

DCN 6322

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BRAC Commission

July 15, 2005

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Received

Mr. Anthony J. Principi, Chairman
U.S. Base Realignment and Closure Commission
Polk Building, Suites 600 and 625
The Pentagon
Room E800
Washington, DC 20301

Dear Chairman Principi:

As Governor of the State of Alaska, I am writing to express my serious concerns over the process used by the Department of Defense to select bases for closure or realignment currently under review by the Base Realignment and Closure Commission (BRAC). The current recommendation calls for the closure of Kulis Air National Guard Base in Anchorage. Eielson Air Force Base, east of Fairbanks, would revert to "warm storage" status – the base's current military function would be closed but the facilities will still be maintained.

I want to ensure that the U.S. Constitution and other federal laws are followed so that costly and protracted litigation between the Department of Defense and the State of Alaska might be avoided. Both Titles 10 and 32 of the United States Code require the consent of each impacted state's Governor. 10 U.S.C. § 18238 reads:

Army National Guard of the United States; Air National Guard of the United States: limitation on relocation of units. A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter [10 U.S.C. §§ 18321 et seq.] without the consent of the governor of the State or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia.

32 U.S.C. § 104 of the National Guard Act that specifically addresses units, location, organization, and command of National Guard Units reads:

(c) To secure a force the units of which when combined will form

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complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State and Territory, Puerto Rico, and the District of Columbia. However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.

And 10 U.S.C § 18235 (b)(1) reads:

The Secretary may not permit any use or disposition to be made of a [National Guard] facility ... that would interfere with its use ... for administering and training the reserve components of the armed forces.

Accordingly, pursuant to the 'militia clause' of the United States Constitution, art. I, sec. 8, cl. 16, and the above referenced statutory provisions, my consent is necessary for the actions contemplated by the Department of Defense with regard to the 176th Wing at Kulis National Guard Base and the 168th Air Refueling Wing located on Eielson Air Force Base. Because the Department of Defense did not obtain my consent, the actions proposed by your department cannot proceed. I am aware that the State of Pennsylvania has already filed suit alleging the same arguments and several other affected states are considering following suit. I will be closely monitoring these proceedings and will take similar action if necessary.

By this letter I wish to formally notify you that I will continue to withhold my consent to the proposed realignment of Kulis Air National Guard Base in Anchorage and the "warm storage" of Eielson Air Force Base until I receive assurances that the mission of the Air National Guard will not be compromised in Alaska. In 2004, the Alaska Air National Guard developed a proposal to relocate Kulis Air National Guard Base to Elmendorf Air Force Base based on the need to expand Ted Stevens Anchorage International Airport for development by civil aviation. The estimated cost of relocation was in excess of \$150 million. I have great concern over these relocation costs identified by the Air Force. I am respectfully requesting an assurance that the costly relocation would be properly funded to ensure that the 176th Air National Guard Unit remains a cohesive operation with the continued ability to meet state needs and respond to state emergencies. Also, I am requesting an assurance that the 168th Air Refueling Wing will be allowed to continue operating at its current level on Eielson Air Force Base.

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In addition to the legal issues detailed above, after considerable review of the selection process I am convinced the Air Force did not follow its own legal criteria for evaluating realignment and closure of bases and units, thus resulting in flawed recommendations. The BRAC criteria ranked national security much higher in value than cost of operations. Eielson Air Force Base received one of the highest military value rankings of all Air Force bases evaluated by the Air Force. Clearly the Department of Defense subjugated national security interests for cost savings by recommending the removal of all active duty aircraft from Eielson Air Force Base. At a time when the Pacific region is rising in national significance to the United States and Alaska has nationally strategic assets, pulling fighter aircraft out of Alaska sends a message to potential adversaries that we are not committed to a Pacific defense and undermines own national security interest in the Pacific.

Further, I am requesting that the BRAC Commission modify its internal rules regarding the voting requirements needed to determine whether or not to exempt military bases for possible closure or realignment. Recently one of the BRAC commissioners, Jim Bilbray, recessed himself from involvement on whether Eielson Air Force Base should be removed from a list of bases marked for potential closure or realignment. If two or more commission members recuse themselves from the process, any vote to remove a base from the list becomes subject to a supermajority vote. This result is unfair, particularly if those recessing themselves would have been votes against shutdown.

The federal statute governing the BRAC Commission's recusal and voting requirements is very specific about what the commission must do to add a base to the list; this requires support of at least seven members of the commission, regardless of how many commissioners are eligible to vote on the matter.

The governing statute is silent on how the BRAC Commission takes a base off the realignment/closure list. The commission's requirement that a decision to take a base off the list be supported by a majority of the serving members is found not in statute but in the Procedural Rules of the 2005 Defense Base Closure and Realignment Commission.

Rule 6 states that "[t]he adoption of any action taken by the Commission with regard to (a) the recommendations of the Secretary submitted to the

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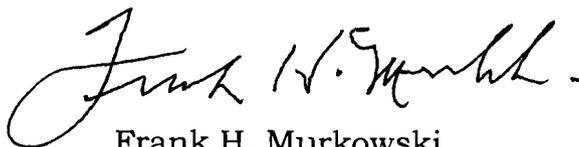
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Commission in accordance with the Act....will be by a majority of the members serving at that time." Rule 10 gives the commission the discretion to change its rules by a simple majority vote, opening the door to changing Rule 6 if appropriate. I now submit to you that the circumstances at hand warrant such a change.

Thank you for your time and patience in reviewing my requests and this letter.

-Sincerely yours,

A handwritten signature in black ink, reading "Frank H. Murkowski". The signature is written in a cursive style with a long, sweeping underline.

Frank H. Murkowski
Governor