

by Harry Kelso

BRAC:

The Four-Letter Word That *Really* Means Base Redevelopment, Advantage, and Compensation

BRAC. Base closures. BRAC 2005. The very utterance of these words and phrases can prompt intense, negative responses from a broad spectrum of parties, ranging from military personnel whose lives and operations are disrupted to base-community and business officials, governors, and congressional delegations, who have endured the serious economic and environmental consequences of the federal government's own brand of plant closures.

A widely held view of base closures, derived from experiences in the 1990s, is that communities and businesses are economically disrupted for years, and even the most innovative efforts to expedite land transfers, cleanup, and redevelopment are crippled by the decentralized and diffuse responsibilities and functions of the federal government. Even U.S. Defense Secretary Donald Rumsfeld recognized the painfulness of this task in the midst of his ultimately successful effort to convince Congress to authorize another round of base closures. In short, the

This article presents the historical

context and the realities of the

base realignment and closure

(BRAC) process and provides

insight for local governments

attempting to turn a base closure

into a redevelopment opportunity.

The article does not focus on

preventing closures. The key for

local communities is to plan now,

before they are left holding the

bag. There is a savvy, results-

driven method of doing so.

predominant public perception is that no one wins in a base closure.

But actual experience shows that it does not have to be this way. Instead, closed military installations represent extraordinary economic redevelopment opportunities if innovative, collaborative approaches are crafted, and if the several "foreign languages" are spoken so as to translate such approaches into economic redevelopment and environmental cleanup successes. This can be done without prohibitively costing communities, redevelopers, and businesses.

First, a quick BRAC overview will show how economic opportunities arise.

BRAC BASICS

Looking back over U.S. history, the closure of military installations has evolved, from the executive decisions made by President James Monroe and his Secretary of War, John C. Calhoun, with little or no public or congressional involvement, into the current statutory and regulatory apparatus as used in the 1991, 1993,

and 1995 rounds of base closures. As the 2005 BRAC selection procedure stands, closure is determined through a two-step technical process, followed by a two-step approval process, both featuring direct public input.

TWO-STEP TECHNICAL PROCESS

1. Comprehensive, internal data about military-service installations are matched with Department of Defense (DoD) and military-service operational and force objectives to arrive at closure recommendations, which are determined ultimately by the Secretary of Defense. These recommendations are made on the basis of eight criteria finalized in February 2004 following public comments on draft criteria (see compendium with an analysis of BRAC criteria on page 38). Recommendations are required to be made in a formal report by the Secretary to the nine-member, presidentially appointed, and U.S. Senate-confirmed BRAC Commission no later than May 16, 2005.
2. The DoD report of closure recommendations and its analyses will be reviewed independently by the BRAC Commission on the basis of whether they adhere to the 2005 BRAC law and to DoD's base closure selection criteria. Once again, the public will have the opportunity to make direct input through presentations to the commission regarding their particular facilities. Subsequently, the BRAC Commission will report its determinations in a formal report to the president no later than September 8, 2005.

TWO-STEP APPROVAL PROCESS

1. Upon receipt of the BRAC Commission report, the president must either accept or reject the report as a whole and report such action to the Congress and the BRAC Commission no later than September 23, 2005. If the president approves the BRAC Commission report, as he has done in the last three, programmatically similar closure rounds

(1991, 1993, and 1995), the report is then transmitted to Congress for review. Should the president reject the report, it goes back to the commission for review of and action on the president's objections and for resubmission to the president.

2. Thereafter, the BRAC Commission report becomes binding law if Congress does not specifically disapprove it by joint resolution within 45 legislative days of the president's transmission of his approval of it to Congress. This presidential and congressional process is scheduled for the fall of 2005.

This cumbersome regulatory process is the latest and most objective, data-driven vehicle that has emerged from policy conflicts between the president and Congress, starting in the early 1960s when Congress voiced its opposition to the closures being made by then-Defense Secretary Robert McNamara.

Though unsuccessful in stopping closures for nearly 15 years, Congress was finally successful in 1977 in virtually halting such DoD-initiated closures through a law imposing many, time-consuming congressional mandates. According to legislative history, Congress took such action because many of its members expressed concern that base closure decisions had been determined in the 1960s and 1970s by DoD or the White House on the basis of raw political considerations of reward, punishment, or electoral votes.

BASE CLOSURE ROUNDS FROM 1988 TO 2005

In 1988, after some 11 years in which virtually no installations were closed, and in the wake of consistently declining defense budgets, Defense Secretary Frank Carlucci persuaded Congress to enact the 1988 base closure law, which allowed such closures after a review by a BRAC Commission appointed by and reporting to the Secretary of Defense.

Following the 1988 round of closures and, in 1990, the publication of a list of recommended additional clo-

sures by then-Defense Secretary Dick Cheney, Congress passed legislation in late 1990 agreeing to three more rounds of closures. However, this could only be done through a presidentially appointed, Senate-confirmed BRAC Commission independent of the executive and legislative branches that operated according to specific regulatory rules unique to the BRAC Commission. This commission was the central vehicle for the 1991, 1993, and 1995 rounds of closures.

In 1997, Secretary of Defense William Cohen documented a need for additional base closure rounds to achieve more infrastructure efficiency and to save funds for other pressing military objectives. However, congressional objection to presidential involvement in the disposition of two installations, despite the 1995 BRAC Commission recommendations, led to Congress's denial of Secretary Cohen's repeated requests for the entire second term of President Clinton.

It was only with a new administration and a politically and business savvy Secretary of Defense Donald Rumsfeld that the 2005 round of closures was authorized by Congress in 2002, with the explicit condition that no politics would be played with the closure process.

Even so, Secretary Rumsfeld was successful in gaining congressional authorization for only one round of base closures (he sought two rounds in 2003 and 2005) after he threatened, in letters to the chairs of the respective armed services committees, that he would recommend a presidential veto of the Defense Department's authorization legislation if Congress did not authorize a round of base closures.

Members of Congress knew all too well, especially given each member's own parochial interests, that the stakes were high. After all, federal government installations bring continuing federal funds and thus economic expansion to a host community.

SOME BRAC REALITIES

Current DoD industrial reformation includes base closures. To make matters more urgent, Secretary of Defense

Rumsfeld has repeatedly indicated that in the context of transforming and modernizing DoD to fit the new defense paradigm, including the war on terrorism, the department must close bases to save needed funds and operate more efficiently (a view that, as it happens, is publicly adhered to by every living former Secretary of Defense).

More specifically, Secretary Rumsfeld has stated that DoD has 20 to 25 percent excess infrastructure. Thus, every installation, with its necessarily expensive environmental and maintenance costs, will be considered for closure. To use a commercial real estate term, DoD is "overbuilt."

Bottom-line realities for communities and states. Like the federal tax code and other regulatory laws, today's complicated base closure process has evolved into a multimillion-dollar bonanza for lawyers and consultants claiming expertise in preventing base closures. But as one consultant stated, "Lobbying and public relations efforts aren't always effective, and in the end, the 2005 BRAC Commission will do what it needs to, turning a blind eye to the desperate pleas of economic hardship that so many communities fear."

Structural results for 2005 forecast from recent base closure processes. Underscoring this unabated march toward base closures is recent history. A comparison of DoD reports of base closure recommendations to the 1991, 1993, and 1995 BRAC Commissions—with their statutorily enacted BRAC Commission reports to the president—statistically documents an extraordinarily high correlation between the two reports in each of the three rounds of closures. In plain English, this means that there is an extremely high likelihood of ultimate closure if a facility is recommended for closure by the Secretary of Defense.

DoD goals for the 2005 round of base closures. Bringing this reality check full circle is the February 2004 congressional testimony of Defense Secretary Rumsfeld's top base closure

official, Deputy Undersecretary of Defense Ray DuBois. Testifying before the Military Construction Subcommittee of the House Appropriations Committee—one of the key congressional panels that determine the department's budget—DuBois frankly discussed the scope of expected DoD closure recommendations and the role of states and communities in lobbying to prevent such closures.

DuBois stated that the scope of the 2005 round would be "global," documenting that base closures sought by DoD would be comprehensive, covering military installations in the United States as well as those in foreign countries. Addressing the issue of state and local efforts to prevent closures, DuBois not only testified that DoD's regulatory selection criteria of "military value"—and not the economic or environmental impacts on communities—would be paramount in its closure recommendations. He also responded to voiced congressional concerns by stating that the parties outside the department to whom DoD leadership devoted the most attention were members of Congress and, more specifically, the military construction subcommittees of the two houses of Congress.

Bottom line: Base closures are coming. Thus, the results are in. Base closures are coming, sooner rather than later, and there is little that can be done by localities to stop this process. Here, it's important to distinguish among local government activities that address encroachment, build base/community relationships, create jobs, and assist in the construction of affordable housing. All of these initiatives, which are good government practice regardless of BRAC outcomes or lobbying to prevent base closures, are necessary in most cases but are not always effective in preventing base closures.

SEIZING BRAC OPPORTUNITIES

Converting a closed military base, that is, a "federal government plant closure," into a net revenue-generating asset requires a savvy community to recognize its opportunities early. Si-

multaneously, it must take advantage of the many tools available to ensure that all base closure and reuse stakeholders—military, civilian, U.S. government, state government, and the community, its businesses, and citizens—are winners in these transactions. Experience shows that leaving any stakeholder in a disadvantaged position sidetracks effective and efficient redevelopment and reuse.

Such victories inevitably arise through innovative, entrepreneurial approaches that merge the economic redevelopment and environmental restoration needs and requirements of state and local governments and businesses with the infrastructural and operational needs of the military, the federal government, and the state government.

Thus, it is critical for stakeholders to fluently negotiate the alien vocabularies and operations of the different stakeholders, particularly the military with its complicated operations and historic industrial uses, in order to translate the base realignment and closure process into base redevelopment, advantages, and compensation.

Indeed, the upside of this huge economic dislocation and environmental cleanup initiative can be found by viewing military bases similarly to any other industrial or commercial real estate, but potentially with four distinct advantages:

- Significant price discounts.
- Favorable government permitting process for reuse.
- Environmental liability protection.
- Government funds and incentives for redevelopment.

These advantages are often augmented by a base's geographic location. Many military bases are sites whose origins date back to the first half of the 20th century. For this reason, many serve as the nuclei for the cities and counties that have developed around them. Further, many closed bases have been successfully converted into airports, shipyards, hospitals, research labs, and manufacturing facilities.

Admittedly, the U.S. government generally operates like any other sophisticated landowner, seeking fair market value for publicly owned land and facilities while extricating itself from the high cost of operation and maintenance of properties it no longer wishes to own or operate. In conveying closing bases too, this has been the norm since the 1990s, with localities collectively paying more than \$700 million for the bases they bought from DoD.

In 2000, however, in response to protracted negotiations over military land value between DoD and local governments when they sought bases for economic development purposes, Congress created a vehicle called the No Cost Economic Development Conveyance (No Cost EDC) to convey closed bases to communities virtually cost-free. It also set up a No Cost Rural EDC to convey rural bases to countryside communities.

Now, with the Defense Department recognizing that much of its real estate inventory is desirable for economic redevelopment, the 2005 base closure legislation requires the department to seek fair market value for its closed bases, though it provides discretion to the Secretary of Defense to convey the bases at no cost for economic development purposes.

Of greater concern to local governments and states is the fact that the 2005 legislation allows the Secretary of Defense to mothball bases (close them in place and retain them for future use), thereby significantly diminishing any base's economic potential.

OTHER CONVEYANCE VEHICLES

By using other particular arrangements, the U.S. government can convey military bases directly to cities and counties at little or no cost, provided the properties are to be used for a specific, public purpose. The two most prominent of these conveyances are the Public Benefit Conveyance (PBC) and the Conservation Conveyance (the newest vehicle, as of 2003).

Common examples of the PBC are conversions of airports, hospitals, and

other commercial and industrial uses from military to civilian and community use. PBCs, like the ones used on a portion of Chase Field NAS in Beeville, Texas, and Pease Air Force Base in Portsmouth, New Hampshire, have been done in many cities. For all PBCs, the transferred property must be used for the identified purpose, and there are a series of steps and restrictions that apply.

Recognizing that closing military bases built in the mid-20th century is tantamount to the "double hit" of shutting down community economic engines that have extraordinary environmental cleanup costs and plant maintenance expenses, Congress has enacted, in an almost piecemeal fashion, a series of government programs spread across a number of federal agencies to address some of these challenges. The programs range from assistance with community planning to civilian labor retraining to tax-law treatment and other incentives.

PUBLIC/PRIVATE PARTNERSHIP MOVES BASES

The most significant impediment to the redevelopment and reuse of closed military installations, according to numerous studies (one conducted by the General Accounting Office) and personal experiences, has been the residual environmental contamination left from decades of military operations. It should be noted, however, that today, as the largest industrial operation in the United States, the DoD seeks in its efforts in the environmental arena, as does the private sector, to address its sizable environmental challenges from ongoing operations.

Because communities with closed bases in the 1990s found the government's cleanup progress—and thus their ability to control a property and put it to economic reuse—slow because of federal budget constraints, Congress enacted an amendment to the federal Superfund law that allows for the transfer and conveyance of contaminated federal property before it is cleaned up but with the requirement that the U.S. government remain responsible for its cleanup.

This legislation, commonly known as Early Transfer Authority (ETA), has been the conduit through which some local redevelopment authorities and the private sector (cleanup companies, redevelopers, environmental insurance companies, and financiers) have been able to work together to respond quickly. Together, they have put property back into productive reuse, thus assisting DoD with its base closure and cleanup challenges.

PLAN NOW, CONDUCT DUE DILIGENCE, AND NEGOTIATE USING STAKEHOLDER LINGO

The major players in commercial real estate possess savvy and sophisticated business minds, and the players involved in closed military installations, given the history of and potential for industrial operations on such sites, must be no different. Thus, successfully acquiring and redeveloping such industrial properties will require the execution of three major tasks:

1. Plan well in advance of base closures.
2. Conduct due diligence on closed military installations and their previous uses.
3. Negotiate using the "foreign" terminology and idioms of the different government and private stakeholders.

If all stakeholders adopt a win-win approach and simultaneously execute these three tasks, then the conversion of a base will truly be characterized by redevelopment, advantages, and compensation. **PM**

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