Evaluation Report

OFFICE OF THE INSPECTOR GENERAL

NATIONAL ENVIRONMENTAL POLICY ACT/BASE REALIGNMENT AND CLOSURE POLICY

Report No. 97-061

January 9, 1997

DEPARTMENT OF DEFENSE

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Acronyms

BRAC	Base Realignment and Closure
CATEX	Categorical Exclusion
CEQ	Council on Environmental Quality
EA	Environmental Assessment
EIS	Environmental Impact Statement
NEPA	National Environmental Policy Act

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

January 9, 1997

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE
(ENVIRONMENTAL SECURITY)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)

SUBJECT: Evaluation Report on National Environmental Policy Act/Base Realignment and Closure Policy (Report No. 97-061)

We are providing this evaluation report for your information and use. We performed the evaluation in response to the Deputy Under Secretary of Defense (Environmental Security) request. Management comments on a draft of this report were considered in preparing the final report.

Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3. We received comments from the Deputy Under Secretary of Defense (Environmental Security), the Army, and the Navy. As a result of comments and discussions with the Department of the Navy, we deleted two of our four recommendations. Comments are not required on this final.

We appreciate the courtesies extended to the evaluation staff. Questions on the evaluation should be directed to Mr. William C. Gallagher, Program Director, at (703) 604-9270 (DSN 664-9270) or Mr. Harry Lindenhofen, Project Manager, at (703) 604-94234 (DSN 664-9423). See Appendix C for report distribution. The evaluation team members are listed inside the back cover.

David K. Steensma

David K. Steensma
Deputy Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 97-061 **January 9, 1997**
(Project No. 6CB-5045)

National Environmental Policy Act/Base Realignment and Closure Policy

Executive Summary

Introduction. This report expands on an issue first reported during a July 1995 briefing to officials in the Office of the Deputy Under Secretary of Defense (Environmental Security) concerning National Environmental Policy Act/Base Realignment and Closure policies in the Military Departments. A second report updating the status of the other briefing issues--the impacts of the National Environmental Policy Act on base closure actions and on interim leases--will be issued later.

The Office of the Deputy Under Secretary of Defense (Environmental Security) asked us to conduct an evaluation to determine whether provisions of the National Environmental Policy Act are affecting the Defense Base Realignment And Closure program. Officials requested that our findings and suggested approaches for resolution be presented to them in a briefing. The Office of the Deputy Under Secretary of Defense (Environmental Security) needed the information to decide whether the National Environmental Policy Act, the Defense Base Realignment And Closure Act, or other legislation associated with 1995 base closures required revision.

The National Environmental Policy Act requires the analysis and preparation of documents describing the environmental impacts of major Federal actions. Because base closures are considered major actions, the DoD must prepare the National Environmental Policy Act documents to address the disposal of land at installations on the base realignment and closure list.

Evaluation Objective. The purpose of the evaluation was to determine existing problems concerning the application of DoD and Military Department National Environmental Policy Act/Defense Base Realignment and Closure program policies to the base closure process.

Evaluation Results. A review of DoD and Military Department National Environmental Policy Act/Defense Base Realignment and Closure program policy revealed that improvements were needed by the Military Departments and other DoD organizations concerning policy and responsibilities. Confusion existed concerning the focus and detail of National Environmental Policy Act documents for Base Realignment and Closure actions and the responsibility for preparing National Environmental Policy Act documents for tenant activities. Because of those conditions, delays resulted regarding disposal and reuse of land, terms were interpreted in more than one way, and the use of resources for the preparation of National Environmental Policy Act documents increased.

Summary of Recommendations. We recommend that Deputy Under Secretary of Defense (Environmental Security) and the Navy clarify policy and define responsibilities associated with the development of National Environmental Policy Act documents for Defense Base Realignment and Closure program actions. Our recommendations are intended to accelerate the transfer and reuse of Base Realignment and Closure installations.

Management Comments. The Deputy Under Secretary of Defense (Environmental Security) nonconcurred on a recommendation to have the Navy clarify policy and define responsibilities associated with the development of National Environmental Policy Act documents for Defense Base Realignment and Closure program actions. She believes that the current Navy policy and guidance is adequate. In addition, she nonconcurred on a recommendation to revise DoD policy and guidance, and to identify the host installation as responsible for preparing National Environmental Policy Act documents for tenant activities that would be impacted by Base Realignment and Closure actions. She believed that past policy guidance in this area is adequate. She also partially concurred on two recommendations associated with the need for developing key definitions in the Base Realignment and Closure area.

We also received comments from the Assistant Secretary of the Navy for Installations and Environment, and the Assistant Chief of Staff for Installation Management, Department of the Army. The Navy nonconcurred with our recommendation to clarify policy and define responsibilities associated with the development of National Environmental Policy Act for Base Realignment and Closure program actions. The Army concurred with the evaluation and recommendations but disagreed with specific statements in the report pertaining to Army policy, guidance, and manuals on National Environmental Policy Act as it relates to base closure. The Army provided the specifics of the correct citations for the manual and memoranda on the evaluation. See Part I for a complete discussion of management comments and Part III for the complete text of those comments.

Evaluation Response In discussions with the Navy on their nonconcurrence, it was brought to our attention that the Navy resolved site specific National Environmental Policy Act policy issues at various workshops that included base level and headquarters personnel. In addition, our recommendation that the Navy develop Base Realignment and Closure specific National Environmental Policy Act policy has been overcome by events. Environmental planning has already been initiated for all fiscal year 1995 Navy Base Realignment and Closure actions. As a result of the Deputy Under Secretary and the Navy comments, we eliminated the recommendation for the Navy to clarify policy and define responsibilities associated with the development of National Environmental Policy Act documents for Base Realignment and Closure program actions.

We also eliminated our recommendation on revising DoD policy and guidance to identify the host installation as responsible for preparing National Environmental Policy Act documents for tenant activities impacted by Base Realignment and Closure actions. The Deputy Under Secretary believes that past policy guidance reissued in this area in May 1996 is adequate. Also, the Defense Logistics Agency, who first raised this issue for a specific installation, reached an agreement with the Army on National Environmental Policy Act responsibility for that installation. We agree that no further guidance on this issue is needed.

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Part I - Evaluation Results

Introduction

The Office of the Deputy Under Secretary of Defense (Environmental Security) asked us to conduct an evaluation to determine whether provisions of the National Environmental Policy Act (NEPA) are affecting the Defense base realignment and closure (BRAC) program. Officials requested that our findings and suggested approaches for resolution be presented to them in a briefing. The Office of the Deputy Under Secretary of Defense (Environmental Security) needed the information to decide whether the NEPA, the BRAC Act, or other legislation associated with 1995 base closures required revision. We presented the briefing in July 1995 to the Principal Assistant Deputy Under Secretary of Defense (Environmental Security) and other officials of that office.

This is the first of two reports on our evaluation of the impacts of the National Environmental Policy Act on the BRAC program. The evaluation expands on the July 1995 briefing and updates our findings concerning the National Environmental Policy Act/Base Realignment and Closure policies in the Military Departments. A second report will update the briefing findings concerning the impact of the National Environmental Policy Act on base closure actions and interim leases.

Evaluation Background

The National Environmental Policy Act, the Base Closure and Realignment Act, and the President's Five Part Plan are applicable to BRAC land disposal. Each is summarized below. Additional information concerning each requirement and how they relate to one another are in Appendix B.

National Environmental Policy Act. Section 4321 of United States Code, title 42, "National Environmental Policy Act," (42 U.S.C. 4321), was signed into law on January 1, 1970. The NEPA requires Federal agencies to consider environmental impacts of proposed major actions in making decisions. The law defines a specific decisionmaking process that must be followed to determine the impacts of the proposed major action. Until an agency completes its NEPA review, work on a proposed action cannot be initiated. Because base closures are major actions, NEPA documents must be prepared to address the disposal of land at installations on the base realignment and closure list.

Base Closure and Realignment Acts. The Base Closure and Realignment Acts of 1988 and 1990 are amendments to 10 U.S.C. 2687. The purpose of the Acts is to provide a fair process that will result in the timely closure and realignment of military installations within the United States.

President's Five Part Plan. President William J. Clinton announced his Five Part Plan on July 2, 1993. The plan is designed to speed the economic recovery of BRAC communities with closure installations. The President pledged to give top priority to early reuse of the installations' valuable assets by local communities.

Evaluation Objectives

The objective of this evaluation was to expand on and update the status of problems that exist concerning the application of DoD and Military Department NEPA/BRAC policies to the base closure process. See Appendix A for additional information on the evaluation process.

National Environmental Policy Act/Base Realignment And Closure Policy in the DoD and Military Departments

Improvements were needed to DoD and Military Department policy and guidance concerning the National Environmental Policy Act application to BRAC actions. Confusion existed concerning the focus and detail of NEPA documents for BRAC actions and the responsibility for preparing NEPA documents for tenant activities on installations affected by BRAC. Those conditions were caused by variations in guidance, a lack of definitions, and undefined responsibilities. Delays resulted regarding the disposal and reuse of land, terms were interpreted in more than one way, and the use of resources for the preparation of NEPA documents increased.

Office of the Secretary of Defense Policy

The Deputy Secretary of Defense published a memorandum, "Fast Track Cleanup at Closing Installations," September 9, 1993. That memorandum was updated on May 18, 1996. The memorandum contains two requirements applicable to our evaluation.

o Military Departments are required to complete applicable NEPA documents within 12 months of the date the community involved submits its final reuse plan.

o The Local Redevelopment Authorities reuse plan, if available and to the extent legally permissible, will be a primary factor in the development of the proposed action, reasonable alternatives, and effects analysis in the DoD Component's NEPA process for the disposal action.

The memorandum reflects the NEPA requirements addressed in the 1990 Base Realignment and Closure Act and the President's Five Part Plan. Chapter 32 of the Code of Federal Regulations, part 91, "Revitalizing Base Closure Communities - Base Closure Community Assistance," also contains those requirements.

The DoD Manual 4165.66-M, "Base Reuse Implementation," July 95, was released after our briefing to the Principal Assistant Deputy Under Secretary of Defense (Environmental Security). The manual contains references to the two requirements discussed in the September 1993 memorandum. That manual also lists the requirements of NEPA and provides an explanation of the types of NEPA documents that can be used to complete the NEPA process for BRAC installations (see Appendix B). The manual applies to the Office of the Secretary of Defense and the Military Departments. The manual consolidates

the NEPA/BRAC requirements defined in the DoD policies and guidance discussed in the previous paragraph. It does not provide any additional or new guidance applicable to NEPA/BRAC requirements.

Policy of the Military Departments

Variations existed in the policy each Military Department issued concerning NEPA/BRAC.

Army Policy. The Army "How-To Manual for Compliance With the National Environmental Policy Act," September 1995, provides detailed policy and guidance on the technical subject areas of NEPA, management responsibilities, document preparation, and the Army NEPA/BRAC process. The Army NEPA/BRAC process incorporates the components of the President's Five Part Plan, considers reasonable and feasible alternatives, integrates environmental conditions and requirements, and outlines a course of action for achieving the least adverse impacts. Those elements of the process aid the Army and the local reuse authorities in their attempts to address the disposal and reuse of installation land and buildings. The Army system addresses land reuse based on land use intensity scenarios (high-heavy industrial, medium-residential, or low-buffer zones) to identify reuse alternatives. That approach allows the completion of NEPA documents even if a local redevelopment authority has not completed its reuse plan. It also minimizes modifications to NEPA documents as the reuse plan develops and presents a full range of practical reuse alternatives to the decisionmaker. Army personnel indicated that the approach has been endorsed by the Environmental Protection Agency and the Council on Environmental Quality.

In our interviews, personnel from the EPA headquarters expressed their satisfaction with the Army "How-To Manual for Compliance With the National Environmental Policy Act." Personnel from the EPA said that the new approach Army uses to develop NEPA documents is worthwhile because it addresses possible reuse scenarios from a land use intensity basis. The EPA also liked the emphasis that the Army places on coordination with the local redevelopment authority and regulators at the start of the NEPA process. The EPA has endorsed the new process.

We believe the manual presents clear and detailed guidance on complying with the NEPA requirements for BRAC actions and the development of reuse scenarios based on intensity.

The Army "How-To Manual for Compliance With the National Environmental Policy Act" was finalized and distributed in September 1995 with no major changes. In addition to the "How-To Manual for Compliance With the National Environmental Policy Act," the Army has published eight memoranda between September 1994 and July 1996 pertaining to NEPA/BRAC. Part III - Management Comments, contains a topical list of the Department of the Army's guidance memoranda.

Navy Policy. In our original evaluation, we found that the Navy did not have detailed written policy or guidance similar to that of the Army or Air Force (discussed below) concerning the NEPA/BRAC process. Comments from Navy personnel on a DoD internal questionnaire revealed a high level of frustration with resources being wasted trying to guess what should be done. Navy personnel indicated verbal instructions are frequently distributed to the field and that the instructions continually change.

The resources lost, and the frustrations associated with those frequent changes, can result in delays to the development and completion of NEPA documents for disposal and interim reuse. The lack of formal and consistent guidance provides the possibility for flawed NEPA documents that do not reflect the selected reuse found in the Local Redevelopment Authority reuse plan.

Recent discussions with a Navy representative revealed the Navy still has not developed NEPA/BRAC guidance similar to that of the Army or Air Force. The representative indicated that the Navy is applying the NEPA/BRAC requirements defined in the Code of Federal Regulations, chapter 32, part 91, on a case-by-case basis.

Air Force Policy. The Air Force "Base Conversion Handbook," Spring 1994, addresses the complete BRAC process. It provides detailed charts and narrative to explain the relationships among conversion planning, decision implementation, interim leasing, and installation management. The document also includes good information on how to consider NEPA for disposal and reuse within each of the relationships. The focus of the handbook places emphasis on providing detailed descriptions in NEPA documents of specific reuses for each parcel of land and applicable facilities. Similar to the Army manual, the Air Force guidance also provides clear and detailed direction in order to meet the NEPA requirements for BRAC disposal and interim leases. We believe the Air Force guidance provides clear direction on how to integrate NEPA into the overall BRAC process.

The "BRAC 95 Update" of the Air Force handbook was distributed in the first quarter of 1996. The revision incorporates changes to the Code of Federal Regulations, chapter 32, and guidance shown in the July 1995 DoD Base Reuse Implementation Manual.

Key Definitions Are Needed

Terms associated with BRAC actions were not defined in policy and guidance. As a result, the Military Departments had different perceptions concerning the level of detail NEPA documents should include for BRAC actions.

A review of the Federal Real Property Laws and DoD and Military Department policy and guidance revealed no definition of the terms "closure," "disposal," and "reuse." No definitions for those terms were found in the 1990 BRAC Act or the President's Five Part Plan. The term closure is defined in the DoD Base

Reuse Implementation Manual and the Code of Federal Regulations, chapter 32, part 90, "Revitalizing Base Closure Communities." The lack of definitions creates confusion and results in different interpretations by each Military Department. The lack of consistent use of terms has raised questions about whether NEPA documents should address only land disposal, only land reuse, or both.

Approximately half the DoD and Military Department NEPA and BRAC experts interviewed defined disposal as property transfer. The other half believed the definition also includes the reuse of the property. We believe NEPA documents that followed the first definition and addressed property transfer only would be less complex, time consuming, and costly to prepare than documents that addressed both land disposal and reuse. The terms need to be defined in order to provide direction to the Military Departments concerning NEPA documents addressing land disposal, or reuse, or both disposal and reuse.

Responsibilities of Host Installations and Tenants Regarding the National Environmental Policy Act

The Defense Logistics Agency (DLA) representatives indicated that DoD Directive 6050.1, "Environmental Effects in the United States of DoD Actions," July 30, 1979, does not define who is responsible for preparing NEPA documents for the disposal or interim leasing of tenant activity facilities on host installations. Section 2682 of 10 U.S.C. prohibits DLA from being a deed holder for land, because all real property of the DoD must be under the jurisdiction of a Military Department. Therefore, DLA leases parcels of land and buildings as a tenant activity on military installations. When the missions of those tenant activities or the host are eliminated by BRAC actions, confusion results over who should prepare the NEPA document. The DLA position is that it cannot make decisions on disposal and reuse for property it does not own. The DLA informally resolved this problem with the Military Departments, but indicated to us that the responsibility needs to be clearly defined in the DoD directive. Other tenants on BRAC closure installations may be faced with similar problems if the guidance is not clarified.

DoD Directive-4715.1, "Environmental Security," was released in February 1996. That directive encompasses all facets of the DoD environmental program. To support that Directive, a series of instructions is currently being developed to provide specific policy and guidance in each environmental area. DoD Instruction-4715.9, "Environmental Planning and Analysis," approved on May 3, 1996, but not yet released, delegates NEPA responsibilities to the Military Departments and requires them to promulgate (legally establish) their NEPA policy and guidance. Neither document defines who is responsible for preparing NEPA documents for the disposal nor interim leasing of tenant activity facilities on BRAC installations. We believe the responsibilities for the applicable NEPA\BRAC documents needs to be clearly defined in DoD policy.

Recommendations, Management Comments, and Evaluation Response

Revised, Deleted, and Renumbered Recommendations. Based on the Department of the Army management comments, the Army policy section of the draft report was revised to accurately reflect the date of publication of the Army "How-To Manual for Compliance With the National Environmental Policy Act," and the existing Army guidance memoranda pertaining to the subject of our evaluation. In addition, draft report Recommendations 1. and 4. were deleted because of management comments, and draft report Recommendations 2. and 3. were renumbered as Recommendations 1. and 2. in this report. Also, draft report Recommendation 2. (Recommendation 1. in this report) was revised based on management comments.

Our recommendations follow with a synopsis of management comments on the recommendations and evaluation responses.

1. We recommend that the Deputy Under Secretary of Defense (Environmental Security) update DoD Manual 4165.66-M, "Base Reuse Implementation Manual," July 1995, or issue guidance to define the terms "disposal" and "reuse."

Deputy Under Secretary of Defense (Environmental Security) Comments. The DUSD(ES) partially concurred and agreed that defining the terms "disposal" and "reuse" will add clarity to the BRAC process. However, the DUSD(ES) propose to do it by policy memorandum in lieu of modifying the DoD Manual 4165.66M, "Base Reuse Implementation Manual", July 1995.

Evaluation Response. We agree with DUSD(ES) comment since it has the same effect as modifying the "Base Reuse Implementation Manual" and we revised the recommendation accordingly.

2. We recommend that the Deputy Under Secretary of Defense (Environmental Security) direct the Military Departments to update their BRAC policy and guidance to define the terms "closure," "disposal," and "reuse" to agree with DoD Manual 4165.66-M or DUSD(ES) guidance, once Recommendation 1. has been implemented.

Deputy Under Secretary of Defense (Environmental Security) Comments. The DUSD(ES) concurred and stated the revisions to the guidance will occur in conjunction with the actions initiated in Recommendation 1.

Other Comments on the Evaluation

Army Comments. The Department of the Army, Assistant Chief of Staff for Installation Management, concurred with the evaluation results and recommendations but disagreed with specific statements in the report pertaining

to the Army guidance and manuals on the subject of the report. The Army provided specifics of the correct citations for the manual and memoranda on the evaluation.

Evaluation Response. We modified the text pertaining to the Army policy documents to ensure the correct document citations provided by them are reflected in this final report.

Part II - Additional Information

Appendix A. Scope and Methodology

Evaluation Scope

The scope of this evaluation encompassed a review of all 1988, 1991, and 1993 base closure installations having land available for disposal and with ongoing or completed NEPA documents. Documents addressing realignment installations were not considered in this report because of the time constraints imposed on the original evaluation by the Office of the Deputy Under Secretary of Defense (Environmental Security).

Evaluation Methodology

We gathered background data for this review from 30 reports, 13 congressional hearing documents, and 46 published newspaper and magazine articles addressing the NEPA process interaction with land disposal necessitated by BRAC. We used a variety of computer on-line database programs to conduct the search for sources of background materials. Time restrictions did not permit us to determine the reliability of each data base used, but the results of the evaluation were not affected by the reliability.

We also obtained and reviewed pertinent information (policy and guidance) from various representatives of the Assistant Secretary of Defense (Economic Security) (now the Office of the Deputy Under Secretary of Defense [Industrial Affairs and Installations]), the Office of the Deputy Under Secretary of Defense (Environmental Security), and the DoD Components involved in the base closure process. Additional information was obtained from three other Federal Government organizations having a major role in NEPA land disposal and interim leasing documentation. Those organizations were the U.S. Environmental Protection Agency, the Council on Environmental Quality, and the General Services Administration.

Meetings with DoD environmental and BRAC management officials identified land disposal and reuse, interim leases, and the value of NEPA in the BRAC process as the main NEPA/BRAC program concerns. Management stated that various DoD organizations and the Military Departments responsible for the NEPA and BRAC programs had voiced those concerns. There was also no consensus among those organizations on which caused the problem--the NEPA requirements or the BRAC policy and procedures.

Organizations and Individuals Visited or Contacted

Contacts During the Evaluation. We visited or contacted individuals and organizations within the DoD. Further details are available on request.

Appendix B. Requirements of the National Environmental Policy Act, the Base Closure and Realignment Act, and the President's Five Part Plan

NEPA Requirements Applicable to BRAC

In 1970, Congress enacted the National Environmental Policy Act (NEPA). Section 102(2)(C) of the act requires Federal agencies to prepare specific documents that address the impacts of all proposed Federal actions.

NEPA Requirements for Levels of Analysis and Documentation. Provisions of the Council on Environmental Quality NEPA implementing regulations contain criteria for selecting one of three levels of analysis and documentation that correspond to the impact of the proposed action.

The three levels of analysis and an explanation of each follow.

Categorical Exclusions (CATEXs). CATEXs are categories of actions that do not individually or cumulatively have a significant effect on the human environment. The Council on Environmental Quality NEPA regulations make allowances for CATEXs to exclude those categories of actions from further environmental analysis.

Environmental Assessments (EAs). EAs are prepared to define the extent of the environmental impacts of an action to determine whether the impacts are significant. Those documents are intended to be brief in nature and provide data on which to base an adequate decision. If the impacts are not significant, then the Component prepares a "finding of no significant impact."

Environmental Impact Statements (EISs). EISs are complex documents that address the impacts of a proposed action in detail and provide extensive data to support the alternative selected and the associated impacts.

Additional NEPA Requirements. In addition to addressing the impacts of the proposed actions, NEPA has additional requirements.

o Procedures should be in place to ensure environmental information is available to decisionmakers and citizens before decisions are made and prior to Federal actions.

o A detailed statement on the environmental impact of major Federal actions that significantly affect the environment should be included in every recommendation or report on proposals for legislation.

o The identification, assessment, and consideration of reasonable alternatives to proposed actions that would avoid or minimize adverse environmental effects should be included in the analysis.

o Agency officials should make decisions based on an understanding of environmental effects and take actions that protect, restore, and enhance the environment.

BRAC Act of 1990

The principal components of the BRAC Act of 1990 applicable to NEPA include the following.

o NEPA is not applicable to the closure decision.

o NEPA applies to actions during the property disposal process.

o NEPA applies to the relocation of functions from a military installation being closed or realigned to another military installation.

The President's Five Part Plan

The President's Five Part Plan concerning NEPA states the following.

o NEPA documents will be completed within 12 months of the date the community involved submits its final reuse plan.

o The community reuse plan will be the preferred alternative and basis for the proposed action and alternatives addressed in the NEPA analysis.

o The NEPA document will be used for both closure and reuse.

Appendix C. Report Distribution

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  Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense (Comptroller)
  Deputy Chief Financial Officer
  Deputy Comptroller (Program\Budget)
Deputy Under Secretary of Defense (Environmental Security)
Deputy Under Secretary of Defense (Industrial Affairs and Installations)
Assistant to the Secretary of Defense (Public Affairs)

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Assistant Secretary of the Army (Installations, Logistics, and Environment)
Auditor General, Department of the Army
Assistant Chief of Staff for Installation Management (Base Realignment and Closure Office)

Department of the Navy

Commandant of the Marine Corps
  Deputy Chief of Staff for Installations and Logistics
Assistant Secretary of the Navy (Financial Management and Comptroller)
Assistant Secretary of the Navy (Installations and Environment)
Chief of Naval Operations-Logistics (Facility and Engineering Division-N44)
Director, Base Closure Office, Naval Facilities Engineering Command
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Deputy Assistant Secretary of the Air Force (Environment, Safety and Occupational Health)
Auditor General, Department of the Air Force
Director, Air Force Base Conversion Agency

Other Defense Organizations

District Engineer, U.S. Army Corps of Engineers-Mobile District (Executive Agent for Base Realignment And Closure)
Staff Director, Environmental and Safety Policy Office, Defense Logistics Agency

Non-Defense Federal Organizations and Individuals

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Environment and Public Works
Senate Committee on Government Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Commerce
House Subcommittee on Health and Environment
House Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight
House Committee on National Security
House Committee on Science
House Subcommittee on Energy and Environment, Committee on Science

Part III - Management Comments

Deputy Under Secretary of Defense (Environmental Security) Comments

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

ACQUISITION AND TECHNOLOGY

23 OCT 1996

ODUSD(ES)/(EQ)

MEMORANDUM FOR DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE
OFFICE OF THE INSPECTOR GENERAL

SUBJECT: "Draft of a Proposed Evaluation Report, National Environmental Policy Act/Base Realignment and Closure Policy" (Project No. 6CB-5045)

The purpose of this memorandum is to respond to your July 3, 1996, request for our review and comments on the "Draft of a Proposed Evaluation Report, National Environmental Policy Act/Base Realignment and Closure Policy." Our comments are attached.

Thank you for the opportunity to comment on the draft report. If you have any questions concerning these comments, please call Len Richeson at (703) 604-0518.

Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

Attachment

Environmental Security — Defending Our Future

Final Report Reference

Draft of a Proposed Evaluation Report, National Environmental Policy Act/Base Realignment and Closure Policy (Project No. 6CB-5045)

General Comments

- The report should be revised to reflect the publication date for the Army's "How-To Manual for Compliance With the National Environmental Policy Act," as September 1995, instead of April 1995. — Page 5

- The report should also be revised to indicate that the Department of Army has issued the following guidance documents in addition to the "How-To Manual": — Page 5
  - Memorandum, HQDA, DAIM-BO, 1 September 94, Subject: BRAC/NEPA Documentation
  - Notice of Intent to Prepare Environmental Impact Analyses for Defense Base Realignment and Disposal Actions Resulting from the 1995 Commission's Recommendations, 22 September 1995, and October 95 correction thereto
  - Memorandum, HQDA, DAIM-BO, 1 April 1996, Subject: Delegation of Authority for BRAC NEPA Documentation
  - Memorandum, HQDA, DAIM-BO, 3 April 1996, Subject: General Information Concerning BRAC NEPA Documentation
  - Memorandum, General Counsel of the Department of the Army, 26 April 1996, Subject: Legal Review of the BRAC NEPA Documentation
  - Memorandum, HQDA, DAIM-BO, 17 July 1996, Subject: Checklist and Legal Review Certification for BRAC NEPA Documentation Staffing at HQDA

Recommendation 1

Recommend the Navy develop detailed written policy and guidance similar to those of the Army and Air Force to address the National Environmental Policy Act (NEPA)/Base Realignment and Closure (BRAC) process.

Response

Non-Concur – When the DUSD(ES) requested a review of the BRAC/NEPA process, the principle concern was whether compliance with NEPA caused delays in disposal decisions and, if so, what changes could be recommended to mitigate these delays. Therefore, in order for the DUSD(ES) to concur with this recommendation, DUSD(ES) would have to conclude that the Navy's current BRAC/NEPA guidance is inadequate and is contributing to delays. The Department of the Navy believes that SECNAVINST 5090.6, OPNAVINST 5090.1B, 32 CFR 775, and DoD's "Fast Track Cleanup Policy Memorandum" provide adequate guidance to its field personnel for performing the NEPA analysis required for disposal and reuse. The Navy further believes that it has been equally or more effective in addressing field level BRAC/NEPA issues through annual BRAC/NEPA workshops, environmental conferences, and other meetings designed to clarify the BRAC/NEPA process. Since the Navy does not appear to be experiencing — Deleted

Final Report Reference

delays due to the lack of NEPA/BRAC guidance, it is difficult to require the Navy to develop such guidance at this time. However, the DUSD(ES) will follow-up this recommendation with a review of the Navy's performance in completing its NEPA/BRAC responsibilities within the timelines established by the fast-track cleanup program to determine whether further action is warranted.

Recommendation 2

Renumbered Recommendation 1.

Recommend the Deputy Under Secretary of Defense (Industrial Affairs and Installations) (DUSD (IA&I)) update DoD Manual 4165.66-M, "Base Reuse Implementation Manual," July 1995, to define the terms "disposal" and "reuse."

Response

Revised

Partially Concur – We agree that defining the terms "disposal" and "reuse," as well as "closure," has merit. However, since the primary reason for defining these terms is to add clarity to the BRAC/NEPA process, DoD proposes that the definitions be issued to the Military Departments by policy memorandum from DUSD(ES) and be included in the "DoD Guidance on Accelerating the NEPA Analysis Process for Base Disposal Decisions" as part of the "Fast Track Cleanup" policy memorandum issued on September 9, 1993, and reissued on May 18, 1996. The DUSD(ES) will work with the DUSD(IA&I), Military Departments, and DoD General Counsel to appropriately define these terms.

Recommendation 3

Renumbered Recommendation 2.

Recommend the Deputy Under Secretary of Defense (Environmental Security) direct the Military Departments to update their BRAC policy and guidance to define the terms "closure," "disposal," and "reuse," to agree with DoD Manual 4165.66-M, once Recommendation 2 has been implemented.

Response

Concur – This will occur in conjunction with the action taken under Recommendation 2.

Recommendation 4

Deleted

Recommend the Deputy Under Secretary of Defense (Environmental Security) revise DoD policy and guidance to identify the host installation as being responsible for preparing National Environmental Policy Act documents for tenant activities residing on host installation land that would be impacted by Defense base realignment and closure actions.

Response

Non-Concur – Guidance concerning responsibility for NEPA already exists. The "Fast Track Cleanup Policy" memorandum issued on September 9, 1993, and reissued, with modifications,

on May 18, 1996 (attached), clearly states that DoD Components responsible for making decisions on disposal and reuse will ensure that all environmental analyses required by NEPA be completed. This includes interim leases issued "in furtherance of conveyance," since they obviously have direct impacts on disposal. The question of responsibility arose almost two years ago in conjunction with the closing activity at the Defense Logistics Agency's (DLA) Defense Personnel Support Center. Here, the Army owns the land, but DLA is the installation manager. Coincidentally, the DoDIG review prompting this recommendation was on-going at this time, which provided an opportunity for DLA to raise this as a potential issue needing policy resolution. DLA and the Army agreed shortly thereafter on NEPA responsibility, which was based on the "Fast Track Cleanup Policy." We have discussed this issue with DLA and concluded that this is not a recurring issue requiring additional guidance from DUSD(ES) at this time. We have also discussed this issue with the Navy and the Air Force and neither Service viewed this as an issue requiring any further guidance.

DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

18 MAY 1996

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Fast Track Cleanup at Closing Installations

The President announced on July 2, 1993, a base closure community reinvestment program directed at the revitalization of local communities affected by base realignment and closure (BRAC) actions through economic and fast track cleanup initiatives. The Fast Track Cleanup policy memorandum was issued on September 9, 1993. It included procedures for establishing cleanup teams and conducting comprehensive "bottom up" reviews of cleanup plans and schedules at closing installations; accelerating the National Environmental Policy Act process; involving the public; determining environmental suitability to lease; and implementing the Community Environmental Response Facilitation Act for identification of uncontaminated properties.

Based on the success the Department has had with the Fast Track Cleanup program at installations in previous base closure rounds, the program is being extended to bases selected for closure or realignment in 1995. To implement Fast Track Cleanup at these locations and continue the program at bases in the previous closure rounds, the following Fast Track Cleanup policies are being reissued, with modifications:

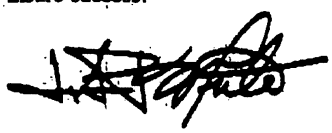
- *DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams*
- *DoD Guidance on Accelerating the NEPA Analysis Process for Base Disposal Decisions*
- *DoD Guidance on Improving Public Involvement in Environmental Cleanup at Closing Bases*
- *DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease*
- *DoD Policy on the Implementation of the Community Environmental Response Facilitation Act*

UO6981 /96

Components should refer to the joint DoD/Environmental Protection Agency (EPA) Restoration Advisory Board (RAB) Implementation Guidelines, issued September 27, 1994, for additional assistance in establishing RABs at BRAC Installations.

The bottom up reviews and cleanup plans discussed in the attached *DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams*, and described in the DoD BRAC Cleanup Plan (BCP) Guidebook (Fall 1995 edition), must be completed by November 1, 1996, for each closing or realigning installation identified through BRAC actions in 1995, where a BRAC Cleanup Team (BCT) has been established. A BCP Abstract shall be submitted to the Under Secretary of Defense (Acquisition & Technology) no later than November 29, 1996, and annually thereafter, for all installations in each of the four BRAC rounds (1988, 1991, 1993, and 1995), where a BCT has been established.

The Department's best efforts are critical to communities successfully transitioning from base closure to economic recovery through economic redevelopment. I ask for your personal support and urge you to give this initiative continual, high level management attention and to allocate the resources necessary to help insure success.



Attachments

2

DOD GUIDANCE ON ACCELERATING
THE NEPA ANALYSIS PROCESS
FOR BASE DISPOSAL DECISIONS

I. PURPOSE

This guidance implements the President's plan to expedite the disposal of closing military bases by directing that all documents required by the National Environmental Policy Act (NEPA) of 1969 be completed, to the extent practicable, within 12 months of receipt of a Local Redevelopment Authority's (LRA) final reuse plan. It requires expedited production of an early, high-quality environmental analysis which will be useful in the LRA's ongoing planning efforts as well as in the Department of Defense (DoD) Component's property disposal decision making, thus expediting Component disposal decisions, the productive reuse of the property, and the economic redevelopment of the community. This analysis may also be used to support DoD Component decisions on interim outleasing of parcels for early reuse and other actions supporting conversion of the installation to civilian reuse.

II. APPLICABILITY AND SCOPE

This policy applies to all DoD installations being closed or realigned pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC 88), P.L. 100-526, or the Defense Base Closure and Realignment Act of 1990 (DBCRA), P.L. 101-510, as amended. The policy's scope includes all environmental analyses required under NEPA to support DoD Component decisions on disposition of BRAC property.

III. POLICY

It is DoD policy that DoD Components responsible for making decisions on disposal and reuse of installations pursuant to the Base Closure statutes will implement measures to assure that all environmental analyses required by NEPA be completed, to the extent practicable, within 12 months of the date the LRA involved submits its final reuse plan. Except in exceptional circumstances, a single NEPA analysis will be prepared to support decisions regarding disposal alternatives and probable reuse of the installation.

IV. PROCEDURES AND RESPONSIBILITIES

A. Procedures

1. Every effort should be made by the DoD Office of Economic Adjustment (OEA) and the DoD Components to aid and encourage the LRA to arrive at a "final" suitable reuse plan at an early stage. An LRA's reuse plan is considered "final" when officially adopted by the LRA.

2. The LRA's reuse plan, if available and to the extent legally permissible, will be a primary factor in the development of the proposed action, reasonable

alternatives, and effects analysis in the DoD Component's NEPA process for the disposal action. Using the reuse plan in this manner will meet the requirement of law that the reuse plan be treated as part of the proposed federal action. The DoD Component will alert the LRA to potential environmental problems and cooperatively seek any necessary modification to the reuse plan. The DoD Component's obligation under NEPA is to evaluate the proposed action and reasonable alternatives for the disposal and reuse of BRAC property.

3. Where an EIS is required, DoD Components will assure that the formal EIS process is initiated so that it can be completed consistent with the timetable developed for property disposal. Gathering data and conducting background analysis for the likely disposal scenarios for the property should begin as early as possible.

This early data development should be combined with other ongoing processes supporting property disposal actions, such as the preparation of Environmental Baseline Surveys. Likewise, other environmental studies undertaken to support the EIS process, such as those regarding wetlands determinations, threatened and endangered species, and cultural or historic resources, should be commenced at this early stage to assure timely compliance with the applicable regulatory requirements.

4. Advance data development could begin even before the publication in the Federal Register of the Notice of Intent (NOI) to produce the EIS. This advance data development will require allocation of sufficient staff, contracting support, and other necessary resources.

5. Data development will continue after publication of the NOI in the Federal Register and will be conducted with the participation of the LRA and other appropriate agencies. Data developed in the early stages of the NEPA process will be provided to the LRA to aid in finalization of its reuse plan.

6. In the event that the LRA does not submit a reuse plan by the time the DoD Component needs to initiate the NEPA analysis necessary to support a disposition decision for the property, the DoD Component will begin preparation of its NEPA analysis using reasonable assumptions as to the likely reuse scenario and its reasonable alternatives.

Reuse assumptions may be based upon such factors as the DoD component's evaluation of the highest and best use of the property; existing use of the facilities; local zoning; specific proposals or plans for the reuse of all or parts of the installation; limitations based on environmental factors such as contamination, cultural and historic resources, wetlands, endangered species; results of the Federal agencies' screening process; proposals from public benefit transfer

applicants or sponsoring agencies; and prior experience in disposal and reuse actions at similar installations.

7. If no final reuse plan is submitted by the LRA before the final NEPA document is completed, the DoD Component will complete its NEPA process and issue a Finding of No Significant Impact (FONSI) or Record of Decision (ROD)in the absence of a final reuse plan. In the event that a final reuse plan is submitted after the FONSI or ROD but prior to transfer of title to the property, the DoD Component will determine whether the environmental impacts of the land uses identified in the reuse plan are adequately addressed in the completed NEPA document. Where those impacts are adequately addressed, the DoD component need take no further action under NEPA. Where those impacts are not adequately addressed, the DoD component will prepare any additional analysis required to comply with law or regulation.

8. To the greatest extent practicable, DoD Components shall ensure that all NEPA documentation prepared in support of disposal decisions includes an analysis of whether the disposal and reuse result in any disproportionately high and adverse human health and environmental effects on minority and low income populations. This requirement is in accordance with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations."

B. Responsibilities

The Secretaries of the Military Departments and Director of the Defense Logistics Agency, through their organizations, shall be responsible for:

1. Delegating authority and responsibility to the lowest level(s) to achieve timely, effective NEPA analyses.

2. Ensuring sufficient resources are available to initiate and complete the NEPA analysis.

3. Ensuring DoD Base Transition Coordinators (BTC) and BRAC Environmental Coordinators (BEC) are involved in the NEPA analysis process for their installations.

4. Establishing adequate procedures to provide information on the NEPA analysis process and actions so as to permit meaningful community and public participation in the process.

3

Department of the Army Comments

Final Report Reference

DEPARTMENT OF THE ARMY
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT
600 ARMY PENTAGON
WASHINGTON DC 20310-0600

REPLY TO ATTENTION OF

23 AUG 1996

DAIM-BO

MEMORANDUM THRU

DIRECTOR OF THE ARMY STAFF

for ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS AND ENVIRONMENT)

FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE (AUDITING)

SUBJECT: Draft Report on National Environmental Policy Act(NEPA)/Base Realignment and Closure (BRAC) Policy (Project No. 6CB-5045)

1. This is in response to the subject audit report dated 3 July 1996. OACSIM concurs with the evaluation results and recommendations; however, we disagree with specific statements in the report. We submit the following comments for accuracy:

a. The Army published the "How-To Manual for Compliance With the National Environmental Policy Act" in September 1995. The final audit report should not reference the April 1995 version of the manual. Page 5

b. The report mentioned the "How-To Manual" as the only NEPA/BRAC policy and guidance that the Army has released. Enclosure 1 contains a list of additional Army NEPA/BRAC policy and guidance. Page 5

2. Points of contact in the OACSIM Base Realignment and Closure Office are Ms. Barbara Anderson, (703) 693-3501, and Brenda Mendoza, (703) 695-8030.

Encl

for FRANK L. MILLER, JR.
Major General, GS
Assistant Chief of Staff
for Installation Management

CF:
SAAG-PMF-E (Ms. Rinderknecht)
DAIM-ZR (Mrs. Moore)

Coordination:
SAILE-ESOH - Concur, LTC Weaver/614-9555

LIST OF BRAC ENVIRONMENTAL PROGRAM GUIDANCE
(PROVIDED TO MR. TOPLISEK, DODIG, JUL 96)

GENERAL GUIDANCE CONTAINING NEPA:

Memo, HQDA, DAIM-BO, 28 Feb 95, subject: HQDA BRAC Implementation Guidance - BRAC 95, Annex H

Memo, HQDA, DAIM-BO, 8 May 95, subject: BRAC 95 NEPA and Cultural/Natural Resources Plans of Action

Memo, HQDA, DAIM-BO, 31 May 96, subject: Guidance for Leasing of BRAC Properties [contains a sample Finding of Suitability to Lease (FOSL)]

NEPA-SPECIFIC GUIDANCE:

Memo, HQDA, DAIM-BO, 1 Sep 94, subject: BRAC NEPA Documentation.

Notice of Intent to Prepare Environmental Impact Analyses for Defense Base Realignment and Disposal Actions Resulting from the 1995 Commission's Recommendations, 22 Sep 95, and Oct 95 correction thereto

Memo, HQDA, DAIM-BO, 1 Apr 96, subject: Delegation of Authority for BRAC NEPA Documentation

Memo, HQDA, DAIM-BO, 3 Apr 96, subject: General Information Concerning BRAC NEPA Documentation - BRAC 95

Memo, General Counsel of the Department of the Army, 26 Apr 96, subject: Legal Review of BRAC NEPA Documentation

Memo, HQDA, DAIM-BO, 17 Jul 96, subject: Checklist and Legal Review Certifications for BRAC NEPA Documentation Staffing at HQDA.

Department of the Navy Comments

DEPARTMENT OF THE NAVY
THE ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SEP 11 1996

MEMORANDUM FOR DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE
OFFICE OF THE INSPECTOR GENERAL, DOD

Subj: DRAFT DODIG EVALUATION REPORT ON NATIONAL ENVIRONMENTAL POLICY ACT AND BASE REALIGNMENT AND CLOSURE POLICY (DODIG PROJECT NO. 6CB-5045)

Ref: (a) Subject Draft Report of 3 Jul 96

Encl: (1) Department of the Navy Response to the Draft DODIG Evaluation Report on National Environmental Policy Act and Base Realignment and Closure Policy (DODIG Project No. 6CB-5045)

I am responding to the subject draft evaluation report forwarded by reference (a). The Department of the Navy response is provided at enclosure (1).

My point of contact for this matter is Mr. Lew Shotton at (703) 614-1295.

Cheryl Kundaras
for ROBERT B. PIRIE, JR.

Final Report Reference

Department of the Navy Response
to
Draft DODIG Evaluation Report of July 3, 1996
on
National Environmental Policy Act/Base Realignment and Closure Policy
Project No. 6CB-5045

Recommendation 1:

Deleted

We recommend the Deputy Under Secretary of Defense and Navy clarify policy and define responsibilities associated with the development of National Environmental Policy Act documents for BRAC program actions. Our recommendations are intended to accelerate the transfer and reuse of BRAC closure installations.

Department of the Navy (DoN) Position:

Non-concur. SECNAVINST 5090.6, OPNAVINST 5090.1B, and 32 CFR 775 provide adequate guidance for NEPA analysis required for disposal and reuse. The NEPA process for BRAC base disposal/realignment and reuse is the same as for any major Federal action with the potential for significantly affecting the quality of the human environment.

Evaluation Team Members

This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD.

Paul J. Granetto
William C. Gallagher
Harold Lindenhofen
Maryjane Jackson