

NEW WRINKLES AND CHALLENGES AS DOD, PRIVATE SECTOR AND COMMUNITIES ATTEMPT TO MOVE BRAC PROPERTIES

In contrast with other U.S. communities, which have fought to keep open nearby military facilities that have been considered for closure or re-assignment under successive rounds of DOD's Base Realignment and Closure (BRAC) program, officials in Concord, California, have actively sought the transfer of the Concord Naval Weapons Station to the city for redevelopment. Facing both rapid economic and population growth and a need to preserve open space, the city and many local stakeholders see the property—with its rolling hills and herds of tule elk—as more valuable in civilian hands, to serve both the economic and conservation needs in balance.

Yet one battle has been traded for another, largely—and perhaps ironically—as a function of the unexpected consequences of recent BRAC authorities that were designed to streamline the transfer of military properties to non-military use.

For much of 2006, the Concord City Council, acting as the Local Redevelopment Authority (LRA), and civic groups engaged in the process—not without its familiar tug of war between developers and conservationists—of developing scenarios for the future reuse of the roughly 5,100 acres constituting the inland portion of the weapons station. Then in October, the Navy announced that it was considering a plan to transfer the property directly to a private firm for redevelopment. It was subsequently disclosed that the private firm was **The Shaw Group** (Baton Rouge, La.; www.shawgrp.com), which had submitted an unsolicited proposal to purchase the property, clean it up, and redevelop it.

While the Shaw proposal came as a surprise to the Concord stakeholders, the fact remains that a transfer of military property under the circumstances proposed by Shaw—that is, to a private entity for redevelopment—is now authorized under Section 2905(e) of the legislation establishing the BRAC program. It is this authority that

makes the “BRAC 2005” round truly different from previous rounds of base realignments and closures, according to Richard Engel, a senior program manager at **Marstel-Day LLC** (Alexandria, Va.; www.marstel-day.com).

“DOD is asking communities to follow a well-established, well-defined process to pursue the transfer and redevelopment—and now you have this other avenue for transfer through Section 2905(e),” Engel notes. These two avenues of property transfer will have to be reconciled, and a number of questions will have to be answered, he declares. For example, will redevelopers, whose interest is obviously stimulated by the 2905(e) authority, be patient enough to wait out the community planning process? Also, if you are a cash-strapped military authority that's been approached by an eager redeveloper, what's your appetite for confronting potentially opposing community groups?

The 2905(e) authority arises from some of Congress's frustration with the slow pace of BRAC transfers, Engel explains. “In 1999, the BRAC law had been changed to require the military departments to convey land to communities at no cost under economic development conveyances” (EDCs). The EDC process, however, did not accelerate the rate at which the bases were being conveyed, as communities squabbled with DOD regarding cleanup standards and other issues. Thus, “in 2002, Congress reversed itself,” Engel notes. “The EDC still exists, but now the community will have to pay fair market value.”

As a result of this change, DOD no longer expects to see a high volume of EDC requests from local communities, Engel continues. That appears to be just fine with DOD. In a rule published in the *Federal Register* late last year, DOD straightforwardly declared its view that the proper role of LRAs is planning and rezoning, but that the market should determine how the actual redevelopment takes form.

The landscape today thus looks like this: “If there are developers out there willing to take the property as is and redevelop it, DOD will sell the property to them,” Engel observes. “This is a big change compared with previous BRAC rounds.” He adds, “it's still fairly early in the process. What we're finding is that the local communities are completing their reuse planning processes. We are at a point now that, once those plans

are completed, DOD will begin the process of seeing whether any parcels can be sold to private developers.”

An additional wrinkle arises from the fact that the 2905(e) process is intended to be competitive. The big question, Engel points out, is, “how will DOD accommodate multiple bidders, each seeking to design its own cleanup plan for the site and each seeking regulatory approval for that plan?” Beyond that choice, how will DOD incorporate local interests in the selection of candidate cleanup plans and redevelopment options?

“One of the proposals that has been suggested is to conditionally select a purchase and cleanup proposal and then give the successful bidder time to achieve regulatory closure,” Engel says. “You could have a bidder offering the highest bid, one that seems to have a good cleanup plan that's consistent with what the community wants, and the military could say, ‘okay, we'll conditionally offer the property to you,’ and set a certain number of months to obtain regulatory closure.”

Certainly, the baseline for success will be the initial establishment of a reuse plan. “Early on, you really need to have the local community come up with the comprehensive plan and the implementing zoning,” Engel says. “That's the basis for everything else that follows—the cleanup standards, the technologies and solutions.” After that, the bidding teams will have to have environmental resources or environmental partners with a good degree of credibility.

Apart from these new challenges, has activity under the BRAC 2005 framework been more streamlined and accelerated? The BRAC program has certainly suffered like other DOD cleanup projects from delay in the establishment of an FY2007 federal budget, and from the diversion of funds to higher priorities like the war on terror and homeland security. Engel, however, says he has seen a welcome acceleration in the early phases of BRAC transfer—notably, the process of screening sites for potential use by other federal agencies, and the launch of reuse planning efforts. “The first couple of phases in the BRAC 2005 process have been methodical and adhered to timelines. What's coming to the fore now is how the 2905(e) will play out.”

The message here, Engel says, is “to be continued.” ■