



DCN 6319 **DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION**
2521 SOUTH CLARK STREET, SUITE 600
ARLINGTON, VA 22202
TELEPHONE: 703-699-2950
FAX: 703-699-2735

July 13, 2005
BAM# 18-33

Chairman:
The Honorable Anthony J. Principi

Commissioners:
The Honorable James H. Bilbray
The Honorable Philip E. Coyle, III
Admiral Harold W. Gehman, Jr., USN (Ret.)
The Honorable James V. Hansen
General James T. Hill, USA (Ret.)
General Lloyd W. Newton, USAF (Ret.)
The Honorable Samuel K. Skinner
Brigadier General Sue Ellen Turner, USAF (Ret.)

Executive Director:
Charles Battaglia

Mr. Bob Meyer
Director
BRAC Clearinghouse
1401 Oak St.
Rosslyn VA 22209

Dear Mr. Meyer:

I respectfully request a written response from the Department of Defense concerning the enclosed document:

X *Base Closure & Realignment Commission question*

18. *In addition to the Military Service involved in these agreements, describe the types of private sector entities (e.g. real estate developers, lenders, bond investors, bond underwriters, bond insurers, credit enhancers) typically involved on the "private" or commercial side of these transactions as well as a brief description of their roles, responsibilities, and obligations.*
19. *Do the private lenders/investors or their fiduciary agents or trustees have the right (or obligation) to cure material defaults (e.g. a non-payment default) or the contractual right to other remedies (beyond "cure" and foreclosure rights) designed to insure timely and adequate debt service payments?*
20. *What is the average amount of project funds borrowed to develop a housing privatization project? What is the typical amortization period for privately borrowed funds? How much was borrowed by the Navy Northeast LLC?*
21. *What is the current status or balance of the funds borrowed by the Navy Northeast LLC to build housing around Navy bases in New England? Does the Navy Northeast housing privatization agreement (e.g., the bond indenture) permit the LLC to use funds to build housing in support of the Navy's mission in another geographic region, like the southeast?*
22. *In the case of Navy Northeast Family Housing Privatization Project, do the Navy's rights under the LLC agreement require it to concur in the managing partner's decision to use the borrowed funds to build housing elsewhere due to the potential closure of NSY Portsmouth or NSB New London and the realignment of NAS Brunswick?*

23. Do lenders/investors require the LLC to borrow and set aside "reserve funds" (e.g., debt service reserves, operating reserves, maintenance reserves, etc.) to mitigate potential lender and/or investor risk?
24. Which party or member of the LLC bears 100% of the re-payment obligation for any project debt secured by the LLC? Under what circumstances, if any, might the government be exposed to re-payment risk due to its membership or relation to the LLC?
25. If not the LLC, is another party obligated to make repay project debt or bond holders if the developer becomes insolvent during the term of the ground lease or life of the LLC?
26. Please explain if potential closures of privatized housing projects (based on BRAC or otherwise) may result in the creation of unfunded contingent liabilities to pay termination costs to private developers and/or private investors."
27. Have prior BRAC closure recommendations and implementation actions required the Military Services to cancel or terminate housing privatization agreements including its participation in a LLC. If so, when and where?
28. In the case of Navy Northeast Family Housing Privatization Project, has the Navy agreed to provide utility, fire protection, and police services to privatized family housing and related facilities at NSY Portsmouth, NSB New London, or NAS Brunswick? What course of action is available to the Navy if the BRAC 2005 recommendation for these installations becomes law? If one possible course of action is for the Navy to make cash payments to the develop/asset manager in lieu of providing Navy services, please provide an estimate of this costs, and indicate whether or not this cost was factored into the COBRA cost benefits analyses associated with these recommendations?
29. If one of these housing privatization agreements is terminated due to implementation of a base realignment or closure decision, explain how the LLC (e.g., Navy Northeast LLC) shields the government from having to pay monetary damages or make debt service payments to the lender or bond holders if the rental housing project becomes nonperforming because its not "leased up" with enough military members or civilian tenants to cover the project's debt service?
30. Is DoD authorized to use or reprogram appropriated dollars used to make Basic Housing Allowance (BAH) payments to eligible military members to make payments to terminate a LLC and/or buyout the LLCs leasehold interest?
31. As part of the data gathering and scenario analysis, did DoD require the Services to obtain housing market assessments for installations slated for closure or significant gains in military population? If so, please provide copies of such assessments along with analysis and deliberative documents for NSY Portsmouth, NSB New London, and NAS Brunswick.
32. For cancelled or terminated housing privatization agreements, please describe the terms of the termination agreements and the terms of any legal settlements or payments resulting from prior DoD decisions to close military bases under BRAC.
33. Have the Navy Audit Service, US Comptroller General, or the US Government Accountability Office independently reviewed and concluded housing privatization

DCN 6319 projects and the Military Services' participation in a
"housing" LLCs does not expose DoD to an unfunded contingent liability?

I would appreciate your response by July 22, 2005. Please provide a control number for this request and do not hesitate to contact me if I can provide further information concerning this request.

Yours sincerely,

Frank Cirillo
Director
Review & Analysis

**DOD Response the Base Closure & Realignment Commission
Questions (Control Number-BAM#18-33-CO-552)**

18. In addition to the Military Service involved in these agreements, describe the types of private sector entities (e.g. real estate developers, lenders, bond investors, bond underwriters, bond insurers, credit enhancers) typically involved on the “private” or commercial side of these transactions as well as a brief description of their roles, responsibilities, and obligations. *DoD Response: The private partners in housing privatization projects are usually teams comprising all of the functions listed, as well as property managers, construction companies and entities to operate and maintain all aspects of the housing projects for 30-50 years.*
19. Do the private lenders/investors or their fiduciary agents or trustees have the right (or obligation) to cure material defaults (e.g. a non payment default) or the contractual right to other remedies (beyond “cure” and foreclosure rights) designed to insure timely and adequate debt service payments? *DoD Response: Yes. lenders have cure rights that are commonly found in private commercial practice. In the event of a default by the Company (LLC), it is the Company, not the lender that has cure rights. The lender has certain rights under the agreements and, ultimately, has the right to sell the leasehold interest in the project that collateralized the loan.*
20. What is the average amount of project funds borrowed to develop a housing privatization project? What is the typical amortization period for privately borrowed funds? How much was borrowed by the Navy Northeast LLC? *DoD Response: Required capital sources for a particular project vary directly with the project scope. We have awarded 47 projects to date generating about \$12 billion in housing construction, so the mean amount would be about \$250 million per project. The typical amortization period for privately borrowed funds is 30-40 years. GMH Military Housing-Navy Northeast LLC sold taxable revenue bonds in the total amount of \$517,800,000.*
21. What is the current status or balance of the funds borrowed by the Navy Northeast LLC to build housing around Navy bases in New England? Does the Navy Northeast housing privatization agreement (c.g., the bond indenture) permit the LLC to use funds to build housing in support of the Navy’s mission in another geographic region, like the southeast? *DoD Response: The current balance of the construction fund is approximately \$400 million. The scope of the Northeast Housing LLC agreements is to develop and operate housing in support of Navy operations in the Northeast Region.*
22. In the case of Navy Northeast Family Housing Privatization Project, do the Navy’s rights under the LLC agreement require it to concur in the managing partner’s decision to use the borrowed funds to build housing elsewhere due to the potential closure of NOSY Portsmouth or NAB New London and the realignment of NAS Brunswick? *DoD Response: Yes, Navy is consulted regarding major partnership decisions. In particular, the Navy’s consent would be required for any change in the project scope. The managing member of the partnership cannot make the “decision” identified in the question.*
23. Do lenders/investors require the LLC to borrow and set aside “reserve funds” (e.g., debt service reserves, operating reserves, maintenance reserves, etc.) to mitigate potential lender and/or investor risk? *DoD Response: Yes, in accordance with normal private sector practice and depending on the project specifics.*

24. Which party or member of the LLC bears 100% of the re-payment obligation for any project debt secured by the LLC? Under what circumstances, if any, might the government be exposed to re-payment risk due to its membership or relation to the LLC? *DoD Response: The LP/LLC bears the risk. The loans are secured by the property. The Government's liability is limited to its initial investment.*
25. If not the LLC, is another party obligated to make repay project debt or bond holders if the developer becomes insolvent during the term of the ground lease or life of the LLC? *DoD Response: No, the LP/LLC is the borrower.*
26. Please explain if potential closures of privatized housing projects (based on BRAC or otherwise) may result in the creation of unfunded contingent liabilities to pay termination costs to private developers and/or private investors." *DoD Response: There are no unfunded contingent liabilities. In the case of the six projects involving limited loan guarantees, Government total obligational authority was "scored" up front in accordance with Office of Management and Budget guidelines.*
27. Have prior BRAC closure recommendations and implementation actions required the Military Services to cancel or terminate housing privatization agreements including its participation in a LLC. If so, when and where? *DoD Response: Not Applicable. Earlier BRAC rounds preceded enactment of the housing privatization authorities.*
28. In the case of Navy Northeast Family Housing Privatization Project, has the Navy agreed to provide utility, fire protection, and police services to privatized family housing and related facilities at NSY Portsmouth, NSB New London, or NAS Brunswick? What course of action is available to the Navy if the BRAC 2005 recommendation for these installations becomes law? If one possible course of action is for the Navy to make cash payments to the develop/asset manager in lieu of providing Navy services, please provide an estimate of this costs, and indicate whether or not this cost was factored into the COBRA cost benefits analyses associated with these recommendations? *DoD Response: The Navy entered into an agreement with Northeast Housing LLC to provide utilities and services at Portsmouth, New London, and Brunswick until such time that the parties agree to discontinue services. There is no Government obligation to provide services on a continuing basis. The privatized housing is subject to ad valorem taxes by the local taxing authority. The local municipality will eventually provide all services as they do to other privately owned housing.*
29. If one of these housing privatization agreements is terminated due to implementation of a base realignment or closure decision, explain how the LLC (e.g., Navy Northeast LLC) shields the government from having to pay monetary damages or make debt service payments to the lender or bond holders if the rental housing project becomes nonperforming because its not "leased up" with enough military members or civilian tenants to cover the project's debt service? *DoD Response: As a limited partner, the government's liability is limited to its initial contribution.*
30. Is DoD authorized to use or reprogram appropriated dollars used to make Basic Housing Allowance (BAH) payments to eligible military members to make payments to terminate a LLC and/or buyout the LLCs leasehold interest? *DoD Response: No, housing allowances belong to the service member, not the government. Service families would continue to qualify for allowances even if they were transferred elsewhere.*

31. As part of the data gathering and scenario analysis, did DoD require the Services to obtain housing market assessments for installations slated for closure or significant gains in military population? If so, please provide copies of such assessments along with analysis and deliberative documents for NSY Portsmouth, NSB New London, and NAS Brunswick. *DoD Response: Housing requirements analyses inform housing privatization plans and concepts and would be employed as part of the implementation process once BRAC decisions are final.*
32. For cancelled or terminated housing privatization agreements, please describe the terms of the termination agreements and the terms of any legal settlements or payments resulting from prior DoD decisions to close military bases under BRAC. *DoD Response: The privatization project owner retains its ownership.*
33. Have the Navy Audit Service, US Comptroller General, or the US Government Accountability Office independently reviewed and concluded housing privatization projects and the Military Services' participation in a "housing" LLCs does not expose DoD to an unfunded contingent liability? *DoD Response: No, however every project has been executed with teams of government attorneys whose role is to ensure that the government does not assume any more liability than it bargained for.*