

BASE REUSE REPORT

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1996

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BRR Interview: Robert B. Leonard

McClellan reuse director breaks new ground in privatizing base

By Sigrid Bathen

Robert B. Leonard is the Executive Director of the Department of Military Base Conversion for Sacramento County, overseeing the county's reuse planning for McClellan Air Force Base and the former Mather Air Force Base. In that capacity, he is responsible for the "privatization-in-place" of McClellan, including negotiations with the federal government regarding the transfer of the property from military to civilian use.

He was previously deputy director of the Sacramento County Department of Airports, which currently operates four county airports, including Mather Field. Before coming to Sacramento, he was assistant director of financing and administration for the Denver State International Airport.

He holds a bachelor's degree in aeronautical engineering and a master's degree in civil engineering from San Jose State University. He is also an FAA-licensed airframe and powerplant mechanic.

BRR: McClellan is in the forefront of base privatization efforts throughout the country. What is the status of those efforts?

Leonard: You have to define McClellan in the context of the five Air Force Materiel Command Centers. McClellan and Kelly are the two of the five slated for privatization, although Kelly is largely a realignment. We are a closure. One of

Continued on page 4

Master leasing helps to mitigate impact of job loss, expands reuse opportunities

By Kenneth S. Taymor

Cassidy & Verges

Leasing of military base property provides an unrealized opportunity for base closure communities to mitigate the impact of the loss of military jobs and investment.

The Department of Defense has made substantial improvements in expanding reuse opportunities through leases of land and buildings. Understanding the variety of leasing opportunities and the procedures for obtaining a lease from the military are essential pieces of knowledge for implementing efficient and rapid reuse strategies.

The military, local reuse authorities (LRAs) and community leaders are struggling to find the means to facilitate

the transfer of installation real property to private and public users. Procedures traditionally used to convey surplus or underutilized installation property have proven too cumbersome to facilitate the quick reuse of portions of bases that are no longer necessary for military purposes.

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CASE STUDY



TOOELE ARMY DEPOT:
HOW A RURAL
COMMUNITY COPES
WITH CLOSURE

SEE PAGE 2

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Publisher

David C. DeRoos

Editor

Sigrid Bathen

Contributing Editor

Randall A. Yim

A Professional Corporation

Editorial Advisor

William A. Carlson

Manager

Christopher Hart

Contributing Writers

Josh Kirschenbaum

Institute of Urban & Regional
Development, UC Berkeley

Raymond Takashi Swenson

Lt. Colonel, USAF (Ret.)

Ballard Spahr Andrews & Ingersoll

Kenneth S. Taymor

Cassidy & Verges

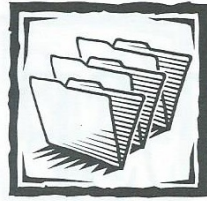
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Lizabeth A. Johnson

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The BASE REUSE REPORT is a primary source of current news and analysis of the issues surrounding the closure of U.S. military bases and their reuse for civilian purposes. The BRR will focus on the planning, economic development and redevelopment of closed bases.

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CASE STUDY

Tooele Army Depot has historic ties to Goshute Indian Tribe

By Raymond Takashi Swenson

Lt. Colonel, USAF (Ret.)

Ballard Spahr Andrews & Ingersoll

The base redevelopment effort at Tooele (Too-will-uh) Army Depot in Utah, is an example of how a rural community copes with the closure of a military base when it's dealt a mixed hand of some valuable new assets along with less valuable buildings and infrastructure.

Tooele Army Depot was selected for realignment in 1993. The 1,700 acres in the closing area are adjacent to the City of Tooele, Utah, which contains 14,000 of Tooele County's population of 28,000 people. The realignment has canceled some 2,000 jobs, over 10 percent of the county's employment.

Tooele City is about 35 miles southwest of Salt Lake City, and some 15 miles from Interstate 80, where the freeway skirts the southern shore of the Great Salt Lake. It lies in the foothills of the western slope of the Oquirrh Mountains, which separate the broad Tooele Valley, carpeted with winter wheat, from the highly urbanized Salt Lake Valley. It was founded in the mid-1800s by Mormon pioneers, and until the establishment of the depot in the World War II era, its economy depended on farming, ranching, and mining some of the same deposits of metal ores in the nearby Oquirrhs that continue to support the mile-deep Kennecott open pit mine on the eastern slope.

Goshute tribal history

Tooele's unusual name has a number of legendary sources, but historians agree that it was named for a chief of the Goshute Tribe who inhabited the area

long before the Mormons arrived. In recent years, as the population of the Salt Lake metropolitan area has grown and housing prices have risen, Tooele and other communities in the county have started to become home to many workers who commute to Salt Lake City.

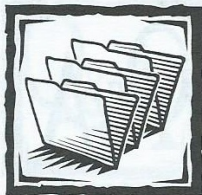
The mission of the closing area was the repair and remanufacture of Army trucks and their engines. Within the area are 265 buildings of various sizes. The largest and newest is the Consolidated Maintenance Facility (CMF), including a system for computerized retrieval of parts to each work station, which was completed at a cost of over \$100 million just before the base was designated for closure. Ironically, the Army Corps of Engineers gave the CMF a design award in 1994 as one of the best new facilities in the Army.

Vast area remains

The closing area includes 1,200 acres of warehouses and workshops, called the industrial area, and a nearby parcel of nearly 500 acres, where a number of activities provide administrative support for Army operations. Both the industrial and administrative areas are adjacent to developed areas of the City, and were formally annexed soon after the closure announcement. As of this spring, almost all operations in the two areas have ceased, except for some administrative functions in a handful of buildings which the Army currently plans to retain.

The vast area remaining of the North Depot continues to operate as a storage site for conventional munitions. About 30 miles to the south is a separate chemical munitions storage facility. Together, these activities employ only 600 people. Further west in the desert areas of the county is Dugway Proving Grounds, which was proposed by the Army for closure in 1995. The nomination was withdrawn before the BRAC Commission could vote on it, after a joint effort by the county's citizens, the State of Utah and Congressman Jim Hansen

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CASE STUDY

persuaded the Army that its calculations of the benefit of such a closure were incorrect, particularly in view of the difficulty of securing environmental permits for the weapons testing that is done there.

Much of the open land in the county is operated by the Bureau of Land Management as rangeland, while a vast tract is the southern half of the Hill Air Force Base Range, where F-16s repaired at the Ogden Air Logistics Center are tested before being returned to service, and where Hill's award-winning active duty and reserve F-16 wings practice air-to-ground combat in a network of electronically scored sites. The thousands of square miles of the county also enclose the Goshute reservation, as well as a number of hazardous material industries that take advantage of the combination of uninhabited land and easy access to the interstate. The federal government is a dominant force in the Tooele economy.

Tribes represented

The City has designated its already existing redevelopment agency as the Local Redevelopment Authority to deal with the Army Materiel Command on closure and reuse issues. Early on it organized a base redevelopment committee which included representatives of various citizen constituencies, including the Goshute Tribe. Most of the day-to-day administration of the base reuse effort has been handled by the Tooele County Economic Development Office,

headed by Scott Muir, which recently moved into offices next to the main entrance of the industrial area.

High-tech capabilities

Because of the obvious value of the CMF complex, the Tooele LRA early on focused on finding a major company

"The closure of the depot has been an unintended example of a 'privatization in place.'"

which could take advantage of the high tech capabilities of that large structure. In 1994 they negotiated an interim lease with the Army as they worked out a sublease arrangement with McDonnell Douglas, but were disappointed when that company selected Long Beach instead after that city offered significant financial incentives that Tooele could not afford.

In 1995 the Goshute Tribe submitted a request to take ownership of the CMF and several other better quality

industrial buildings at the depot. The request was too late for the federal screening process through the Bureau of Indian Affairs, and was included in a belated state and local screening process conducted by the Army. The base reuse plan submitted by the LRA did not recommend specific transfers directly to the Goshute Tribe, but leaves open the possibility of sale or lease from the LRA to the tribe.

No homeless requests

Because of Tooele's distance from the Salt Lake metropolitan area, there was virtually no interest expressed by providers of housing and services to the homeless. The community did not feel the need to adopt the procedures provided by the 1994 Base Closure Community Redevelopment and Homeless Assistance Act.

The community has persisted in looking for a major tenant/purchaser for the CMF, and was recently approached by a major company with an existing Utah plant that needs room to expand. Ironically, it appears that at least some of the work that would be done by the company at the CMF will be contracted work from the Army, which the CMF had originally been designed to perform. In a way, then, the closure of the depot has been an unintended example of a "privatization in place," like that currently being planned for Kelly Air Force Base in San Antonio and McClellan Air Force Base in Sacramento.

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INTERVIEW

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the largest arguments in San Antonio (where Kelly is located) is how much of the base will be annexed to Lackland Air Force Base, the neighboring facility—and then what will be available for community reuse and privatization. We don't have that luxury here. We're going to close.

BRR: *Privatization is controversial in some quarters. Is there opposition?*

Leonard: The Air Force here at McClellan is really stepping up to the challenge of privatization and is looking at it, I believe, with a great deal of innovation. General Henry Viccellio, Jr., Commander of Air Force Materiel Command, is providing some pretty dynamic leadership and is challenging and pushing a few things. However, we are also getting the impression that, beneath him, at Materiel Command, there is some real apprehension about this within both the blue-suit and civilian ranks. Then we have the three remaining Air Logistics Centers and their respective communities. Our assessment is that McClellan and Kelly are viewed as threats to the remaining depots.

BRR: *Isn't that opposition ultimately self-defeating? If the depots are closed and not privatized, wouldn't there be more layoffs?*

Leonard: One could argue that it is very near-sighted. However, there is a tremendous infrastructure represented by the status quo—a lot of jobs and communities around these centers.

BRR: *What is the future of the 60/40 rule? Efforts to repeal it failed in Congress last year—what is likely to happen this time around?*

Leonard: Our position is that we must see 60/40 repealed. We are not talking about some sort of compromise, multi-year phaseout that could evolve. We have been actively engaged with the Texas delegation, with Sen. Kay Bailey Hutchison in the lead. Sen. (Dianne) Feinstein (of California) is also actively

engaged, as is Congressman (Vic) Fazio. We also have industry involved in this strategy... It is going to be a very tough fight, and I remain optimistic that there will be relief.

BRR: *Can privatization succeed without repeal of the 60/40 rule?*

Leonard: I would say yes. It makes it somewhat more difficult. There is another impediment which is also part of

"We haven't had the jurisdictional range wars."

Title 10 of the U.S. Code, and that's the \$3 million threshold that says, in essence, any DoD workload with a value in excess of \$3 million has to be subject to public/private competition. That's another complicating factor.

The Air Force depot calculation on 60/40 now shows that approximately 28 per cent of the depot maintenance dollars are spent in the private sector. The successful privatization of the five workloads at Kelly and McClellan that have been "blessed" by the Depot Maintenance Council—these are the initiatives that are underway—will bring us from 28 to 35 per cent, leaving very little headroom for privatization of additional workloads. Here at McClellan, successful privatization of the three approved workloads—hydraulics, software and electrical accessories, accounts for less than 10 per cent of the total civilian work force here at McClellan.

So, assuming no relief from 60/40, there is going to be great difficulty privatizing additional work load [and] meeting the employment goals established by the president associated with

privatization for McClellan. That is 8,700 during the five years [before closure], then 4,350 for the three years following 2001, the date of closure.

BRR: *How does the lawsuit against privatization brought by civilian employees at McClellan affect your plans?*

Leonard: It will be another complicating factor, just as [is] the opposition of those communities with the remaining Air Logistics Commands and [opposition] from communities with DoD depots other than the Air Force. Now we also have the American Federation of Government Employees opposing privatization. I think, again, this is sort of a short-sighted perspective on things. But we're looking at an institutional, almost corporate, structure that has been in place for many, many years.

BRR: *Do you have anything else on your legislative agenda?*

Leonard: That (the 60/40 rule) is the primary focus right now. We've had a series of meetings over the past two to three months with individuals ranging from DoD Secretary Perry to Dr. Sheila E. Widnall, Secretary of the Air Force, all on this issue. We have a clear understanding of where the push is going to come from DoD and the Air Force on this matter—reinforcing the focus on 60/40 right now.

BRR: *What about beyond 60/40?*

Leonard: We're looking at performance of existing DoD and Air Force contract workloads here at McClellan. These workloads are currently being performed throughout the country and are therefore considered part of the "40." We are actively engaged in the existing Air Force and DoD source selection process for those workloads that are already contracted out, so that when they are up for bid, we want to put McClellan on the map as a site for those workloads.

BRR: *We hear you are working on obtaining a significant contract involving C-130 aircraft manufacturing.*

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INTERVIEW

Leonard: This is an example of an existing contracted workload that we are pursuing. The workload is already being contracted out. It's included in the 40 per cent, so why not bring it here? It's currently being performed in Birmingham, Ala., by a contractor and the existing contract term is about to expire. This could involve, on the high side, about a \$65 million-a-year contract that would translate to something in the neighborhood of 500 jobs. It's a five-year contract with three one-year options.

BRR: Generally describe your goals in privatization at McClellan.

Leonard: We were on the front edge of base conversion at Mather (AFB) with it being a BRAC I (1988) facility, and just when we thought we understood how the process works, along comes privatization. A lot of our energies have been focused at the DoD source selection process, and trying to reconcile the goals of the Federal Acquisition Regulations with the goals of the Base Realignment and Closure Act—the BRAC-FAR Reconciliation.

Putting it simply, our goal is to integrate the communities' goals and interests into the Air Force source selection process to make sure the work stays here at McClellan. And, number two, that the successful contractor utilize the capability of the facilities and the work force here at McClellan to diversify the work load—doing commercial work right alongside the military work. That is one of our foremost goals and is a continuing focus of our energies.

BRR: *McClellan is known as perhaps the most seriously contaminated closing base in the country. How will that impact your efforts?*

Leonard: We have to accept it as a part of the setting and then establish a legal framework in concert with the regulatory process to minimize the impact that the existing environmental condition has on reuse and privatization.

We have learned a lot on this subject at Mather and at other facilities. We have to apply every bit of that knowledge.

BRR: *Explain the structure of the reuse authority for McClellan and Mather.*

Leonard: The county Board of Supervisors serves as the LRA for both. Our headquarters, our main office is here at McClellan. This approach—moving out here—has proven to be incredibly productive and has really served as a catalyst for a good working relationship between us and the Air Force here at McClellan in identifying issues, developing strategies—trying to write the book on how this is going to be done.

BRR: *Tell us about your Business Development Center.*


Leonard: We have more than 10,000 civilians who work out here. They're trying to plan their future, and there is a lot of anxiety. Some of them are

interested in starting their own businesses, so we have created the McClellan Business Development Center to provide advice and access to community and state resources. The center is staffed with three people to help employees put together a business plan and test their ideas. We have linkages with regional educational institutions.

BRR: *You have also recently hired a staff person to serve as liaison with the private business community. Explain his role.*

Leonard: We now have an individual, Michael Perry, on staff who is dedicated to interacting with industry and the commercial real estate brokerage communities. He is there as a single point of contact for business interests in regards to opportunities here at McClellan.

BRR: *What can other closure communities learn from your experience?*

Leonard: We haven't had the jurisdictional range wars other communities have had. Consistent and unified leadership is critical when dealing with the Air Force, the DoD and other federal and state agencies. I mentioned the multiple Air Forces, and the associated complications. These complications are compounded when you end up with multiple or competing community interests. 

Sigrid Bathen is Editor of the BASE REUSE REPORT.

Contact:

Sacramento County Department of Military Base Conversion, 3237 Peacekeeper Way, Suite 16, McClellan AFB, CA 95652-1059. Phone (916) 643-6877, FAX (916) 643-6278.

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LEGISLATION

Legislative Update

Foot-dragging on federal budget slows base conversion legislation

By Josh Kirschenbaum

Josh Kirschenbaum is the Defense Conversion Coordinator for the Institute of Urban and Regional Development at the University of California, Berkeley.

As the federal government continues to dance around completing its 1996 fiscal year budget, legislation affecting defense conversion programs and activities for fiscal year 1997 progresses at a slow pace.

No new federal legislation has been introduced since our last update, which confirms the federal government's attention to last year's budget and more high-profile projects during an election year.

In fact, Congress has not been in session during the first two weeks of April. As soon as bills relative to base closures

or defense conversion are developed, we will track their progress through the legislative process. The BRR will also keep track of Fiscal Year 1997 Defense Authorizations and Appropriations after they are introduced.

There were 12 new Notices listed in the Federal Register since the last update. No new Rules and Regulations were developed during this time. Summaries of the Notices are included below.

Department of Defense (DoD)

Department of the Navy

Notice: Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Air Warfare Center, Aircraft Division, Warminster, PA

Contact: John J. Kane, (703) 325-0474

Notices

(FEDREGISTER 61 FR 11616 03/21/96; 145 lines.)

Department of Defense (DoD)

Office of the Secretary of Defense (OSD)

Notice: Base Closure and Community Redevelopment and Homeless Assistance Act; Base Realignments and Closures; Economic Security

Contact: Helene O'Connor, (703) 604-5948

Effective Date: 03/01/96

Notices

(FEDREGISTER 61 FR 8045 03/01/96; 209 lines.)

Department of Defense (DoD)

Notice: Base Closure and Community Redevelopment and Homeless Assistance Act; Base Realignments and Closures

Contact: Helene O'Connor, (703) 604-5948

Effective Date: 04/02/96

Notices

(FEDREGISTER 61 FR 14561 04/02/96; 283 lines.)

Executive Office of the President

Office of Management and Budget (OMB)

Notice of Transmittal Memorandum No. 15, to the OMB Circular No. A-76, "Performance of Commercial Activities," "Revised Supplemental Handbook". Performance of Commercial Activities, OMB Circular No. A-76.

Contact: (202) 395-6104

Effective Date: 03/27/96

Notices

(FEDREGISTER 61 FR 14338 04/01/96; 980 lines.)

Department of Defense (DoD)

Department of the Army (DA)

Notice of availability: Environmental Assessment and Finding of No Significant Impact for the Disestablishment of U.S. Army Aviation Troop Command, St. Louis Missouri, and the Major Item Information Center, Logistics Support Activity, Letterkenny Army Depot, Chambersburg, Pennsylvania, to Redstone Arsenal, Alabama

Contact: Mr. Neil Robison, (334) 690-3018

Comment Date: 03/29/96


Notices

(FEDREGISTER 61 FR 10566 03/14/96; 69 lines.)

Department of Defense (DoD)

Department of the Army (DA)

Notice of availability: Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of

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LEGISLATION

the BRAC Parcel at Tooele Army Depot, Tooele, Utah

Notices

(FEDREGISTER 61 FR 9680 03/11/96; 65 lines.)

Department of Defense (DoD)

Department of the Army (DA)

United States Army Corps of Engineers

Notice: Available Surplus Real Property at the U.S. Army Reserve Facility Bellmore, Located in Bellmore, Nassau County, New York

Contact: Maria Anglada, (212) 264-9109

Notices

(FEDREGISTER 61 FR 15226 04/05/96; 43 lines.)

Department of Defense (DoD)

Department of the Army (DA)

United States Army Corps of Engineers

Notice of availability: Availability of Surplus Land and Buildings Located at Detroit Arsenal Tank Plant, Michigan

Contact: Laura Whitworth, (502) 625-7303

Notices

(FEDREGISTER 61 FR 15057 04/04/96; 43 lines.)

Department of Defense (DoD)

Department of the Army (DA)

United States Army Corps of Engineers

Notice: Available Surplus Real Property at Stratford Army Engine Plant (SAEP), Stratford, Connecticut

Contact: Maria Anglada, (212) 264-9109

Notices

(FEDREGISTER 61 FR 15225 04/05/96; 45 lines.)

Department of Defense (DoD)

Department of the Army (DA)

United States Army Corps of Engineers

Notice: Available Surplus Real Property at the Seivers Sandberg U.S. Army Reserve Center (Camp Pedricktown), Located at Pedricktown, Salem County, New Jersey

Contact: Randy Williams (212) 264-6122

Notices

(FEDREGISTER 61 FR 15225 04/05/96; 42 lines.)

Department of Defense (DoD)

Department of the Army (DA)

United States Army Corps of Engineers

Notice: Available Surplus Real Property at the Sgt. Joyce Kilmer U.S. Army Reserve Center (Camp Kilmer), Located in Edison, Middlesex County, New Jersey

Contact: Randy Williams (212) 264-6122

Notices

(FEDREGISTER 61 FR 15226 04/05/96; 43 lines.)

Department of Defense (DoD)

Department of the Army (DA)

United States Army Corps of Engineers

Notice of Availability: Availability of Surplus Land and Buildings Located at Defense Depot, Memphis, Tennessee

Notices

(FEDREGISTER 61 FR 13483 03/27/96; 45 lines.)

Contact:

Josh Kirschenbaum (510) 642-8728,
fax (510) 642-0908. E-mail: convert@ced.berkeley.edu.

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Projects include: Griffiss Air Force Base, Rome, NY; Charleston Naval Complex, Charleston, South Carolina; Norton Air Force Base, San Bernardino County, California; Calverton Naval Air Facility, Riverhead, NY; and Brooklyn Navy Yard, Brooklyn, NY.

For more information, please contact John H. Alschuler, Jr.

Tel: 212.977.5597

Fax: 212.977.6202



LEGAL ISSUES

Master leasing . . .

Continued from page 1

Very few deeds to land or improvements on BRAC installations have been granted to local reuse authorities, private companies or state or local governmental agencies. As a result, potential reuse opportunities in many base closure communities are lost or their benefits delayed while the preconditions to transfer of surplus property by deed are satisfied and the terms of the transfer are negotiated.

Leasing of installation property can provide an alternative means by which public entities or private users can gain access to the land and/or buildings on a base slated for closure while the formal and complicated reuse planning process proceeds. These leases can take the form of "Interim Leases" or "Leases in Furtherance of Conveyance." In addition, the leases can be of a specific building or small portion of the base or a "Master Lease" of all or substantially all of the installation.

Interim lease

An Interim Lease ordinarily is a short term lease that makes no commitment to the Tenant for future use or conveyance of title to the property. Interim Leases usually are entered into before final disposal decisions are made. Interim Leases generally terminate at the time that final reuse and disposal decisions

are implemented. The primary tenant under an Interim Lease will usually be the Local Reuse Authority or a local government or state redevelopment agency. Those entities can, under certain circumstances, sublease the property to private users for commercial or non-commercial uses.

Public interest benefits

Rent under an Interim Lease may be below fair market value if the lease serves a public interest or if fair market value is unobtainable. Public interest benefits which justify below-market value rental include: the benefits provided under traditional "public benefit conveyances" (for historic monuments, education, public health, public park or recreation, non-federal correctional facilities, or port facilities); job creation or retention; community economic development; reduction in federal maintenance and/or security costs; and fostering redevelopment of the property.

Interim Leases must be preceded by an Environmental Baseline Study (EBS) and by a Finding of Suitability to Lease (FOSL). Interim Leases, however, can be executed prior to completion of all the formal requirements of NEPA and in advance of the Local Reuse Authority and

the Military Department developing a formal reuse plan for the installation. While the EBS and FOSL requirements can add some delay to the timing of an Interim Lease, the Department of Defense has shown a willingness to expedite that process where local communities have a concrete Interim Lease proposal under consideration.

Because an Interim Lease can be executed prior to completion of the EIS and local reuse plan, it is an excellent vehicle to obtain use of installation property and facilities during the lengthy technical and public processes necessary to complete formal reuse planning.

The property particularly susceptible to interim leasing strategies would include open space areas which might be useful for trucking or parking facilities, warehousing facilities, office facilities, and facilities that can be converted to light industrial use with low capital expenditures—for example, to assemble electronics equipment, and under some circumstances, specialized vehicles, such as special orders of light rail vehicles for local transit authorities.

The most significant limitation of the Interim Lease is the requirement that it not exceed five years, and that the lease can be terminated sooner if the interim use is incompatible with the final disposal decisions under NEPA.

Furtherance of conveyance

Leases in Furtherance of Conveyance are an alternative means by which the



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LEGAL ISSUES

Department of Defense can transfer property for reuse without use of a deed. The need for a Lease in Furtherance of Conveyance instead of a deed ordinarily would arise because environmental remediation action obligations under CERCLA, Section 120(h) have not been fulfilled. As a precondition to a Lease in Furtherance of Conveyance, the Secretary of the Military Department must comply with NEPA and issue a final disposal decision for the property.

Lease contemplates ownership

The lease may be long-term and may be a Master Lease or a lease of a small portion of the installation property subject to the disposal decision. The lease contemplates that the Tenant will ultimately become the owner of the property once the requirements for transfer by deed have been satisfied.

The Department of Defense provides some flexibility with respect to the terms to be used in a Lease in Furtherance of Conveyance. Because each conveyance will present unique situations, however, they will require substantial negotiation to tailor lease terms to specific situations. For example, the lease will undoubtedly have specialized provisions referring to the environmental remediation work yet to be completed to permit a deed transfer and the uses that will be permitted on the site based on the Record of Decision (ROD) and Final Disposal Decision by the Secretary of the Military Department.

Rental payments under a Lease in Furtherance of Conveyance should be based on the ultimate compensation to be provided upon transfer of the property by deed. Thus, the rental could be at or below fair market rental value, depending upon whether the property qualifies for an Economic Development Conveyance (EDC), a public benefit conveyance, or negotiated sale.

Master lease

The term "Master Lease" refers to a lease of all or a large portion of an installation which contemplates that the

Tenant will sublease portions of the installation to other end-users. Master Leases can be either Interim Leases or Leases in Furtherance of Conveyance. Master Leases present specific issues that should be considered by reuse communities and authorities.

A Master Lease permits the LRA, or in certain circumstances, local or state governmental agencies, to obtain con-

"Excessively narrow use restrictions in the Master Lease will render subleasing, and hence income generation, infeasible."

trol over large portions of a base prior to completion of the formal disposition process. Because of the size of the area subject to the Master Lease, the Tenant and the DoD must reach agreement on a number of issues related to operation and maintenance of the installation that often are not addressed in lease agreements for smaller portions of the base.

These agreements can be contained within the Master Lease or can be subject to collateral agreements between DoD and the master tenant. A Cooperative Agreement should be reached to allocate responsibility for providing utilities, infrastructure maintenance, and maintenance of common areas on the base. If the Master Lease does not cover the entire base, this Cooperative Agreement also should provide for maintenance of those areas not being leased by DoD to the Master Tenant.

To maintain value within the portion of the base subject to the Master Lease, the Master Tenant will need to be assured that the surrounding property will be kept in a neat and attractive manner.

Parties must agree on services

The parties will need to reach agreement on responsibility for continued provision of police, fire and emergency medical services to the Leased Premises. This agreement may be part of the Master Lease or a subject of a Public Services Agreement. DoD may seek to have the Master Tenant assume responsibility for maintenance and public services in exchange for reduction or elimination of rent under the Master Lease.

The Master Tenant should not overlook personal property disposition when negotiating terms of the Master Lease. Often, the value of the property being leased will depend upon inclusion of the personal property and fixtures found at the base. A Personal Property Disposition Agreement may be negotiated between the parties, or the Master Lease may specify which personal property will be included within the leased property and which personal property will be removed by the DoD.

Such personal property may include heavy machinery, light fixtures, or surplus computers and electronics equipment. If recreational facilities are included within the Master Lease, care should be taken by the Master Tenant to assure that the Master Lease includes both the equipment necessary to operate the recreational facilities economically, as well as parking and access rights to assure that members of the public can conveniently use the facilities.

Subleasing

A successful Master Lease must provide substantial flexibility in the rights of the Master Tenant to sublease all or portions of the leasehold. While the DoD does not

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LEGAL ISSUES

Master leasing . . .

Continued from page 9

wish to be involved in subleasing activities, in the past it has insisted on having the right to approve each individual subtenant. While it is reasonable for the Department of Defense to want to be able to screen subtenants to protect against waste of installation property or creation of uses that are incompatible with the FOSL, the DoD's interest can be protected through appropriate restrictions in the lease short of requiring consent to individual subtenants.

A practical matter

As a practical matter, DoD review and approval of each subtenant and sublease will add unnecessary time and expense to the Master Tenant's already difficult task of finding interim users. A better approach is to have the Master Lease contain a general outline of the terms that must be contained in each sublease and any special requirements that subtenants must meet. As long as the subtenants meet those criteria and the sublease includes the required terms, the Master Tenant should be allowed to sublease any portion of the leased premises without additional DoD review and approval.

Permitted interim uses under the Master Lease will be dictated by the FOSL. It is important for the LRA and any other entity contemplating becoming a Master Tenant to work closely with the Military Department to assure that the FOSL does not unnecessarily restrict permitted uses because of perceived environmental liability or other undefined risks. Excessively narrow use restrictions in the Master Lease will render subleasing, and hence income generation, infeasible.

Rather than eliminating whole categories of uses from the Master Lease, both DoD and LRA interests would be better served by permitting a broad range of uses that will facilitate

rapid reuse of the installation on an interim basis.

To the extent that there is a concern that a particular kind of use may pose special risks, the Military Department and Master Tenant should seek to mitigate those risks by actions such as

"Subtenants in commercial leases routinely are granted these assurances of quiet enjoyment and access."

requiring special monitoring of tenant activities, or installation of security devices or other equipment that would allow a tenant to sublease a portion of the installation safely.

Subtenants of the Master Tenant must be assured that they can continue to occupy and use their subleasehold for the full term of the sublease as long as they comply with the terms of their sublease. This can be a sensitive issue with the Military Department which may want to have the right to terminate subleases if the Master Tenant is unable to fulfill its obligations under the Master Lease. It is commercially unreasonable, however, to expect the subtenant who complies with its sublease and who may have substantial investments in improving its subleasehold, to bear the risk of eviction because of termination of the Master Lease.

An alternative solution to termination of all of the subleases would be for the Military Department to seek

assurances from the LRA and other local or state agencies that they will cooperate to find a new Master Tenant in the unfortunate (and unlikely) circumstance that the Master Tenant is no longer able to fulfill its duties.

The Master Lease presents two important access issues: Access to the Leased Premises in possession of subtenants (i) by the subtenants and their invitees and (ii) by the Military Department to complete its environmental investigation and remediation program. The Master Lease and related documents must assure subtenants that they and their invitees will have free access to the base and that their operations will not be interfered with by environmental investigation remediation activities. Subtenants in commercial leases routinely are granted these assurances of quiet enjoyment and access.

Commercial techniques

Commercial landowners have developed techniques for being able to obtain access to tenant spaces for repair, maintenance, marketing, and remediation activities in a manner not inconsistent with continued and successful operation of tenant businesses. To have a successful Master Leasing Program, the Military Department will need to emulate these commercial practices. ■

Kenneth Taymor is a principal of Cassidy & Verges in San Francisco, Calif. He is a graduate of Princeton University, magna cum laude, and Yale Law School. He is a Lecturer in Law at the Stanford Law School and has been a Lecturer in Public Management at the Stanford Graduate School of Business.

Taymor's practice at Cassidy & Verges includes land use and government relations, housing, real estate finance and sales, military base conversion and limited liability companies.

From 1988-1993, Taymor was Special Assistant for Business and Finance to the San Francisco City Attorney.

Contact:

Kenneth S. Taymor, Cassidy & Verges, 20 California Street, Suite 500, San Francisco, CA 94111. Phone (415) 788-2020, FAX (415) 788-2039.



CASE STUDY

Tooele Army Depot ...

Continued from page 3

Impact on rural economy

The City had pursued the normal course of preparing a reuse plan with the aid of an Office of Economic Adjustment grant, and followed it with an Economic Development Conveyance (EDC) application. Besides asking for a no-cost conveyance of the land, based on the relative size of the economic impact of closure on Tooele's rural economy, the LRA also requested that the Army contribute \$35 million to cover the city's estimated cost for upgrading the base infrastructure.

As was the case with a similar request made to the Air Force by the LRA for Loring Air Force Base, Maine, the Army responded that it had no authority or budget to make such a payment. The Army indicated it had other disagreements with the EDC application, so the city agreed to withdraw its EDC application while reserving the right to resubmit a revised application.

With the new interest expressed by a potential purchaser of the CMF, the LRA prepared a revised EDC application and submitted it to the Army at the end of March, 1996. The LRA anticipates that, because of delays in finalizing a Finding of Suitability to Transfer (FOST), it will be necessary to negotiate a long term lease to allow the first few months of occupancy by the buyer in the CMF. The LRA recently met with the BRAC Cleanup Team for the base to work out a priority scheme for preparing Findings of Suitability to Lease and then FOSTs for each segment of the base that has commercial potential.

Business interest

A few buildings on the BRAC property have been leased on one-year renewable contracts directly from the Army to various businesses, without formal participation by the LRA. Some of these businesses will likely continue in place over the long term, with the LRA assuming the landlord role. The LRA has also been approached by companies interested in upgrading and managing the remaining industrial property in return for a share of the lease income.

Residential construction

Much of the administrative area is planned for new residential construction, while other portions will be retained by the Army and the National Guard. The LRA, in its revised EDC application, is asking for title to those areas to be transferred to the LRA on condition that the LRA will lease it to the federal tenants at no cost, under authority of the "lease back" provision, Section 2837, in the Fiscal Year 1996 National Defense Authorization Act.

The Army is in the midst of negotiating with the local electricity, telephone and natural gas companies to have them take over those systems throughout the Depot, not just in the closure parcels. The City is also negotiating over a

similar broad transfer of ownership of the water, sewer and stormwater systems, since the portions of those systems on the closing parcels are dependent on their hookup to the rest of the Army systems downgradient.

The Tooele LRA is looking forward to returning the 1,700 acres to a positive job-producing use—a use that may, in the end, restore the prior level of employment while increasing the diversity of jobs, and buffer the community from the continued downsizing of the defense establishment. □

Colonel Swenson practices base reuse law with Ballard Spahr Andrews & Ingersoll, on behalf of local redevelopment authorities in California, Utah, Illinois and New York.

Contact:

Raymond Takashi Swenson, Lt. Col., USAF (ret.), Ballard Spahr Andrews & Ingersoll, 201 South Main Street, Suite 1200, Salt Lake City, UT 84111-2215 (801) 531-3924, Fax (801) 531-3001.

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NEWS BRIEFS

News Briefs

Ayers, Mass. & Vallejo, Calif. Ft. Devens, Mare Island Shipyard close after many years of service

At the end of March, the closure of **Fort Devens** and the **Mare Island Naval Shipyard** were marked by emotional ceremonies. After years of military service, these facilities are looking toward a successful role in the private sector.

The 1,700 buildings and 4,400 acres at Fort Devens, now referred to as just Devens, will be managed by the **Massachusetts Government Land Bank**. Efforts to revitalize the 65-year-old facility received a significant boost when the **Gillette Co.** agreed to locate a 410,000-square-foot distribution center at the facility (see *BRR News Briefs*, March, 1996).

"In some ways, it's a sense of relief," said **Michael P. Hogan**, executive director of the **Massachusetts**

Development Finance Agency, the Land Bank's administrative arm. "We've been dealing with all these details for the last six months, but now it seems we've crossed the line."

Meanwhile in California, the oldest Naval yard on the West Coast was going through a similar closure ceremony. Since Mare Island was opened in 1854, the naval shipyard built 513 ships, beginning with the wooden paddle-wheeled steamer **U.S.S. Saginaw** in 1858.

The 6,000 acres of docks, cranes and industrial shops will now be managed by the **City of Vallejo**. As a military facility, Mare Island employed as many as 10,000 workers, and the task of replacing those jobs will be formidable. However, numerous businesses have already moved into Mare Island and the city is mounting an aggressive campaign to draw industry, business and tourism to the island, in addition to the filming of a new **Francis Ford Coppola** movie "Jack."

Sources: *Worcester Telegram & Gazette* and *The San Francisco Chronicle*

Ohio Union files lawsuit to block three base privatization efforts

The **American Federation of Government Employees** has filed a suit in the Ohio federal district court that says the government violated federal law by allowing private companies to bid on "core" maintenance and repair jobs at **Kelly AFB**, **McClellan AFB** and **Newark AFB**. If successful, the suit could delay privatization plans at the three bases.

Unless waived by the Secretary of Defense, the law requires such work to be performed by federal employees.

Martin R. Cohen, who filed the lawsuit for the union, claims that no such waiver has been sought. Further, the suit charges, other military bases were prevented from bidding on the work which, they contend, is against the law and also results in capping payrolls at the those facilities.

Sacramento, Calif. CEO Task Force releases report on military base privatization

On April 4, **Governor Pete Wilson** released the final report of the California **Chief Executive Officers' Defense Privatization Task Force**. The report, **Pathway to Privatization: An Industry Perspective**, provides the viewpoints of private industry on DoD's efforts to privatize closing military depots.

The **California Trade and Commerce Agency** sponsored report had three key findings. First, privatization will be met by well-organized resistance from individuals, organizations and legislators. Second, success will follow only if viable business opportunities with ongoing potential and strong support by the communities are made available. And third, Local Reuse Authorities must be an equal partner with the State and private sector throughout the process.

The report recommended that Congress repeal the 60/40 law, remove rules and regulations that bias the system against contracting to outside firms, remove barriers preventing new workload to coming to privatized bases, and that adequate attention and finances are provided for toxic remediation.

To get further information or to obtain the report, please contact **Mike Marando** or **Lisa Rettig** at the **California Trade and Commerce Agency** at (916) 324-8214.

Bayside, N.Y. Community demonstrates against Fort Totten planning process

As seen in many base reuse efforts throughout the U.S., determining the future plans for closing military bases



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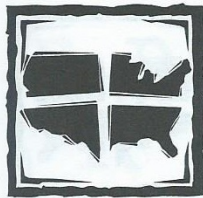
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NEWS BRIEFS

can be contentious and divisive. The latest example is the 163-acre **Fort Totten** where community members demonstrated outside the fort on March 11 to voice their objection to the reuse planning process for the base scheduled for closure in two years.

"There are closed-door, secret meetings going on about the future of Fort Totten," said **City of Bayside** activist **Joyce Shepherd**, president of the **Citizens Action Committee for Change**. Two weeks ago, Shepard's organization launched "Fort Tottengate" by blitzing the Bay Terrace shopping center with fliers.

Sherry Schlissel, another member of the committee said, "When it's secret, it generally has evil connotations."

Marty Algaze, a spokesman for **Mayor Rudolph Giuliani**, said that because of the size of the panel, "to open every meeting up to the public would be a little chaotic, and nobody would get any work done."

A developer who is on the reuse panel, **Joseph Mattone Sr.**, said the protesters have "an exaggerated sense of fear . . . There is nothing secretive about this. We met for five sessions that were informational." He said the sessions dealt with federal procedure for closing bases.

"We have the community uppermost in our minds," said Mattone. "There is no agenda. They will be provided with minutes, and I'm sure the borough president and the mayor's office will set a public hearing to discuss various proposals the committee has before it. No decisions have been made."

Source: *Newsday*

Santa Monica, Calif. **RAND's study finds less impact on closed base communities**

A DoD-sponsored study on the impact of defense draw-down on California's economy found that the economic effects were less than expected. Part of a series of reports, the study, *The Effects of*

Military Base Closure on Local Communities, concluded that, "While some of the communities did indeed suffer, the effects were not catastrophic and not nearly as severe as forecasted." Further, the burden of the impact was on the individual worker or firm rather than on the community.

The study was conducted by the **Rand Corporation** and focused on three bases: **Castle AFB**, **Fort Ord** and **George AFB**.

Nine measures were used to measure the impact on these communities and the results were benchmarked with the anticipated impact. In addition, the results were benchmarked with communities with open bases and other communities with no bases.

Critics of the report, however, argue that the severe impact to each community was obscured due to state and regional economic growth.

The study may have wide implications for how policymakers decide to shut down military bases in the future amid politically charged predictions of grave economic consequences for the communities involved. In addition, the study provides recommendations for the on-going monitoring of base reuse efforts.

To get further information or to obtain the 72-page report, contact Rand Distribution Services at (310) 451-7002.

San Diego, Calif. **Redeveloping historic properties subject of Governor's conference**

The **California Governor's Office of Planning and Research** and the **California Historic Preservation Office** are hosting a conference, *The Challenges & Opportunities of*

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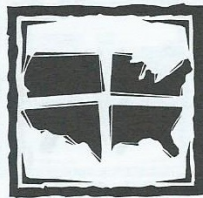
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NEWS BRIEFS

News Briefs

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Redeveloping Historic Properties at California Military Base Closure Sites." The two-day conference will examine problems encountered during the transfer of historic property at military bases, rehabilitation tax credits, low-income housing tax credits, building codes, opportunities for reusing historic structures, and more.

The conference is co-sponsored by a variety of organizations and will be held in San Diego on May 16-17. The cost for the conference is \$50. For more information, please contact Dara Wheeler at (916) 322-3170.

Orlando, Fla.

Barron Collier Co. seeks swap for Florida, California base property

After meeting with representatives from the Naples-based **Barron Collier Co.**, **Orlando Mayor Glenda Hood** said some of her concerns had been eased and that a proposed land swap that would give the developer portions of the **Orlando Naval Training Center**, the **San Diego Naval Training Center** in the heart of that city's downtown harbor, the **Treasure Island Naval Station** in San Francisco Bay and the **Tustin Marine Corps Naval Air Station** in Orange County.

The Navy's existing plan is to withdraw from the 2,000-acre Orlando training center by the year 2000 and turn over the facilities to the City of Orlando for redevelopment. The Navy and City have agreed upon a 20-year plan that calls for conversion of the training center campus into a miniature village with houses, stores, offices and parks by reselling parcels to private developers.

Hood said a deal with Collier could allow the city to avoid the trouble and expense of buying the Navy land and clearing it for redevelopment. During their March 25 talks, Collier representatives assured Hood that they would follow the city's base-redevelopment

plans and would do so within 20 years.

Hood and Cawley agreed to meet again within 30 days, after company officials continue talks with the **U.S. Department of the Interior** about obtaining the military bases.

Allen McReynolds, special assistant to **Interior Secretary Bruce Babbitt**, stressed Monday that the federal government will not run roughshod over city plans for the base. "Everyone in Washington will be looking to them (the city) to see if this (proposed swap) is supportable and appropriate . . . They're in the driver's seat."

Collier officials already have talked to federal officials about trading oil-drilling rights to environmentally sensitive **Big Cypress National Preserve** in southwest Florida for the Orlando base and other closed military installations in San Francisco and Tustin, Calif. "We have looked at the Tustin plan, and we think they did a nice job of it," said Roy Cawley, president of the Collier's real estate division. "We are evaluating those components to be developed by the private sector."

But Assistant City Manager Christine Shingleton said it's unclear what the advantages would be in dealing with a developer who is relatively unknown in Orange County and California. "We're not jumping on the bandwagon," she said.

In addition, the *Orlando Sentinel* reports that the closed-door meetings by top Interior officials and representatives of the Collier real estate family of Florida also have drawn harsh criticism from experts in Interior's own lower ranks, who say the deal could amount to a virtual giveaway by U.S. taxpayers and a windfall for the Colliers.

Source: *Orlando Sentinel* and *Orange County Register*

Aurora, Colo.

Fitzsimons Army Medical Center given more control over housing

Aurora leaders stated on April 10 that the issue of creating housing for the homeless at **Fitzsimons Army Medical Center** is likely to be less controversial than it was in 1995 when nearby **Lowry Air Force Base** experienced fierce debate over their homeless housing plans.

Lowry and Fitzsimons are both in the process of being shuttered. In the past, federal agencies gave priority to homeless-housing providers when deciding what to do with closed military bases. Since then, however, federal rules have changed, giving local redevelopment authorities more control over how closed bases are used. The biggest change is that homeless-housing providers will apply directly to the redevelopment authority for buildings or land, instead of applying to federal agencies.

The DoD and **Department of Housing** will make the final decision about who gets buildings and land at Fitzsimons. But under the new plan, local planners will know about the homeless-housing proposals while they still are developing their base-use plans.

"It gives us much more determination over our destiny," said **Aurora Mayor Paul Tauer**, chairman of the Fitzsimons Redevelopment.

Previously, homeless providers were given several opportunities to ask for base buildings to be converted into housing. At Fitzsimons, they will be given one chance to apply, and must do so by July. In addition, the new guidelines state that the needs of homeless providers must be balanced with the desire for economic development and that homeless-housing proposals at Fitzsimons must address needs of the homeless in Aurora, not the rest of the metro area.

Source: *Denver Post*

Written and compiled by Christopher G. Hart.



BRR FORUM

BRR Forum

Personal property inventories pose significant challenges to LRAs

By Randall A. Yim

The transfer of personal property inventories on closing bases present some significant—but not impossible—challenges. Here are some suggestions to expedite that process.

Once personal property inventories are completed (a formidable task in itself), the LRA and the military must work together to determine which items of personal property will be made available to the LRA for redevelopment purposes. Personal property should be segregated into the following categories:

- Available for reuse
- Not available for reuse
- Ordinary fixtures

- Not needed for LRA redevelopment
- Status under disagreement (where LRA and the military disagree on availability for reuse)

The military may initially identify items as “not available for reuse” if they meet one of the following seven criteria:

- The property, other than the ordinary fixtures, is required for the operation of a transferring unit, function, component, weapon, or weapon system (includes property needed by a unit being transferred to a new location)
- The property is required for the operation of a unit, function,

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Calendar of Events

May 16–17: California Governor’s Office of Planning and Research and State Office of Historic Preservation are sponsoring a conference on historic preservation on closed military bases—San Diego, CA

May 22–25: National Conference on Business Incubation, New Orleans, La—(614) 593–4331.

June 16–18: NAID Aviation Base Reuse Conference—(703) 836–7973

June 20–23: Cultivating Community Success. A National Conference on “Strategic Lessons From Community Assessment”—Lincoln, NE (800) 927–1115.

August 4–7: NAID Annual Conference—Sacramento, CA (703) 836–7973

August 7: NAID, DoD and OEA Economic Development Workshop—Sacramento, CA (703) 836–7973

October 7–8: NAID Privatization Conference—Indianapolis, IN (703) 836–7973

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BRR FORUM

BRR Forum ...

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component weapon, or weapon system at another installation within the military department

- The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source for commonly used components) (e.g. weapons)
- The property is stored at the installation for distribution
- The property meets the known requirements of an authorized program of another federal department or agency that would otherwise have to purchase similar items

• The property is needed elsewhere in the national security interest of the United States

• The property belongs to non-appropriated fund instrumentalities or other non-defense department entities

Consultation is required between the military, principally the particular installation's commander, and the LRA regarding retention and transfer of personal property. These discussions may be contentious, particularly with

respect to "specialized equipment," such as unique and/or expensive test equipment or tooling. The LRA will want to own this specialized equipment to "anchor" workload in place or attract new uses; the military will wish to retain ownership to maintain mission "readiness" or transfer to a non-closing military base.

Randall A. Yim is Contributing Editor of the BASE REUSE REPORT.

Contact:

Sacramento County Department of Military Base Conversion, 3237 Peacekeeper Way, Suite 16, McClellan AFB, CA 95652-1059. Phone (916) 643-6877, FAX (916) 643-6278.

SUMMARY OF LRA POSITION ON TRANSFER OF SPECIALIZED EQUIPMENT

COMMON ARGUMENTS AGAINST LRA POSITION	LRA REBUTTAL
1. Military cannot assure equipment will be maintained and upgraded as necessary.	1. Military contracts currently require contractor to maintain and upgrade equipment to military specifications. LRA facility use agreements with contractor can and will contain identical language and be enforceable by both LRA and military.
2. Equipment could not be transferred in time for LRA to support early privatization initiatives.	2. Equipment treated just like real property: interim leasing or licensing will occur until prerequisites satisfied for transfer.
3. Hard to justify transfer of equipment under Pryor EDC since must demonstrate why other mechanisms not available.	3. Justification similar, if not identical, to those made for real property transfers. <ul style="list-style-type: none"> • Clear and voluminous historical precedents exist. • Transfer of property for job creation and economic development purposes are precisely the reasons why Pryor EDC process enacted.
4. Limited options available for ownership of property to support privatization.	4. Issue is not either/or. Many combination or hybrids exist. For example, property could be GFE until prerequisites satisfied for transfer to LRA.
5. What if contractor defaults and military wishes to reassign work. Cannot allow LRA to hold up process by disputing if a default has occurred.	5. LRA will agree contractually that military may solely decide if a "default" occurs.
6. Military cannot get back equipment if a national emergency arises.	6. DoD can already take over property (for example, airports) in national emergencies. LRA will agree to allow DoD to recover property in specified emergencies. Another depot's desire to obtain the workload is not such an emergency.
7. LRA may abandon use of equipment and sell it.	7. LRA will give military the right for first refusal to recover the property if, for whatever reason, LRA abandons its use.
8. LRA appeal of military property disposal decisions can cause confusion and unnecessary delays.	8. LRA already entitled under BRAC laws to specific property disposal dispute resolution mechanisms and consultation with the Secretary of Defense and Assistant Secretary of Air Force. <ul style="list-style-type: none"> • LRA will invoke dispute resolution mechanisms allowed under law for each item separately in order to anchor workload in Sacramento.
9. LRA will not act Honorably.	9. LRA will act in its own economic self-interest, but not irrationally. LRA will not insist on retaining military property without clear reuse plans if the property will deteriorate and become unusable before reuse may be implemented.
Bottom line: The only issue is whether, as a matter of policy, DoD will transfer equipment to the LRA. Any "practical" or "quasi-legal" objections can be overcome. The issue is solely one of policy and should not be disguised otherwise. A good faith disagreement may exist over policy, but unsupported excuses to delay a policy decision do not benefit either the military or the LRA.	