious sites	(cl)
Archaeological and Historic Preservation Act (AHPA), 16 U.S.C. § 469	Governs activities that may affect historic or archaeological resources Directs Federal agencies to coordinate with the Department of the Interior	(aw)
Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. § 668	Governs activities and facilities that may threaten protected birds	(l)
Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451–1464	Encourages states along oceans and the Great Lakes to adopt Coastal Zone Management Plans (CZMP), which require any applicant for a Federal permit to certify that its project is consistent with the applicable plan	(n)
Endangered Species Act (ESA), 16 U.S.C. §§ 1531–1544	Requires protection of threatened or endangered species by prohibiting activities and facilities that would have an adverse effect on them	(o)
Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. §§ 661–666	Requires persons to consult with Federal and state agencies when modifying, controlling, or impounding a surface water body over 4 hectares in size	(cm)
Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361-1421	Governs activities that may affect or harass marine mammals	(cn)
Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§ 703–712	Governs activities that may affect or threaten migratory birds or their habitats	(r)
Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001–3013	Governs discovery and handling of Native American human remains and objects	(s)
National Historic Preservation Act (NHPA), 16 U.S.C. § 470	Establishes a program for the preservation of additional historic properties throughout the nation Establishes a process to identify conflicts between historic preservation concerns (e.g., properties included or eligible for the National Register of Historic Places) and Federal undertakings	(u)

Law/Regulation/Authority	Summary of Key Provisions	Reference
Watershed Protection and Flood Prevention Act (WPFPA), 16 U.S.C. § 1001 et seq.; 33 U.S.C. § 701-1; Executive Order 11988 (Floodplain Management)	Governs reservoir development and stream modification projects including specific wildlife habitat improvements	(co)
Wild and Scenic Rivers Act (WSRA), 16 U.S.C. § 1271 et seq.	Preserves and protects the free flowing condition of selected rivers Establishes a national Wild and Scenic Rivers System	(cp)
Executive Order 12088	Establishes a process for ensuring Federal agency compliance with Federal, state, and local pollution control requirements Outlines a process for resolving disputes between EPA and Federal agencies, specifying the Office of Management and Budget as dispute resolution agent	(cq)
Executive Order 12372 (as amended by Executive Order 12416)	Requires Federal agencies to provide opportunities for consultation by elected officials of state and local governments	(cr)
Executive Order 12580	Addresses delegation of certain duties and powers assigned to the President in CERCLA to heads of Federal agencies	(cs)
Executive Order 12788, January 15, 1992, as amended by Executive Order 13378	Creates the Defense Economic Adjustment Program to coordinate economic adjustment assistance for communities affected by Defense downsizing	(ct)
Executive Order 12999, Improving Mathematics and Science Education in Support of the National Education Goals	Gives preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment such as computers	(bd)
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations	Requires the creation of an Interagency Working Group on Environmental Justice to develop guidance for Federal agencies on environmental justice strategies Requires Federal agencies to include diverse segments of the population in research, data collection, and analysis Requires Federal agencies to solicit public views and to consider environmental justice values in decision-making	(cu)
Executive Order 13089, Coral Reef Protection	Requires all Federal agencies whose actions may affect U.S. coral reef ecosystems to (a) identify their actions that may affect U.S. coral reef ecosystems; (b) utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and (c) ensure, to the extent permitted by law, that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems	(cv)
DoD Directive 3030.1	Updates the mission, responsibilities, functions, relationships, and authorities of the Office of Economic Adjustment (OEA).	(cw)
DoD Directive 4165.6	Real Property	(bs)
DoD Directive 4165.63	Housing	(bt)
DoDI Directive 4715.4	Hazardous Material Pollution Prevention	(cx)
DoD Directive 4500.34	DoD Personal Property Shipment and Storage Program	(cy)
DoD Directive 5134.01	Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L))	(a)
DoD Directive 5410.12	Economic Adjustment Assistance to Defense- impacted Communities	(cz)

Law/Regulation/Authority	Summary of Key Provisions	Reference
DoD Instruction 4165.68	Revitalizing Base Closure Communities and Community Assistance - Community Redevelopment and Homeless Assistance Implements the Redevelopment Act, as amended, codified at 32 CFR Part 176	(da)

AP2. APPENDIX 2

ENVIRONMENTAL CONDITION OF PROPERTY REPORT OUTLINE

AP2.1. PURPOSE

AP2.1.1. This section will discuss the purpose of the ECP Report as:

AP2.1.1.1. Providing the DoD Component with the information it needs to make disposal decisions regarding the property;

AP2.1.1.2. Providing the public with information relative to the environmental condition of the property;

AP2.1.1.3. Assisting the local government in planning land reuse activities;

AP2.1.1.4. Assisting Federal agencies during the Federal property screening process;

AP2.1.1.5. Providing information to prospective buyers;

AP2.1.1.6. Assisting new owners in meeting their environmental obligations; and

AP2.1.1.7 Assisting in determining appropriate responsibilities, asset valuation, liabilities, and costs with other parties to a transaction.

AP2.2. BACKGROUND

This section will provide a brief discussion of the existing environmental conditions of the property, including the scope of contamination from hazardous substances or petroleum products and current cleanup activities. The background section should also include a brief description of the property's historic and current land uses.

AP2.3. PROPERTY DESCRIPTION

This section will describe the property including acreage, geographic coordinates, a summary of the natural physical environment, a summary of known cultural and historic resources, and site maps.

AP2.4. ENVIRONMENTAL CONDITION OVERVIEW - EXISTING ENVIRONMENTAL INFORMATION (ECP REPORT)

This section will rely on existing information and, if necessary, new information that is readily

available to provide a more accurate summary of the environmental condition of the property. It will summarize the historical, cultural, and environmental conditions of the property. For each environmental statutory or regulatory requirement identified in Table AP2.T1, Part I, a summary of activities relevant to the property, or notation that this requirement does not apply, will be provided. This section will also reference all related publicly available documentation including, but not limited to permits, surveys and inventories, management plans, reports, reviews, and assessments. Information related to the statutory and regulatory requirements identified in Table AP2.T1, Part II, as they apply, should also be provided here.

AP2.5. ENVIRONMENTAL CONDITION OVERVIEW - NEW ENVIRONMENTAL INFORMATION (UPDATE TO ECP REPORT)

This section, if applicable, will include any new or updated information.

AP2.6. CERTIFICATION

This section will contain a signed statement certifying that all information/documentation provided accurately reflects the property's condition.

TABLE AP2.T1. Environmental Condition of Property

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Environmental Requirement	Typical Documentation Needed to Determine Environmental Compliance	Environmental Information	Resource Links
Part I: Minimum Requirements to be Addressed in ECOP Reports			
Archeological Resources Protection Act (reference (ax))	• Archeological land surveys • Integrated Natural Resource Management Plan (INRMP)	• Information about known archeological resources	
Asbestos (Toxic Substances Control Act) (reference (x))	• Previous Environmental Baseline Survey (EBS) reports • Abatement action reports • Inspection reports or logs	• All available information on the existence, extent, and condition of Asbestos Containing Material I • If present, information on the location, type, and condition of asbestos • Information on any control or mitigation measures taken at property to remove or treat any asbestos or asbestos containing materials • Any known compliance requirements for new owners of property with facilities containing asbestos	
Clean Air Act, as amended (CAA) (reference (d))	• Permits, past and present • Title V Operating Permits, State minor source operating permits, PSD permits, New Source Review permits • CAA General Conformity Determination, if applicable	• Emission inventories for a criteria pollutants, and/or hazardous air pollutants (HAPs) • Information on compliance with State Implementation Plan (SIP) nonattainment requirements	

Environmental Requirement	Typical Documentation Needed to Determine Environmental Compliance	Environmental Information	Resource Links
Clean Water Act, as amended (CWA) (reference (m))	• Permits, past and present (i.e., Publicly Owned Treatment Works (POTW), National Pollution Discharge Elimination Systems (NPDES))	• Information on direct and indirect discharges	
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (reference (f)), including the Community Environmental Response Facilitation Act (CERFA) (reference (g))	• Copy of the Hazardous Substance Activity Certification • CERCLA studies/process documents (i.e., PA/SI, RI/FS, five-year reviews). • Copy of correspondence with environmental regulators relating to presence of hazardous substances • Previous EBS reports • Copy of all environmental studies conducted by the landholding agency and others relating to presence of hazardous substances • Administrative Record for the site	• Identification of the property's National Priority List status • Information indicating whether hazardous substance activity took place • Information on substances released, disposed of, or stored for a year or more • Status of response actions at all sites identified under CERCLA • Sampling Information	• EnviroMapper for Superfund (http://www.epa.gov/envirosf/) • CERCLIS Database (http://www.epa.gov/superfund/sites/cursites/)
Endangered Species Act (ESA) (reference (o))	• Environmental Impact Statement (EIS) or Environmental Assessment (EA) • Biological Opinion (BO) • Biological Assessment (BA) • Biological Evaluation (BE) • Concurrence letter • INRMP • Endangered Species Management Plan (ESMP)	• Information on presence or potential presence of Federally listed endangered species • Information on critical habitats located on property	• USFWS Endangered Species (http://www.fws.gov/endangered/) • NOAA-Fisheries (www.nmfs.noaa.gov)

Environmental Requirement	Typical Documentation Needed to Determine Environmental Compliance	Environmental Information	Resource Links
Floodplains (Executive Order 11988) (reference (be))	• Flood map	• Information about known flood hazards (i.e., the probability of meeting or exceeding a certain level of flooding per year) • Location of floodplains • List of flood-related restrictions on land use under Federal, state, and local regulations • Any other relevant use restrictions	• NOAA River Flood Outlook (http://www.hpc.ncep.noaa.gov/nationalfloodoutlook/) • FEMA Flood Insurance Rate Map (http://www.fema.gov/fhm/)
Pesticides (Federal Insecticide, Fungicide, and Rodenticide Act) (reference (p))	• Pest Management Plans	• Information on use and management of pesticides on property, including documentation that no known misapplication of such pesticides occurred, and that all applications were in accordance with FIFRA	• http://www.epa.gov/pesticides/ • http://www.afpmb.org
Lead-Based Paint (Residential Lead-Based Paint Hazard Reduction Act, Title X) (reference (bn))	• Lead survey reports • A completed risk assessment and paint inspection for 1960-1978 housing • Lead-based paint abatement reports	• Inventory of all buildings constructed before 1978 • Information on the location of LBP hazards • Any known compliance requirements for new owners of property with facilities containing LBP	

Environmental Requirement	Typical Documentation Needed to Determine Environmental Compliance	Environmental Information	Resource Links
National Historic Preservation Act (NHPA) (reference (u))	• Integrated Cultural Resource Management Plan (ICRMP) • Programmatic Agreement, Memorandum of Agreement, or Comprehensive Agreement • Documentation of agreements with any off-site curation facilities	• List of the property's' historic and archeological resources, whether the property is listed on or has been nominated for listing on the National Register of Historic Places • Information available about any effort by the public to have the property listed	
Native American Graves Protection and Repatriation Act (reference (s))	• Surveys and inventories • Secretarial Notification documents for inadvertent discovery	• Information on Native American human remains and associated funerary objects	
Polychlorinated Biphenyls (Toxic Substances Control Act) (reference (x))	• PCB annual logs • Notification of PCB Activity form (EPA form 7710-53) (http://www.epa.gov/pcb/7710-53.pdf) • Certification that property does or does not contain PCB transformers or other PCB-containing equipment	• Inventory of PCB equipment • Any known compliance requirements for new owners of properties with facilities containing PCBs	
Radon (DoD Policy on Radon)	• Existing DoD Radon assessment data • Existing Radon survey reports	• Provide any information on the presence of radon on or around the property • Provide information on radon tests	
Resource Conservation and Recovery Act (RCRA) (reference (v))	• Permits, past and present, (i.e., Hazardous Waste Treatment, Storage, or Disposal Facility (TSDF))	• History of activities associated with hazardous wastes and materials on property • Status of response actions at all sites identified under RCRC corrective action	• RCRA/Superfund Industry assistance Hotline (1-800-424-9346)

Environmental Requirement	Typical Documentation Needed to Determine Environmental Compliance	Environmental Information	Resource Links
Safe Drinking Water Act, as amended (SDWA), including requirements for oil/water separators (reference (w))	• Permits, past and present (i.e., water discharge permits) • Closure Reports • NPDES permits	• Information on water discharges • Information on contaminants that may impact drinking water • Information on the point source discharges from oil/water separators	
Underground Storage Tanks/ (Subtitle I under RCRA) (reference (v))	• Installation notification form • Leaking Petroleum Storage Tanks (LPST) Reports • Corrective action reports • Closure reports	• Information on operating, closed, leaking, or inactive USTs (e.g., location, capacity of tank(s), compliance status, number of tanks in use, substances stored)	
Unexploded Ordnance (UXO) or Munitions and Explosives of Concern (MEC)	• Historic land use and operations records • Certificate of Clearance required for Explosive Ordnance Disposal and MEC	• Information about whether training involving munitions was conducted or any other activity in which ordnance, munitions, or explosives were used • If used on site, provide statement explaining the extent of decontamination accomplished or plans for decontamination. • List of any use restrictions	
Wetlands (Executive Order 11990) (reference (bf))	• Permits, past and present (404 permits) • Wetlands delineation study • Wetlands certification	• Presence and location of wetlands • Any known information about wetlands (e.g., permits, certified wetland delineations, listing of restricted uses)	• National Wetlands Inventory (www.nwi.fws.gov)

Environmental Requirement	Typical Documentation Needed to Determine Environmental Compliance	Environmental Information	Resource Links
Part II: Additional ECOP Report Requirements to Consider			
Coastal Zone Management Act (CZMA) (reference (n))		• Identification of coastal zone areas within or near property • Identification of applicable restrictions for the area (e.g., state CZM restrictions)	
Coral Reef Protection (Executive Order 13089) (reference (cv))	• Integrated Natural Resource Management Plan (INRMP)	• Information on the presence of coral reef ecosystems (also to be identified in the INRMP)	
Magnuson-Stevens Fishery Conservation and Management Act	• ESMP • EFH Assessment	• Information on the presence of essential fish habitat (EFH)	
Marine Mammal Protection Act (reference (cn))	• INRMP • ESMP	• Information on presence or potential presence of protected species (e.g., whales, dolphins, porpoises, seals, and sea lions) • Identification of marine mammals also protected under Endangered Species Act	

Environmental Requirement	Typical Documentation Needed to Determine Environmental Compliance	Environmental Information	Resource Links
Radiological Materials (CERCLA) (reference (f))	• Copy of the Hazardous Substance Activity Certification • CERCLA studies/process documents (i.e., PA/SI, RI/FS, 5-year reviews). • Copy of correspondence with environmental regulators relating to presence of hazardous substance	• Information indicating whether activity took place involving the use of radiological substances or materials • Information on radiological materials released, disposed of, or stored on site	

AP3. APPENDIX 3

FORMAT FOR FINDING OF SUITABILITY TO TRANSFER/LEASE

AP3.1. FOST/FOSL

For matters specifically related to hazardous substances, petroleum products and other regulated materials (e.g., asbestos) on the property, authorized officials shall sign a FOST/FOSL summarizing how the applicable requirements and notifications for these substances and materials have been satisfied.

AP3.2. FOST OUTLINE

The following outline shall be followed for all DoD FOSTs and FOSLs:

AP3.2.1. Purpose

AP3.2.2. Property Description

AP3.2.3. Summary of Environmental Condition and Notifications (see Table AP3.T1)

AP3.2.4. Finding of Suitability to Transfer/Lease with Signature

AP3.2.5. Enclosures:

AP3.2.5.1. Site Map

AP3.2.5.2. References – Documentation Supporting the FOST/FOSL

AP3.2.5.3. Regulatory Comments and Comment Adjudication – Lists the regulatory agencies that commented on the FOST/FOSL, summarizes how the comments were adjudicated, and describes any issues for which the DoD Component may not agree. Comments may be attached as part of the enclosure.

AP3.3. FOST SECTIONS AND CONTENT

AP3.3.1. Purpose – The purpose of the FOST/FOSL is to "summarize how the requirements and notifications for hazardous substances, petroleum products and other regulated materials on the property have been satisfied."

AP3.3.2. Property Description – This section should provide a brief description of the property being conveyed/leased, including acreage, current ownership/leasing, and buildings and utilities present. A legal description is not required.

AP3.3.3. Summary of Environmental Requirements and Notifications.

AP3.3.3.1. This section should summarize the actions and notifications taken to satisfy requirements related to hazardous substances, petroleum products and other regulated materials. The FOST/FOSL need not repeat information documented elsewhere, but should state the actions taken and provide references to other documents. This section will also summarize any deed/lease restrictions.

AP3.3.3.2. Table AP3.T1 provides the list of topics that shall be addressed. Summaries need only be provided for the topics checked "yes" in Table 1 (i.e., topics that are applicable for the property). If applicable, this section shall incorporate analysis of the environmental impacts caused by adjacent property conditions.

AP3.3.4. Finding of Suitability to Transfer/Lease and Signature – The following standard text shall be used:

AP3.3.4.1. FOST Language: Based on the information contained in this FOST, and the notices, restrictions, and covenants that will be contained in the deed, the property is suitable for transfer.

AP3.3.4.2. FOSL Language: Based on the information contained in this FOSL, the uses contemplated for the lease are consistent with the protection of human health and the environment, and there are adequate assurances that the United States will take all remedial action necessary with respect to any hazardous substance remaining on the property that has not been taken on the date of the lease. The property therefore is suitable for lease.

TABLE AP3.T1. Environmental Requirements and Notifications to Cover in FOST/FOSL

Applicable to Property?		***APPLICABLE TOPICS***
No	**Yes**	
		Presence of Hazardous Substances (Notification)
		CERCLA/RCRA (Response/Corrective Actions)
		Presence of Petroleum Products and Derivatives (Notification)
		UST/AST Storage Tanks (Closure/Removal)
		Munitions and Explosives of Concern – Response Actions
		Asbestos Containing Material (Abatement/Notification)
		Lead-Based Paint, Target Housing and Residential Property (Abatement/Notification)
		PCBs (Notification)

AP4. APPENDIX 4

MILITARY DEPARTMENT IMPLEMENTING GUIDANCE FOR NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

AP4.1. DEPARTMENT OF THE ARMY

32 CFR Part 651 (Army Regulation 200-2) (reference (dd)).

http://www.access.gpo.gov/nara/cfr/waisidx_02/32cfr651_02.html

AP4.1. DEPARTMENT OF THE NAVY

32 CFR Part 775 (reference (dc)).

http://www.access.gpo.gov/nara/cfr/waisidx_02/32cfr775_02.html

AP4.1. DEPARTMENT OF THE AIR FORCE

32 CFR Part 989 (reference (dd)).

http://www.access.gpo.gov/nara/cfr/waisidx_02/32cfr989_02.html

AP4.1. DEFENSE LOGISTICS AGENCY (DLA)

DLA Regulation 1000.22 (reference (de)).

http://www.dlaps.hq.dla.mil/dlar/r1000.22.htm