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Economic Development Conveyances for BRAC Properties

Congress has approved five rounds of military base realignments and closures under the Base Realignment and Closure (BRAC) process: in 1988, 1991, 1993, 1995, and 2005. Since 2005, Congress has not authorized additional BRAC rounds. Recent funding for prior BRAC rounds has focused on properties where environmental remediation is not complete. A 2022 Government Accountability Office (GAO) report found that 17% of BRAC properties closed under prior rounds awaited environmental remediation and/or conveyance.

Regulations for BRAC property disposal identify multiple mechanisms for the Department of Defense (DOD) to transfer ownership of (i.e., “convey”) surplus BRAC property for redevelopment. Those include:

- economic development conveyances (EDCs) at no cost, below market value, or at cost, in which a local redevelopment authority (LRA) agrees to certain conditions designed to generate employment at the property;
- public benefit conveyances;
- negotiated sales to state or local governments;
- conservation conveyances; and
- public sales.

BRAC Property Conveyance Process

The Defense Base Closure and Realignment Act of 1990 (Base Closure Act, P.L. 101-510, as amended, 10 U.S.C. §2687 note) and DOD regulations (32 C.F.R. Part 174) outline the DOD’s steps to put a property through the BRAC process. Those include selecting a property for closure or realignment, closing or realigning the property’s military mission, remediating environmental issues, and conveying the property, either to another federal agency or to a nonfederal entity, for civilian reuse.

LRAs are central to several aspects of the BRAC and EDC processes. The Base Closure Act defines an LRA as “any entity ... recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect for the installation.” Once a BRAC property is approved for closure and declared surplus—meaning no federal department or agency identifies a need for it—local governments of jurisdiction typically organize an LRA to create and execute a redevelopment plan for the property. Once finalized, the DOD also uses the redevelopment plan as its basis to prepare the environmental review analysis under the National Environmental Policy Act (42 U.S.C. §4321 et seq.) in order to evaluate the potential

environmental impacts of the disposal of the property. The environmental remediation activities the DOD must conduct are also based on land use under the plan. The redevelopment plan is distinct from the EDC application (discussed below).

32 C.F.R. Part 174 stipulates that there is generally to be only one recognized LRA per BRAC property. Although the LRA is responsible for preparing the redevelopment plan, the DOD may use any of the conveyance mechanisms identified in regulation to dispose of a BRAC property. The LRA may desire an EDC, but neither statute nor regulation bind the DOD to that particular conveyance mechanism.

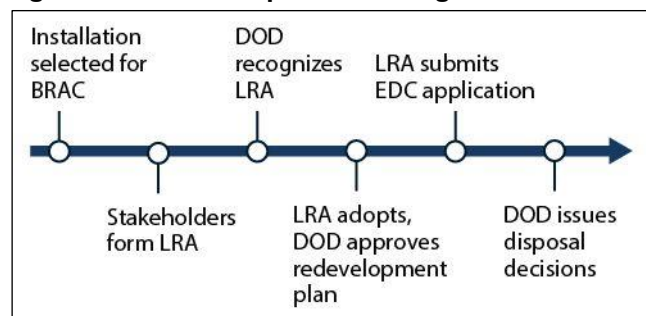
Economic Development Conveyance Process

The Base Closure Act authorizes the DOD to use an EDC to transfer real and personal property at a BRAC property to an LRA for the purposes of job generation.

After completing the redevelopment plan, the LRA may submit an EDC application to the DOD. 32 C.F.R. Part 174 requires, among other things, the EDC application to describe the property’s intended uses; describe how the EDC will contribute to short- and long-term job generation; include a business plan with a development timetable and financial feasibility analysis; and project the number and type of new jobs the EDC will help create. The secretary of the military department with jurisdiction over the property reviews the application and must provide a preliminary determination within 30 days of receiving the application “to the extent practicable.”

Figure 1 presents selected steps for obtaining an EDC. Remediation is an additional step prior to conveyance.

Figure 1. Selected Steps to Obtaining an EDC



Source: DOD, *Base Redevelopment and Realignment Manual*

According to the Base Closure Act, conveyance of a BRAC property under an EDC may be “for consideration at or below the estimated fair market value or without

consideration.” If the LRA makes some form of payment (a “consideration”), the DOD may accept a share of the revenues that the LRA receives from sales and long-term leases of the conveyed property, in-kind payments, real property and improvements, or other consideration that the Secretary of Defense or secretary of the transferring military department deems appropriate.

Per 32 C.F.R. Part 174, the terms and conditions of a transfer may take into account nine different factors. Most of the factors address economic considerations—those relating to the redevelopment of the property but also including the benefit to the federal government. However, others are based on the potential impact on other federal agency interests and compliance with applicable state or local laws and regulations.

The Base Closure Act requires an LRA that receives a BRAC property under a no-cost or below-market EDC to agree to use proceeds from any sale or lease of the property or a portion of the property made within seven years after the transfer date to support the economic development of the property site. Uses of those proceeds that qualify as supporting economic development are:

- road construction;
- building or maintaining transportation management facilities;
- storm and sanitary sewer construction;
- building or maintaining police and fire facilities and other public facilities;
- utility construction;
- building rehabilitation;
- historic property preservation;
- building or maintaining pollution prevention equipment or facilities;
- demolition;
- disposal of hazardous materials and hazardous waste generated by demolition;
- landscaping, grading, and other site or public improvements; and
- planning for or marketing the redevelopment.

Policy Considerations

As Congress has not authorized any new BRAC rounds since 2005, its interest in EDCs may be in oversight of the use of EDCs at BRAC properties still awaiting conveyance. (According to GAO, 1,486 BRAC properties awaited remediation and/or conveyance as of September 2022.) This oversight may include determining the conditions under which the DOD transfers a BRAC property using an EDC.

Congress has periodically amended EDC stipulations—particularly the DOD’s authority to transfer BRAC properties with below-market or no-cost EDC. As discussed below, these changes occasionally reflected Congress’s intent to ensure appropriate justification for using EDCs.

In the 106th Congress, the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65) included a provision authorizing below-market or no-cost EDCs under specified conditions. However, in the 107th Congress, some Members voiced concerns about the EDC provisions in P.L. 106-65. Referring to those provisions, the committee report accompanying S. 1416—the Senate Committee on Armed Services’ version of the FY2002 defense authorization bill—stated, “When the Department of Defense requested this legislative change, its stated intent was to apply stringent criteria to this new authority.... Since enactment of this new authority, every conveyance of base closure property has been at no cost to the recipient. The Committee urges the Department of Defense to ... ensure that conveyances for economic development at less than fair market value, in particular those to be conveyed at no cost, merit such treatment.”

The related adopted version of the defense authorization bill—the National Defense Authorization Act for Fiscal Year 2002 (P.L. 107-107)—required that the DOD “seek to obtain consideration ... in an equal amount to the fair market value of the property.” P.L. 107-107 did not prohibit the DOD from transferring BRAC properties with below-market or no-cost EDCs. However, the law’s conference report expressed Congress’s intent to “require the Secretary of Defense to obtain fair market value for economic development conveyances in most cases, unless the Secretary determines the circumstances warrant a below-cost or no-cost conveyance.”

The National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) again amended EDCs’ criteria. The law allowed the continued use of below-market or no-cost EDCs. However, the law added conditions to a below-market or no-cost EDC, stipulating that the DOD’s determination of how to price an EDC “may account for the economic conditions of the local affected community and the estimated costs to redevelop the property.”

Congress’s oversight of EDCs may entail certain questions. One may involve the short- and long-term impacts of an EDC. For example, a below-market or no-cost EDC may lessen the federal government’s short-term financial return. However, if the EDC recipient is able to quickly generate jobs or real estate gains, taxes from those outcomes may prove more valuable to the federal government than the unrealized revenue from the below-market or no-cost EDC. Another question may be whether the federal government is seeking to maximize its financial return or prioritize local economic development, which could affect how the DOD prices and distributes EDCs. As Congress provides oversight of EDCs, these may be relevant concerns.

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