

PLANNING FOR THE REUSE OF CLOSING MILITARY BASES:  
THE NEED FOR CONSENSUS BUILDING

by

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Bachelor of Science  
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Submitted to the Department of  
Urban Studies and Planning in Partial Fulfillment of  
the Requirements for the  
Degree of

MASTER OF SCIENCE  
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ABSTRACT

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Planning for the reuse of closing military bases is one of the most significant land use issues currently faced by communities throughout the U.S. This process is cumbersome due to the complexity of federal disposition procedures and the sheer magnitude of such an endeavor. Yet, this effort is often further complicated by the jurisdictional disputes which may erupt in the base transitioning process, often leading to stalemate and delay.

This thesis focuses on the application of consensus building and mediated negotiation in the military base reuse planning process. My hypothesis is that these tools may be of value for the federal, state, and local authorities attempting to establish a collaborative planning effort. My analysis shows that with mediation and active federal involvement, some base closure conflict may be diffused. Chapter 1 provides the context; Chapter 2 outlines the federal property disposal procedures; Chapters 3 and 4 look at two base closure cases where planning impasses occurred; Chapter 5 analyzes the facts of these cases from a conflict management and dispute resolution perspective; and, Chapter 6 concludes the thesis by suggesting proposals for applying consensus building in the base closure environment.

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## TABLE OF CONTENTS

	<u>Page Number</u>
 <u>CHAPTER 1 - INTRODUCTION</u>	
1.0	Introduction . . . . . 6
1.1	Consensus Building and Negotiation . . . . . 11
1.2	The Call for Mediation . . . . . 13
1.3	Mediation in Land Use Disputes . . . . . 14
1.3.1	Denver Metropolitan Water Roundtable . . . . . 14
1.3.2	The "Negotiated Investment Strategy" . . . . . 16
1.4	The "Promise and the Pitfalls" of Mediation . . . . . 17
1.5	Mediation of a Military Base Disposal Dispute . . . . . 21
1.6	Federal Statutes Encouraging Negotiation . . . . . 23
 <u>CHAPTER 2 - THE BASE DISPOSAL PROCESS</u>	
2.0	Introduction . . . . . 26
2.1	History of Base Disposal . . . . . 26
2.2	The Players . . . . . 28
2.3	Federal Property Disposal Procedures . . . . . 29
2.4	Environmental Aspects of the Base Disposal Process . . . . . 33
2.4.1	The Environmental Impact Analysis Process . . . . . 34
2.4.2	Base Cleanup and Remediation . . . . . 35
2.4.3	Recent DoD/EPA Joint Ventures . . . . . 39
2.5	Community Planning . . . . . 40
2.6	The Clinton Administration Strategy . . . . . 42
 <u>CHAPTER 3 - THE HAMILTON EXPERIENCE</u>	
3.0	Introduction . . . . . 45
3.1	The Context . . . . . 46
3.2	The 1973 Closure Action and Its Aftermath . . . . . 48
3.3	Referendums and Initiatives in the Base Reuse Planning Process . . . . . 55
3.4	The 1988 Closure . . . . . 57
3.5	The Disputes Revisited . . . . . 59

## TABLE OF CONTENTS

	<u>Page Number</u>
 <u>CHAPTER 4 - THE GEORGE AFB CASE</u>	
4.0	Introduction . . . . . 62
4.1	The Context . . . . . 62
4.2	The 1988 Closure and The Reuse Planning Process . . . . . 63
4.3	The George AFB Reuse Plans . . . . . 67
4.4	The Impasse . . . . . 70
4.5	Attempts at Mediation . . . . . 71
4.6	Federal Indecision . . . . . 73
4.7	Current Affairs . . . . . 75
 <u>CHAPTER 5 - ANALYSIS</u>	
5.0	Introduction . . . . . 76
5.1	The Issues Revisited . . . . . 76
5.2	The Problematic Elements . . . . . 79
	5.2.1 Fairness, Voting Rights, and Power . . . . . 79
	5.2.2 Lack of Face-to-Face Communication . . . . . 80
	5.2.3 History of Conflict . . . . . 80
	5.2.4 Complex Issues . . . . . 81
	5.2.5 Procedural Bureaucracy . . . . . 81
	5.2.6 Federal Indecision . . . . . 82
	5.2.7 Lack of Effective Funding Delivery Systems . . . . . 82
	5.2.8 No Federal Default Options . . . . . 83
5.3	Mediation Applied . . . . . 83
	5.3.1 Fairness in Base Reuse Planning . . . . . 84
	5.3.2 Objective, Third-Party Mediation . . . . . 85
	5.3.3 Joint Fact Finding . . . . . 86
	5.3.4 Delivery Vehicle for Federal Assistance . . . . . 86
	5.3.5 Forum for Discussion of the Issues . . . . . 87
5.4	Where Mediation Falls Short . . . . . 88
5.5	The "Failure" of Mediation at George AFB . . . . . 88
	5.5.1 Mediation vs. Facilitation . . . . . 89
	5.5.2 "Contaminated" Entry . . . . . 89
	5.5.3 Commitment and Duration . . . . . 90
	5.5.4 Encouraging Participation . . . . . 90
5.6	Summary . . . . . 91

## TABLE OF CONTENTS

	<u>Page Number</u>
<u>CHAPTER 6 - CONCLUSION</u>	
6.0 Life Without Negotiation . . . . .	92
6.1 The ADR Law and Base Closure . . . . .	93
6.2 Federal Default Options . . . . .	93
6.2.1 Federal "Carrots" . . . . .	94
6.2.2 Federal "Sticks" . . . . .	94
6.3 Negotiation in Future Base Closures . . . . .	96
Bibliography and Selected References . . . . .	97

## **CHAPTER 1 - INTRODUCTION**

### **1.0 Introduction**

The end of the Cold War, as well as the fundamental restructuring of the U.S. military has resulted in a series of military base closures which, with the exception of the drawdown after World War II, is unprecedented in terms of land transfer and economic impact.

For the communities affected by the closure, it is difficult to imagine what the future holds for these massive land parcels in terms of ownership, control, and economic development. Yet, perhaps even more daunting is the path that they must follow. The challenges are awesome. After all, not only are the communities dealing with planning for the reuse of what was, in most cases, one of the largest economic engines in the region, they must also work with a complex, slow-moving federal bureaucracy.

Major hurdles faced by the communities planning for reuse of the base include complying with and working within the federal disposal process, adhering to federal and state environmental laws, dealing with changing federal priorities, and establishing some measure of control in the planning process.

The federal property "disposal" process is a formal set of statutory guidelines and procedures which must be followed in the transfer of all federal land to local public or private ownership. As the nomenclature suggests, this process is oriented

towards the federal withdrawal from ownership, with some anticipated "return on investment" in terms of either sale of the property or cost savings (from no longer having to maintain the property), or both. Unfortunately, these guidelines are time consuming and confusing. Furthermore, the federal authorities tasked to carry out the disposal action often apply the procedures in markedly different ways.

Coupled with the federal disposition guidelines, the environmental statutes affecting base closure weave a more complicated web. The most pervasive of these environmental laws is the Environmental Impact Review (EIR) process, where the federal, state and local officials must coordinate to produce a comprehensive analysis of the effects that existing and proposed uses will have on man's environment. The EIR procedure is inextricably linked to the federal disposal process as the actions typically occur simultaneously and, any proposed federal, state or local uses must be considered in the Environmental Impact Statement (EIS).

Changing federal priorities add a new layer of complexity to the disposal and reuse of military bases.<sup>1</sup> The most clear change in direction came in the 1988 base closure legislation, which shifted federal disposal objectives. Prior to the 1988 Base Realignment and Closure Act (the first of the most recent base closure rounds), the federal government position regarding excess land disposal was to expedite transfer to the local community with no expectation of economic returns (other than the

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<sup>1</sup> From this point forward, I will refer to the overall process as either the "disposal process" or the "reuse planning process." The former generally refers to the federal view of this effort, while the latter is the label typically used by the states and local communities.

ongoing operational savings). The federal intent subsequent to 1988 was to consider obtaining some level of investment return from the "sale" of excess bases.<sup>2</sup> Although this policy has changed somewhat since 1990, it has complicated many of the base reuse efforts throughout the country.

Recently, the Clinton Administration responded to these issues by publishing a five-point plan to "revitalize" base closure communities.<sup>3</sup> The Clinton plan goes a long way in refocusing federal objectives from a property "sale" approach to a "jobs-centered property disposal" system. The most striking change with this new plan is to allow federal authorities to convey federal property for economic development either free or at a steep discount.<sup>4</sup> Other aspects of this new strategy include easy access to transition and development help, fast-track cleanup, transition coordinators, and larger economic development planning grants.<sup>5</sup>

These measures are likely to have a positive impact on current base disposal actions. Yet, according to many experts deeply involved in this endeavor, one of the greatest challenges which communities face is developing consensus among the

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<sup>2</sup> Interview with Dr. John Lynch, Former Associate Director, Office of Economic Adjustment, Washington, D.C., June 8, 1993.

<sup>3</sup> White House Press Release, July 2, 1993, "Revitalizing Base Closure Communities," Office of the President of the U.S., Washington, D.C.

<sup>4</sup> According to the Clinton proposal, before the land is transferred, the community economic development proposal must meet "strict tests for economic viability and job creation." (These requirements are yet to be defined).

<sup>5</sup> White House Press Release, "Revitalizing Base Closure Communities", July 2, 1993.

different interests at the local level.<sup>6</sup> When a base is announced for closure, the communities must quickly establish some type of planning entity to work with the federal and state authorities and begin to address potential reuses for the property. In cases where only one community is affected, or, in situations where a well-organized planning agency already exists, establishing a planning forum is less problematic. Some cases, however, involve many different communities and special interest groups. In these instances, marshalling a collaborative planning effort is often a major hurdle.

As a result of the aforementioned complications, the base closure and reuse planning process appears to be moving very slowly. For instance, of the 16 major domestic bases that were to be closed as a result of the 1988 Base Realignment and Closure (BRAC) action, only four are actually closed, only three have interim leases in place for reuse, and no land has changed ownership.<sup>7</sup> Furthermore, of the 26 major domestic bases to be closed as a result of the 1991 BRAC recommendations, only five are closed, six have interim leases, and, as with the 1988 closures, no title has been transferred.<sup>8</sup>

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<sup>6</sup> Based on interviews with representatives from the Office Of Economic Adjustment (OEA), Washington, D.C. May-June 1993. The OEA is the federal agency with primary responsibility for acting as a liaison between the federal government and state and local representatives in base disposal cases. As such, in my view, these professionals are uniquely qualified to diagnose and assess problems associated with the transitioning (planning) process.

<sup>7</sup> Memorandum from the Office of the Under Secretary of Defense, Subject: Strategy for Economic Transition and Base Closure, Washington, D.C., June 3, 1993.

<sup>8</sup> Ibid.

Local consensus is critical to the success of the reuse planning effort. After all, following these complex procedures is cumbersome enough without the additional complications resulting from unresolved disputes. The facts from historical and recent closures suggest that these stalemates are costly in terms of time, legal expenses, and lost opportunities.

In the recent lore of base disposal planning, two closures stand out as "problem cases."<sup>9</sup> The first case, involving the closure and reuse of Hamilton Air Force Base in Marin County, California, began in 1973 and is still being played out today. The second case involves the recent closure of George AFB in San Bernardino County, California. In both closures, consensus was never established among the local communities involved in planning the reuse of the bases. The result for Hamilton was gridlock and delay, with the federal government ending up holding on to most of the property (and continuing to pay for its maintenance), with no new economic development for the region. The outcome at George AFB is not altogether different. The base was placed on the closure list in 1988, and since that time, no title has been transferred, and no leases have been executed. Once again, the federal government has ended up paying the maintenance bills, and the local communities have seen no new jobs or tax revenues, and have spent significant time and money in court. By most accounts, these cases represent impasses which resulted in lost opportunities for the locals and ongoing costs for the U.S. taxpayer.

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<sup>9</sup> Ibid.

Most of the historical base disposal cases involve some level of "success" in terms of federal and local objectives. In almost all situations, however, the local interests must establish some level of cooperation and collaboration before effective planning can occur. The federal procedures governing base disposal do not provide many tools for multiparty decisionmaking at the local level.

The question then remains: Is there some way to better manage coordination and avoid conflict? What planning tools are available to aid the local players in reaching consensus? Finally, how can creative solutions be crafted in such a difficult climate?

### **1.1 Consensus Building and Negotiation**

As with other community planning cases, negotiation and bargaining are always elements of this process. Yet, planning at this scale often requires more than just give and take and political logrolling. In some difficult base reuse planning cases, such as Hamilton and George, the need may exist for some level of mediation or facilitation to bring the parties together. Perhaps a neutral, third party mediator with expertise in conflicts of this type would be of some benefit.

The call for some form of consensus building in the base reuse planning seems apparent. In all cases, especially where disputes seem likely, new prescriptions appear warranted. If an impasse occurs among the local communities, and the

process is in gridlock, as in the Hamilton and George cases, all parties are likely to suffer the consequences.

This thesis focuses on the applicability of consensus building and mediated negotiation in the military base reuse planning process. My hypothesis is that these tools may be beneficial for the federal, state, and local authorities attempting to establish a collaborative planning effort in the base disposal process.

In developing my ideas, I will first provide a brief synopsis of cases where negotiation and consensus building have been employed to resolve public sector disputes, including a case involving a military base closure. Additionally, I will provide arguments for and against such an approach. The second chapter of the thesis focuses on the laws and administrative procedures and regulations surrounding base disposal activities, including a brief discussion on federal base closure "policies" before and subsequent to the Base Realignment and Closure Act of 1988, and additional detail regarding the Clinton Administration's new strategy. The next two chapters provide actual case studies of the Hamilton AFB and George AFB cases, with particular emphasis on the events surrounding the unresolved disputes. The fifth chapter presents a critical analysis of these two cases in terms of where and why the planning process went awry and in what way the tools of negotiation and consensus building might have been helpful. The final chapter focuses on lessons learned from my research and analysis, including possible prescriptions for improving the base disposal and reuse planning process.

## 1.2 The Call for Mediation

Mediated negotiation involves an informal, ad-hoc procedure where a neutral, third party, with expertise in dispute resolution acts as an active facilitator. This approach typically requires a party with specific knowledge of the issues. For instance, in environmental disputes, an expert in environmental negotiation may be warranted. Mediation is typically employed where unassisted negotiation has either failed or is likely to fail. Base reuse planning may fall into either of these two categories. Yet, how do we diagnose the problem to identify which approach to take?

Mediated negotiation may be necessary in certain base reuse planning cases for a number of reasons. In many of these cases, the parties involved have long histories of conflict. Moreover, it is often difficult to find a neutral stakeholder to facilitate the process and provide a reality check. The players involved may lack good negotiating skills, placing them at a disadvantage in terms of building consensus. Perhaps most problematic is the fact that the local participants in the reuse planning endeavor have no models or systems to follow, thereby necessitating some level of outside expertise.

As with other public disputes, the conflicts arising from community infighting in base closures have a number of identifying characteristics. These include a multiplicity of interests, varying levels of expertise, different power bases, varying decisionmaking procedures, lack of standardized (formal) procedures, and a broad

range of issues.<sup>10</sup> Other problem areas may also be present, such as a lack of long-term commitment (as the players may feel that this will be the last time that they will be required to work with the other parties), inequality in the voting process, complex technical issues, and, perhaps the worst, the "winner-takes-all" mind-set.<sup>11</sup> These complexities may result in an impasse without some formal procedure for dispute resolution. As such, mediation may be warranted.

### **1.3 Mediation in Land Use Disputes**

The use of mediation in resolving land use disputes is not a new phenomenon. Land use dispute resolution tools have been in place for close to two decades in some form or another, and have been applied in major environmental, development, and facility siting cases. The following paragraphs provide brief synopses of representative cases where these techniques have been employed with some success.

#### **1.3.1 Denver Metropolitan Water Roundtable**

The Denver Metropolitan Water Roundtable case involved an eighteen month negotiated effort involving the construction of a new dam in Colorado in the early 1980s. The endeavor began as a result of the complications of the previous dam development in the area, which took 7 years of litigation, tripled the construction

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<sup>10</sup> Susan Carpenter and W.L.J. Kennedy, Managing Public Disputes, Jossey-Bass, London. 1988.

<sup>11</sup> Susskind, Lawrence and Cruikshank, Jeffrey, Breaking The Impasse: Consensual Approaches to Resolving Public Disputes, (New York: Basic Books, 1987).

costs, and polarized the community for close to a decade.<sup>12</sup> After being asked to intervene to assist in negotiations, the mediators involved in the case defined the real question as "how can we best meet the water needs of the metropolitan Denver area?"<sup>13</sup>

The negotiations involved 31 different parties and required an eighteen month effort. Sessions involved such activities as setting ground rules and protocols, identifying and defining the different parties' interests, and joint fact-finding. During the process, the 31 parties organized themselves into three groups, with each developing their own set of proposals. According to the mediators involved in this effort, the three parties focused on compromise and acceptance, versus positional bargaining. The end result was a twelve-page agreement ratified by all parties, followed by a careful implementation effort.<sup>14</sup>

Although the issues involved in this case were somewhat different than the typical base reuse planning scenario, the complexity of the problem, as well as the way that the parties dealt with each other seem comparable.

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<sup>12</sup> "Denver Metropolitan Water Roundtable," Case Study Presented by Susan Carpenter, ACCORD Associates, National Conference of State Legislatures Annual Meeting, Boston, July 22, 1984.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

### **1.3.2 The "Negotiated Investment Strategy"**

One model of mediated negotiation which involves resolving jurisdictional disputes similar to those found in military base disposal is the Negotiated Investment Strategy (NIS). The NIS was designed to resolve disputes involving the need to identify better ways of channelling federal funds to states and local communities. The NIS approach is based on the assumption that decisions regarding the allocation and use of public resources can be arrived at more efficiently if the following four elements exist:

- All parties (in the process) participate;
- Different interests are represented by negotiating teams;
- The differences among the teams are identified through face-to-face negotiation; and,
- A mediator is involved.<sup>15</sup>

The NIS process is quite similar to many of the negotiation models used in land use disputes, with the principal difference being that the NIS includes provisions for public review and monitoring. This is necessitated by the fact that the NIS involves so many different levels of government and numerous public participants. Furthermore, results of NIS cases suggest that this approach has a number of key success factors. These include:

- The need to encourage participation through positive incentives (access to power) and negative case examples;
- Functioning in teams to meet political (need for representation) and substantive (need for knowledge) objectives;

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<sup>15</sup> Carl M. Moore, "Negotiated Investment Strategy," Journal of Dispute Resolution, (January 1989).

- The need for adequate support staff and "stewards" (implementors); and,
- Reasonable ground rules for the negotiations.<sup>16</sup>

In applying the NIS model to base disposal cases, it is important to recognize a number of differences between traditional NIS applications and military installation reuse planning. First, the NIS experiments typically involved fewer participants at all levels of government. Secondly, the NIS model was designed principally for the productive allocation of federal funds (generally perceived as a positive event) whereas base disposal typically involves reuse planning where a major source of employment has been lost. Finally, in the NIS cases, the BATNAs (Best Alternative To a Negotiated Agreement)<sup>17</sup> appeared to be no federal funds. In the case of base disposal and reuse planning, the BATNAs are less clear. Even with these differences, however, the NIS approach may provide useful parameters for negotiating jurisdictional disputes associated with military base reuse planning.

#### **1.4 The "Promise and the Pitfalls" of Mediation**

Prior to embracing the principles of conflict resolution, most experts in this field define where negotiation may or may not work. According to Susskind, the two major categories of conflicts are distributional disputes and constitutional or legal rights disputes. The first category focus on "the allocation of funds, the setting of

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<sup>16</sup> Ibid.

<sup>17</sup> Roger Fisher, William Ury, and Bruce Patton, Getting to Yes: Negotiating Agreement Without Giving In (New York: Penguin Books, 1991).

standards, or the siting of facilities (including how we use our land and water)."<sup>18</sup> Constitutional disputes deal primarily with interpretations of constitutionally guaranteed rights.<sup>19</sup>

Base reuse planning involves a wide variety of legal and political issues, most of which are what Susskind would define distributional in nature. Yet, some of the issues in this process could arguably be constitutional or legal rights questions. For instance, when the base closes and the land is surrounded by two or more municipalities, and was never part of a specific municipality, should one town or city be given the right to annex the base over another? This could be a question for the courts.

In his essay *Environmental Dispute Resolution: The Promise and the Pitfalls*, Douglas J. Amy argues both sides of the question of the use of dispute resolution.<sup>20</sup> According to Amy, those who argue for dispute resolution often focus on the fact that this approach is faster and cheaper than litigation, and that mediation focuses on resolving the real (underlying) disputes, where litigation deals primarily with questions of legal procedures and statutes. After all, argue the proponents, dispute resolution is informal, and involves face-to-face discussions, thereby alleviating much of the miscommunication and misperception which may exist without such tools.

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<sup>18</sup> Susskind and Cruikshank, *Breaking the Impasse*, p. 17

<sup>19</sup> Ibid.

<sup>20</sup> Douglas J. Amy, "Environmental Dispute Resolution: The Promise and the Pitfalls," reprinted in *Environmental Policy in the 1990s*, edited by Norman J. Vig and Michael E. Kraft, (Washington D.C.: CQ Press, 1990).

Finally, on the pro side, Amy points out that mediation focuses on win-win situations, where all parties' concerns are treated as legitimate, and the mediator attempts to structure creative compromises. Conversely, litigation typically has a winner and a loser.<sup>21</sup>

Amy goes on to present a fairly comprehensive critique of dispute resolution and mediation. He first argues that no real proof exists that dispute resolution is faster or cheaper than litigation. According to Amy, most of the evidence is anecdotal, and no systematic studies have been completed to prove that mediation saves time or money in comparison to litigation. In fact, some have argued that mediation may be more expensive, in that litigation often continues with mediation, and mediation typically demands more research, which is expensive. Amy also suggests that in a typical mediation case, access may not be the same for all parties involved. Mediators make the decisions regarding what groups are included, and they may try to limit the numbers to facilitate the process. Yet, according to Amy, even with this access, an imbalance of power may exist. This inequity can take many forms including different levels of negotiating experience, technical expertise, and/or economic capabilities. One of Amy's more convincing arguments against mediation involves his analysis of the assumptions made by dispute resolution advocates. For instance, according to Amy, mediation proponents often argue that the interests of the disputants are fundamentally compatible, and that the impasse has resulted from misinformation, misrepresentation, and poor communication. Moreover, the

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<sup>21</sup> Ibid.

advocates suggest that all parties have equally valid concerns, and that compromise is usually the best outcome. Opponents of mediation may disagree with these assumptions, indicating that this approach is naive and misguided. After all, argues this group, many of these conflicts are rooted in conflicts of principles and values. Compromise may not be the answer in these situations. Most of all, according to Amy, mediation may be viewed as misleading. It is not always the panacea that some advocates might suggest.<sup>22</sup>

Both sides of the debate seem to agree that mediation has its limitations. Many cases will not be resolved through this approach. According to the experts, prior to entering into a formal negotiation process, it is important to recognize that the success of this endeavor depends on a number of prerequisites, such as:

- Can the key players be identified and persuaded that it is in their best interest to negotiate?
- Are the power relationships relatively balanced?
- Can a spokesperson(s) be located for each group?
- Do deadlines exist? Are they reasonable?
- Can the dispute be redefined so as to avoid any focus on constitutional rights, cultural values, etc.?<sup>23</sup>
- Will any of the parties benefit from some form of stalemate or delay?

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<sup>22</sup> Ibid.

<sup>23</sup> Susskind and Cruikshank, Breaking the Impasse.

Not all base disposal and reuse planning situations require assisted negotiation. In fact, many of the base closure cases will not meet these tests. However, mediation may prove to be an avenue for building consensus and cooperation. Conservatively speaking, this strategy may provide an outlet for developing creative solutions to difficult problems.

At least one case exists where mediation was used successfully to resolve a base closure land use dispute. Although this closure occurred in the 1970s and dealt primarily with environmental issues, it provides a valuable lesson for the application of consensus building and negotiation in base reuse planning.

### **1.5 Mediation of a Military Base Disposal Dispute**

In 1973, the Department of Defense closed several naval installations in Rhode Island, totalling some 4,000 acres of property. To expedite the reuse of this excess land, the GSA negotiated and executed leases with the Rhode Island Port Authority and a number of private firms, including many oil-related companies. Environmental groups concerned about these actions filed suit against the GSA for failing to follow National Environmental Policy Act (NEPA) guidelines. This action eventually escalated into a major land use dispute between environmental groups, the GSA, the State of Rhode Island, and various private sector interests. Prolonged litigation appeared inevitable.<sup>24</sup>

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<sup>24</sup> Resolution of A Community Land Use Dispute: A Rhode Island Case Study, Community Guidance Manual IV, The President's Economic Adjustment Committee, May 1980.

Hoping to avoid a prolonged conflict, in early 1977, the DOD and the State decided to engage a non-profit, environmental mediation firm to assist in establishing a forum for dispute resolution. The mediators spent the first few months identifying the players to be involved in the negotiations. Close to 40 leaders from a wide variety of interests first met formally to discuss, face-to-face, their concerns and interests. As a result of the four years of intense conflict, the first meeting proved to be a hostile session. As a result of this meeting and subsequent gatherings, the mediator decided to establish a more informal setting, suggesting the creation of an Executive Committee. The different parties endorsed this idea. This committee became the driving force behind the development of a final agreement.

The mediations proved intense and time-consuming. Yet, by the end of 1978, the parties came to agreement on such major issues as the environmental protection, land parcel transfers, development rights, and worker occupational safety and health. All players involved, even the most skeptical participants, endorsed the process and the outcome. The success of this mediation has resulted in the establishment of a similar Rhode Island State system. Furthermore, by most accounts, all players came out ahead. The State and the DoD avoided costly litigation (estimated at \$250,000, compared to approximately \$35,000 in mediation fees); the GSA was able to transfer property, and forgo the costs of continued maintenance; environmental groups were able to require key development limitations, with a continued threat of litigation if the DoD and the State did not live up to their end of the agreement; and, private industry was able to establish a new foothold in Rhode Island.<sup>25</sup>

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<sup>25</sup> Ibid.

The results achieved in this case may not be achievable in all base disposal disputes, as some of the conflicts may have vastly different characteristics. However, it seems worth looking at mediation as one possible source of consensus building and dispute resolution.

## **1.6 Federal Statutes Encouraging Negotiation**

In an effort to encourage the use of negotiation and dispute resolution (as an alternative to litigation), Congress has recently passed two pieces of legislation which focus on consensual approaches to decisionmaking, the Administrative Dispute Resolution Act (1990) and the Negotiated Rulemaking Act (1990). According to U.S. Senator Charles Grassley (R-Iowa), chief sponsor of the Administrative Dispute Resolution Act in the Senate, the federal government is in an "ideal position to serve as a beacon for the rest of our society" in the way that disputes are handled.<sup>26</sup> Although the ADR Act does not specifically require the use of consensual approaches in federal disputes, it provides guidance to federal agencies hoping to employ these techniques. Furthermore, the Act directs federal agencies to consult on these matters with the Administrative Conference of the U.S. (ACUS), the government group responsible for this legislation.

The ADR Act provides a number of specific implementation provisions. The legislation suggests that federal agencies consider, in coordination with the

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<sup>26</sup> Lawrence Susskind, Eileen F. Babbitt, and Phyllis Segal, "When ADR Becomes the Law," Negotiation Journal, January 1993.

Administrative Conference, if ADR will be useful in their "administrative programs" defined to include all activities involving "... protection of the public interest and determination of rights..."<sup>27</sup> In other words, the legislation encourages federal agencies to undertake a proactive evaluation of where consensual approaches might be employed. Additionally, the Act suggests that each federal agency select a "senior official" to be that agency's dispute resolution specialist. This specialist should work with agency counsel to incorporate specific dispute resolution approaches, such as negotiation, mediation, facilitation, conflict assessment, and, in some cases, arbitration (although this must be voluntary).<sup>28</sup> Each of these approaches are defined within the legislation. Once again, assistance is available through ACUS.

Although the ADR Act has not specifically been applied to base disposal cases, it may have applicability in the future.<sup>29</sup> Furthermore, a number of federal agencies involved in base disposal, such as the EPA, Army Corps of Engineers, Federal Aviation Administration and HHS, have been employing these techniques for years. At first glance, it appears that these techniques could be applied in two regards. First, the agencies integrally involved in base closure and disposal, could employ methods identified and defined within the act (e.g. negotiation, facilitation, mediation) to build consensus among the many players involved. For instance, where the DoD and the OEA are beginning to work with a state and local communities to

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<sup>27</sup> Administrative Dispute Resolution Act [Pub. L. No. 101-552, 104 Stat. 2736 (1990)]

<sup>28</sup> Ibid.

<sup>29</sup> The U.S. Air Force Legal Office is currently evaluating the applicability of the ADR law to its disposal cases.

initiate disposal actions and plan for reuse, they could employ an outside, objective facilitator/mediator to assist in building a federal/state/local coalition. Secondly, the Act seems well suited for distributional disputes which may arise in the process. For instance, if a coalition has fallen apart over issues associated with differing reuse planning interest, formal mediation may be appropriate. Clearly, this legislation is no panacea for all disputes arising from base disposal actions. However, the ADR Act does seem to offer some tools which may be useful in this complex process.

The following chapters provide case studies of base closure related land use disputes which remain unresolved. In each of the cases, I will be examining the facts and the chronology of events. With this information on the table, the final two chapters will focus on what may have gone awry in these planning endeavors and where mediation might have proved helpful.

## **CHAPTER 2 - THE BASE DISPOSAL PROCESS**

### **2.0 Introduction**

As indicated in the preceding chapter, the base disposal process is complex and time consuming. This chapter focuses on the federal process in terms of its three major components: federal property disposal procedures; environmental compliance and remediation; and, the community planning effort. However, prior to detailing the process surrounding base disposal, it is worth briefly reviewing the history of military base closure and reuse.

### **2.1 History of Base Disposal**

The closure of military bases is not a recent phenomenon. In fact, between 1961-1990, over 100 communities experienced military base closures and reuse transitioning. Although this effort was not as extensive as the current round of closures, it had significant social, political, and economic effects. According to the Office of Economic Adjustment, the 100 communities involved lost over 93,000 civilian jobs, and approximately 137,000 military positions (although military jobs are not calculated in the local employment figures). These job losses were partially offset by over 158,000 new civilian jobs. Reuses for the closing installations included office and industrial parks (at over 75 of the former bases), municipal and general aviation airports (at 42 of the locations), and four-year and community colleges.<sup>30</sup>

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<sup>30</sup> Civilian Reuse of Former Military Bases, 1961-1990: Summary of Completed Military Base Economic Adjustment Projects, Office of Economic Adjustment, Office of the Assistant Secretary of Defense, (Washington, D.C. April-June 1990).

As noted in the previous chapter, prior to 1988, the General Services Agency (GSA) was the federal government arm responsible for federal land disposition.<sup>31</sup> The Base Closure and Realignment Act of 1988 designated the Secretary of Defense as the agency with responsibility for the disposal of excess military property.<sup>32</sup> Although this administrative change appeared inconsequential on the surface, it had significant practical implications.

Prior to 1988, when the GSA "sold" federal property (e.g. military bases), the proceeds of the sale would go into the federal Land and Conservation Fund, ultimately ending up in the U.S. Treasury. As such, the GSA did not receive any direct benefit from optimizing the value of the land (other than perhaps, a job well done). Typically, because of the enormous political pressure that the GSA was placed under in these cases, they would focus on public reuses and transfer of the land through public benefit conveyances. However, the 1988 Act incentivized the DoD in a different way. Under this legislation, the DoD was allowed to keep the proceeds from the sale for internal requirements. Given the significant budget pressures which DoD was facing, the department began focusing on optimizing "fair market value" return. As a result, in their negotiations with states and communities, they considered more than public uses. This change in philosophy had tremendous procedural implications, as will be detailed later in this thesis.<sup>33</sup>

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<sup>31</sup> Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. S 484].

<sup>32</sup> Defense Reauthorization Amendments and Base Closure and Realignment Act, as amended [Pub. L. No. 100-526, 102 Stat. 2623 (1988)]

<sup>33</sup> See George R. Schlossberg, "Planning and Managing Military Base Adjustments: Federal, State and Local Perspectives," Presentation at George Mason University Conference, January 23, 1992.

## 2.2 The Players

In managing the process of disposing of excess military bases, the Secretary of Defense has delegated his authority to the individual armed services. As such, each of the military branches, Army, Navy and Air Force, has established a group to control base disposal. Furthermore, in the 1960s, recognizing the need to provide support to the communities affected by major federal agency employment actions, the federal government established the Office of Economic Adjustment (OEA). Organizationally, OEA falls under the Department of Defense, with a "dotted-line" reporting relationship to the President's Economic Adjustment Committee.

In addition to the Department of Defense, a number of other federal agencies and departments are typically involved in the disposal of a military base. For instance, the following federal agencies are representative of the types of the branches of government which might be involved in base closures and reuse planning (depending on the proposed reuse).<sup>34</sup>

- Department of Education (educational facilities)
- Department of Energy (utilities, nuclear power)
- Department of the Interior (parks, fish and wildlife)
- Department of Justice (prisons)
- Department of Transportation (highways, airports)
- Health and Human Services (mental health, homeless)
- Housing and Urban Development (housing)
- Environmental Protection Agency (federal environmental statutes)

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<sup>34</sup> Based on interviews with representatives from the Office of Economic Adjustment, March - June 1993.

Additionally, because of the importance of military bases to state and regional economies, in almost all cases, U.S. Congressional representatives are involved in the disposal process. At the state and local levels, a variety of public and private sector agencies involved, as well as special interest groups. For example, a typical reuse effort might include the following interests:

- The State Legislature
- The Governor's Office
- State environmental agencies
- County and/or regional planning authorities
- Surrounding community planning authorities
- One or more public redevelopment authorities
- Citizens/neighborhood groups
- Various special interest groups
- "Watchdog" agencies
- Private developers
- Prospective users/tenants

This is certainly not all-inclusive list. Many more groups would be involved. However, this sample serves to illustrate the complexity of the base disposal and reuse planning collaboration. Moreover, as the following section illustrates, this effort involves close coordination and cooperation among the federal, state and local interests.

### **2.3 Federal Property Disposal Procedures**

The following steps briefly outline the mechanics of the base disposal process.<sup>35</sup>

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<sup>35</sup> Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. S 484]; Defense Authorization Amendments and Base Closure and Realignment Act, *supra.*; McKinney Act: Public Health and Welfare [42 U.S.C. S 11411]; Interviews with David A. MacKinnon, Office of Economic Adjustment, March-June 1993.

- 1) Once the base has been selected and approved for closure, the disposal agency begins the process by notifying the other military departments, Department of Defense agencies, the U.S. Coast Guard, and Non-Appropriated Fund Instrumentalities (NAFIs) of the availability of the property. This appears to be somewhat of a formality as the Secretary of Defense would not likely recommend the base for disposal if he felt that it could be reutilized within the DoD. If no other DoD organization requests use of the property, the base is determined to be excess to defense needs.
  
- 2) Before the base is offered to the state and local governments, the land must be screened for use by other federal agencies. Simultaneously, the base is screened for reuse under the guidelines of the McKinney Act. Each of these screening processes is presented separately as follows:

The federal agency screening requires a 30-60 day clearance process. During this time, any federal agency is permitted to request the land. In so doing, the agency must pay a "fair market value" for the property (as determined by the Office of Management and Budget (OMB)). However, the fair market value requirement can be waived under a variety of circumstances. For instance, if an agency such as the National Park Service requests the land for public use, it is unlikely that they will be required to pay fair market value for the parcel. As mentioned previously in this paper, a wide variety of federal agencies are involved in this and later stages. Moreover, as a practical matter, almost any federal agency can request the land at any time during the disposal process. Finally, many federal agencies act as agents for local communities, requesting the land for such uses as affordable housing, education, and prisons.

The second component of the federal clearance process is review of the property for use under the Stewart B. McKinney Homeless Assistance Act. Two federal agencies are involved in this process, the Department of Housing and Urban Development (HUD), and the

Department of Health and Human Services (HHS). This process involves advertising the availability of the base to various homeless provider agencies via the federal register and direct mail (to the larger homeless providers). Prior to notification, HUD will look at the base in terms of its suitability in accordance with the Act. If the base is not feasible in this regard, HUD will likely suggest that it not be considered for use by homeless providers. However, if it is determined suitable for use under the McKinney Act, as noted above, it will be advertised; according to the act, interested groups have 90 days to respond to the request; HHS will review all proposals to determine the capabilities of the providers. In this analysis, HHS is looking primarily at the financial and service capabilities of the groups. If approved by HHS, the proposal will be forwarded to the disposal agency for issuance of a lease.

- 3) Once the federal agency and McKinney Act clearances are complete, and, if none of these departments are interested in the base property, the land, or remaining portion thereof, is determined to be surplus to the federal government.
  
- 4) At this stage, the land is offered to the state and local governments via either public benefit conveyances or negotiated sales. A public benefit conveyance is a transfer of property from the federal government to the state or local government (or their representatives) based on the "best interests of the federal government," at some discount to fair market value (up to 100 percent discount). Negotiated sales involve some type of negotiations between the federal government and the state or local communities. However, prior to any transfer of property, the disposal agency must complete an Environmental Impact Statement (EIS) and, based on the outcome of the EIS and coordination with the local agencies, a Property Disposal Plan (PDP). Realistically speaking, by this time, the state and local governments will likely

have marshalled their resources into one or more agencies to manage the base reuse planning process. As such, the federal disposal agency will likely be working closely with the local agencies to coordinate the EIS and PDP actions. The EIS and PDP processes are presented briefly in the following subparagraphs.

The EIS is designed to be a decision guidance document for the federal disposal agency to use in their Property Disposal Plan. It should address issues regarding the quality and potential reuses of the existing land and what factors are impediments to the effective disposal. Much of the document deals with the environmental aspects of the reuse. However, this product provides much more than just environmental guidance. The EIS process is managed by the base disposal agency and is monitored by the EPA. The EIS is completed by a private contractor and is typically very time consuming. Once the Draft EIS is complete, the disposal agency must organize a public hearing and present the EIS findings. This hearing will typically be held at a meeting facility in one of the affected communities (however, not on the base). The disposal agency is responsible to ensure that all affected parties are invited. Once the draft hearing is complete, then any concerned group has 45 days to provide comments to the disposal agency. The agency must "address" these comments and regardless of whether or not they agree, they must respond to any issues of concern. Once all comments have been addressed, the disposal agency has 30 days to publish the final report. This final EIS is then registered as a Record of Decision (ROD). A ROD has important legal implications as it represents documented findings regarding environmental compliance on the site, as well as the federal government's plan for disposition of the property. Once the EIS is complete, the disposal agency must develop the PDP.

The Property Disposal Plan (PDP) is based on the outcome of the EIS and should also consider the reuse plans of the local agencies. This document is designed to be a disposition plan and should answer questions relating to whom land should be transferred, how much land should be involved in each transaction, when land should change hands, and in what forms (e.g. sold, leased, conveyed, etc.). The disposal agency may have difficulty in developing the PDP as much of the PDP work is occurring simultaneously with the EIS research and work being performed by the local redevelopment agency and other interested parties. As such, from a pragmatic standpoint, the disposal agency must work closely with the local agencies to develop a coordinated plan ( and to avoid the "them" vs. "us" stigma).

Once the EIS and PDP are complete (at least in some preliminary form) the federal government "officially" begins to work on the property transfer actions through negotiated sales, leases, and/or public benefit conveyances (PBC). The communities and state identify desired properties, and the federal government begins hard negotiations with the local participants. This process is likely to be very time consuming, often involving years of complex transactions.

- 5) Any land remaining from the process outlined above is then offered for sale via a public bidding process.

#### **2.4 Environmental Aspects of the Base Disposal Process**

Federal and state environmental statutes and regulations have a significant impact on base closure and reuse planning. Environmental actions associated with base disposal follow two distinct processes. The first component, the Environmental Impact Analysis Procedure (EIAP) focuses on evaluating the environmental effects of proposed (alternative) uses. The second set of procedures deals with the cleanup and remediation of existing hazardous waste. Although these procedures and statutory guidelines were not designed specifically for base transitioning actions, they have been interpreted and amended to apply to all DoD disposal cases.

This section briefly describes both environmental processes and their effect on the base disposal process. More specifically, I will identify the most relevant environmental statutes, how these statutes affect base reuse, and the interaction between the two major players involved in environmental compliance and remediation: the Department of Defense, and the Environmental Protection Agency. Finally, I will provide an update on current DoD/EPA "partnership" efforts.

#### **2.4.1 The Environmental Impact Analysis Process**

The Environmental Impact Analysis Process (EIAP) is directed for all federal agencies under the National Environmental Policy Act (NEPA) of 1970.<sup>36</sup> NEPA was designed to provide an "impact statement" approach to regulating the activities of federal agencies. More specifically, the Act provides that any legislation or other "major federal action" undertaken by a federal agency must be accompanied by a detailed statement regarding the effect of the proposed action on the "human environment."<sup>37</sup> Furthermore, NEPA requires the responsible agency to consider alternatives to the proposed action. As a practical matter, this process has a major effect on the disposal of military installations. For instance, a typical base disposal case will involve a minimum of two (and often three or more) comprehensive Environmental Impact Statements (EIS). The first EIS will be for closure (CEIS), and will focus on short-term closure planning actions. The second EIS will focus on various reuse scenarios for the base property. This EIS is often time consuming and expensive.

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<sup>36</sup> National Environmental Policy Act (NEPA) [Pub. L. No. 91-190, 83 Stat. 852 (1970)]

<sup>37</sup> Ibid.

The following points present a brief overview of the environmental impact analysis process.<sup>38</sup>

- 1) Stage one of obtaining an EIS involves soil sampling and data collection. This entails reviewing historical records, as well as physical inspection of the property, both visually and through soil samples.
- 2) A description of the proposed action and potential alternative uses planned for the site is then drafted. This section discusses the impacts likely to result from the proposed action and alternatives, complete with methods for mitigating such impacts.
- 3) The proposed action and potential planned uses are then matched to the environmental analysis, with the resulting data then compared to the local community's reuse plan.
- 4) All of the data, proposals and mitigation methods are then combined to form the Draft Environmental Impact Statement (DEIS). Often this is completed in two stages with a preliminary DEIS first being circulated before the final DEIS is written.
- 5) A local public hearing is then held to address the DEIS. This public hearing also begins a 45 day statutory period for public comments on the DEIS.
- 6) The public comments are then comprehensively addressed, culminating into a Final EIS. Often a preliminary FEIS will be completed and reviewed to insure that all public concerns, comments, and mitigation measures were effectively addressed.
- 7) Finally, the EIS is recorded to become a permanent Record of Decision (ROD). This has lasting and binding implications, since it creates a public, legal record of contamination levels, remedial action, future uses, mitigation measures and a review of the public comments and concerns.

#### **2.4.2 Base Cleanup and Remediation**

Each military base was designed to include its' own infrastructure, which in essence makes the base almost completely self contained. As a result, military bases have been able to function as mini-cities, usually even complete with their own utility

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<sup>38</sup> Interview with Johanna Hunter, Regional Administrator, Environmental Protection Agency, Boston, April 1993.

sources. Understanding this point helps demonstrate how and why most military bases have developed numerous hazardous waste contaminated areas. The most common hazards include petroleum, cleaning solvents, heavy metals and PCBs.

The majority of these hazards exist on military bases today because of historical operations on the installations. Each base typically has a motor pool, and repair and maintenance areas for equipment and aircraft. These areas are generally contaminated with petroleum products. The petroleum contamination has resulted from problems such as leaking underground tanks that have not been maintained, fuel and oil spills, as well as improperly dumped motor oil. Some of the worst petroleum contamination is found at the base locations where fire training drills have been repeatedly conducted over the years. These practice drills usually involved igniting fuel that was then contained and extinguished. And as a result, unburned fuel would be absorbed into the soil.

Most bases also have hazardous sites caused by ordnance storage and disposal areas. Additionally, the self-contained base infrastructure includes additional environmental hazards such as landfills that were created as base garbage dumps, as well as base waste treatment, discharge and disposal systems.

Due to the types of activities conducted on them over the years, most military installations have some level of contamination which must be remediated. If the situation is severe, the base will have been placed on the National Priority List (NPL). NPL designation carries certain advantages, such as increased support and

federal funding. However, this characterization also results in a heightened level of scrutiny and additional procedural requirements. More specifically, in the disposition process, NPL sites are required to have an Inter-Agency Agreement (IAG). The IAG is a compact between the DoD, EPA, and sometime the state environmental agency which guides remediation actions and establishes schedules for remediation.<sup>39</sup> Under the "superfund" laws, if EPA and DoD cannot agree on the remediation strategy, EPA will select the remedy.<sup>40</sup>

In the case of either an NPL site or a non-NPL site, certain procedures must be followed. The following points outline the principal actions required.

- 1) The first stage involves the preliminary assessment and physical inspection of the site. This stage is identical to the first step of the EIS process, which entails reviewing historical records, as well as physical inspection of the property.
- 2) The second stage involves conducting remedial investigations and feasibility investigations (RI/FI) on these potential remedial actions.
- 3) The third stage includes beginning the implementation of, as well as finalizing plans for, all interim and final remediation strategies.
- 4) The fourth stage involves full site characterization of contamination levels, so as to classify the contaminated site according to cost-to-correct and clean-up priority.

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<sup>39</sup> Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

<sup>40</sup> Ibid.

In addition to the procedures outlined above, under CERCLA, the DoD agency responsible for disposing of the excess property must serve notice to the future user(s)/owner(s) regarding historical contamination. Further, DoD must "indemnify" the end user. Specifically, in the transfer documents, in considering the proposed use(s), the disposal agency must include covenants that all required remedial actions have been taken and that the U.S. government retains responsibility for any future required remediation actions.<sup>41</sup> Additionally, prior to recent legislation, the DoD could not transfer any parcels of property until the entire installation was clean.

In the first two rounds of base closure (and the associated reuse planning), the DoD and the EPA have found it difficult to both adhere to federal environmental legislation and meet the needs of the local community in expediting the transfer of base property. Recognizing this problem, in 1992, the Congress passed the Community Environmental Response Facilitation Act (CERFA). CERFA amends previous legislation in an effort to facilitate base closure and reuse.<sup>42</sup> In a practical sense, in conjunction with the EPA, CERFA directs federal agencies to identify uncontaminated parcels early in the disposal process. Furthermore, the Act allows for the expeditious transfer of uncontaminated and remediated parcels. To encourage timely transfer, the legislation sets deadlines for these actions. Finally, CERFA allows for transfer of federal property during the remediation process if an approved remedy has been developed and approved by the EPA.<sup>43</sup>

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<sup>41</sup> Ibid.

<sup>42</sup> Community Environmental Response Facilitation Act (CERFA) [Pub. L. 102-426, 106 Stat. 2174 (1992)]

<sup>43</sup> Ibid.

### 2.4.3 Recent DoD/EPA Joint Efforts

Recognizing the need to improve coordination between the federal agencies on the environmental component of the base disposal process, as well as the requirement to balance environmental protection with economic development, the Clinton Administration has encouraged an active "partnership" between the Department of Defense and the Environmental Protection Agency.<sup>44</sup> In essence, these two agencies have suggested that their goal is to streamline the process without compromising the substance of the environmental protection provisions.<sup>45</sup> Specifically, in recent Congressional testimony, these agencies outlined four specific actions which they planned to take to improve the process of disposing of military bases. First, they plan to improve coordination between the cleanup and reuse efforts. In other words, where feasible, focus the cleanup and remediation strategy on the parcels which have been identified for early reuse. Second, the DoD and EPA plan to follow and enforce the provisions of CERCLA (outlined previously). Third, these two agencies indicated a desire to support the recent CERFA legislation. Finally, where feasible, the Administration officials suggested that their agencies will expedite the transfer of military base land from the federal government to the local communities.<sup>46</sup>

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<sup>44</sup> Joint Statement of Sherri Wasserman Goodman, Deputy Under Secretary of Defense (Environmental Security) and Thomas L. McCall, Jr., Acting Deputy Administrator for Federal Facilities, U.S. Environmental Protection Agency, before the Committee on Environment and Public Works, U.S. Senate, May 23, 1993.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

The impact of these proposed policy changes could be dramatic. One of the major difficulties that communities face in this process is property transfer in the face of stringent environmental laws and regulations. The proposed DoD/EPA partnership could partially alleviate some of these difficulties by focusing their efforts on quick reuse of economically desirable property. For example, if the proposed reuse of an industrial area is an industrial park, remediation should focus on meeting this need, as opposed to cleaning to a residential standard. The implementation of the Administration's new procedures remains to be seen. However, these policy shifts should yield positive effects.

## **2.5 Community Planning**

The third concurrent process involved in base disposition involves the community reuse planning effort. Although not recognized as such by most federal government officials, in many ways, this component of base disposal is the most important. Consider the following:

- In most base closure cases, the local community is responsible for establishing a reuse planning agency and developing a reuse master plan.
- Because of the sheer size of most military bases, as well as the significant environmental compliance efforts required prior to full reuse, the DoD must look to the local public sector as the receiver of much of the land.
- Federal disposition guidelines favor transfer to local communities.

Given these circumstances, as well as historical precedent, the local communities will play a large role in the disposal of former military bases. Furthermore, in cases

involving major regional economic impact, state authorities have stepped in to assist in or manage reuse planning.<sup>47</sup>

As noted previously, the federal government agency most responsible for providing assistance to the local communities is the Office of Economic Adjustment (OEA). OEA will typically act as an advisor to the local community in the reuse planning effort as well as a coordinating group for dealing with other federal agencies. Further, the OEA provides grant money for reuse planning.<sup>48</sup>

Once a military base is identified for closure, the affected state or local communities will likely begin organizing to address reuse planning. This activity is encouraged by the federal government as no property can effectively be transferred without some form of local input and land use regulation. In meeting with the state and local authorities, the DoD makes it clear that their desire is to work with one reuse planning group/redevelopment agency. Although this is not official policy, informally, the DoD can encourage such an approach. For instance, the Office of Economic Adjustment will typically provide only one planning grant (or multiple grants to one group).<sup>49</sup> Additionally, the DoD disposal agency can decide to accept one community's plan over another (as the preferred plan). However, the statutes and regulations devote little mention of these potential problems, and the federal

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<sup>47</sup> The most illustrative case of this is the Massachusetts Government Land Bank and their role in the planning for the reuse of Fort Devens in Ayer, Massachusetts.

<sup>48</sup> Defense Economic Adjustment Programs [Executive Order No. 12049, 3 C.F.R. 169 (1978), reprinted in 10 U.S.C. S 111 notes (Supp. 1992)].

<sup>49</sup> Interview with Kenneth Matzkin, Office of Economic Adjustment, Washington, D.C., June 8, 1993.

agencies involved are reluctant to place themselves in the middle of a jurisdictional dispute between two or more communities.

In most cases, either the state and/or the municipalities will form some type of development/redevelopment authority to manage the base disposal process at the local level. This agency works closely with the federal government agencies in order to expedite the property transfer process, as well as to protect the interests of the local community. Additionally, at some point, this group will begin to market the installation to prospective local, national, or international users. The prevailing conventional wisdom surrounding base closures does not advocate any one type of redevelopment organization. In some cases, the state will assume control through enabling legislation or gubernatorial (executive) order. Whereas, in other situations, the local communities will join forces to form their own reuse planning group.

## **2.6 The Clinton Administration Strategy**

On July 2, 1993, in approving the 1993 Base Closure Commission's recommendations, President Clinton presented a new \$5.0 billion, five-point plan for overhauling the base adjustment process. The plan is designed to shift greater priority towards community economic development. Specifically, the plan calls for the following:

- Changes in federal disposal laws and procedures which permit public benefit conveyances. The current laws do not allow PBCs for economic development. The Clinton proposal seeks to change these laws to allow the DoD to turn over property for economic development, as long as the community plan meets certain requirements.

- Improved access to transition assistance. The strategy calls for increased funding and administrative streamlining of transition assistance programs.
- A new "fast-track cleanup" program, that eliminates unnecessary delays (while maintaining environmental protection), will be implemented. Much of this effort will be accomplished by sending special teams to each base to identify clean parcels (for immediate reuse) and expediting the cleanup process.
- Placing transition coordinators at each base. The Clinton plan suggests that the federal government will soon be sending "transition coordinators" to each base to assist the local players in cutting through the red tape and acting as the "community champion."
- Increased economic development assistance will soon be made available. The proposed strategy includes greater and more expeditious funding for local community planning and economic development.<sup>50</sup>

This policy shift indicates that the Clinton Administration is well aware of many of the major issues affecting base reuse planning. Further, the President's proposal suggests that he will be directing more effort and funding towards community needs, as opposed to federal disposition procedures. This appears to be more of a "partnership" or a "transition assistance" approach rather than the historical "disposition" strategy. The question is now whether the Administration will be able to marshal Congressional support and approval. If he is successful in this regard, the next hurdle will be to implement these changes at the local level. Key questions remain, such as:

- How will these new federal benefits be delivered to the local communities? Who will be the recipients of the funds?

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<sup>50</sup> White House Press Release, "Revitalizing Base Closure Communities," July 2, 1993.

- How much authority will the "transition coordinators" have? Will they be able to grant money and recommend public benefit conveyances? To whom do they report?
- What tests will the local communities have to meet to receive public benefit land transfers? Can more than one community receive financial and other forms of federal support?

Clearly, these are difficult questions which are likely already being debated in Washington. The questions as they relate to this thesis are: How do we ensure that local consensus is reached before (or, as) the federal authorities deliver these new benefits? And, how do communities facing these complex federal procedures marshal a collaborative planning effort?

## CHAPTER 3 - THE HAMILTON EXPERIENCE

### 3.0 Introduction

The implementation of the base disposal/reuse planning process at the local level often coincides with other major land use policy debates. Such is the case with the Hamilton AFB closure. Hamilton is located in Marin County, a wealthy suburban area north of San Francisco. The base was first announced for closure in April 1973, when the Air Force determined that the land was excess to their needs. The closure came at a time when Marin County, in the face of rapid development, was working to resolve the need for a controlled growth plan for the area. Marin's strategy was essentially a slow-growth strategy. The debate was perhaps best framed by the GSA in their EIS comments:

Both the City of Novato and Marin County are very concerned about the current economic and demographic trends of the area. The urban corridor of Marin County, extending along Highway 101 from the Marin headlands north to and into Sonoma County increasingly functions as a bedroom suburb for the affluent employed in San Francisco. Commuter traffic is rapidly congesting Highway 101. Opportunity for further residential development is decreasing, and housing costs are driving lower-, moderate- and even middle-income residents out of the County. Job opportunities within the County are limited, and little basic industry exists.<sup>51</sup>

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<sup>51</sup> U.S. General Services Administration, "Final EIS on Disposition and Use of Federal Property at Hamilton Air Force Base," February 1980.

The closure also occurred in the midst of a debate over the need for expanded airport services in Marin and the greater San Francisco Bay Area. The result was a series of disputes, carried on for close to twenty years, between advocates for regional aviation and those who essentially took a slow or no development stance. During this period, for the most part, the federal government was left holding and maintaining the property.

The following paragraphs provide an overview of the Hamilton experience in terms of the players, the chronology of events, and the disputes which erupted between the various interests. All of this is intended as background material to the question of whether or not this case could have been different with some explicit consensus building early in the process.

### **3.1 The Context**

Hamilton is located on the shore of San Pablo Bay in Novato, a city with approximately 35,000 residents in 1973, some 25 miles north of San Francisco in Marin County. The county is best characterized as a wealthy suburban area, with a population of over 200,000 (1973 figures) and one of the highest median incomes in the U.S. Hamilton AFB is a relatively small installation by Department of Defense standards. In 1973, when the base was declared excess, the base was comprised of 2,127 acres of land and improvements, with a population of approximately 2,000 military and 600 DoD Civilian personnel.<sup>52</sup>

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<sup>52</sup> Office of Economic Adjustment, "Status Report: Hamilton Air Force Base," Washington, D.C. June 1976.

The base is situated at the interface between San Pablo Bay and the hilly uplands of Marin County. Much of the base, including the runway and its supporting environs, is located in lowlands in the Novato Creek bay plain that have been reclaimed from bay tidelands. These parcels are as much as 6.5 feet below mean sea level, subject to tidal flooding, and are protected by a series of levees and pumps. The other portions of the base are comprised of low hills and uplands. Marin County is located in an earthquake zone.<sup>53</sup>

As with most military installations, the base is a self-contained community. Land uses include an 8,000-foot runway, with hangars and support buildings, office areas, three housing areas, a community support district, and a golf course. The base is located wholly within the City of Novato (although it was never annexed by the City) in Marin County, with simple and direct access to State Highway 101. Because of the physical characteristics outlined above, and the fact that Hamilton's runway is built to military specifications, most experts agree that it would be cumbersome and very costly to use the aviation area of the base for anything other than an airport. Some land, however, is available for residential, commercial and industrial development.<sup>54</sup>

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<sup>53</sup> U.S. General Services Administration, "Final EIS on Disposition and Use of Federal Property at Hamilton Air Force Base," February 1980.

<sup>54</sup> Ibid.

### **3.2 The 1973 Closure Action and Its Aftermath**

The Department of Defense restructuring during the early 1970s resulted in a number of base closures throughout the continental U.S., including Hamilton Air Force Base. In April 1973, the Air Force announced that they intended to remove all active units from the base by January 1974. Although no official announcement was made regarding disposition of the property, it quickly became clear that Hamilton's days as an active military base were numbered. Immediately subsequent to the announcement, the communities surrounding the base, including representatives from Marin County and Novato, jointly formed ad-hoc citizens committees to study the reuse potential of the installation. During this same time frame, based on internal defense screening activities, the Air Force transferred 1,197 housing units, various community support facilities, and 460 acres of land to the Navy for use as a defense housing project for the San Francisco area. Additionally, the Army was deeded the base hospital and 10 acres of land for use as a Reserve Center.<sup>55</sup>

The Air Force made its final decision to close the base in November 1974, and by March 1975 reported 1,400 acres to the GSA as excess to defense needs (presumably some land was held in reserve for other defense uses). Screening by other federal agencies occurred between March 1975 and early 1976. As a result, approximately 200 acres of the land was "tentatively" reserved for inclusion in the National Wildlife Refuge System, 55 acres and 5 buildings abutting the flight line

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<sup>55</sup> OEA, "Status Report: Hamilton Air Force Base," 1976.

were identified for joint use by the Coast Guard and Army, and 2 buildings were set aside for the FAA (assuming future aviation uses). In March 1976, the remaining 1,145 acres were determined to be surplus property, and approximately 1,055 acres were made available for "public airport purposes."<sup>56</sup> This definition meant that the land could be transferred via public benefit conveyance at a steep discount (up to 100 percent) to fair market value. Moreover, the federal authorities seemed to be encouraging this approach.

During the federal screening period, the communities were preparing their reuse plans. In November 1975, the City of Novato held a referendum on the issue of aviation with two different measures. The first measure would have created a general aviation zone in Novato; while the second measure would have applied this zone to Hamilton. Both measures were defeated by a sizeable majority.<sup>57</sup> Within a year of this vote, the Marin County Board of Supervisors, in a departure from Novato, unanimously endorsed limited aviation activity and notified the GSA of their intention to apply for acquisition of the surplus property for an airport facility. This placed the county and Novato at odds with each other, with Novato advocating "no aviation" and Marin County suggesting some limited aviation use.

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<sup>56</sup> Ibid.

<sup>57</sup> Hamilton Reuse Committee, "Comprehensive Land Use Plan-Hamilton Army Airfield," November 7, 1991.

Between April and June 1976, presumably when Marin was developing its application for purchase, based on federal agency screening, the GSA determined that, of the land held in reserve (the property not included in the 1,055 acre public airport transfer parcel), approximately 18 acres should be improved and reused for moderate income housing, 15 acres and the DoD school buildings would be transferred to the Novato School system, 66 acres would be set aside for public park and recreation uses, and the remaining property should be made available for reasonable and controlled industrial, commercial, and community development.<sup>58</sup>

The County proposal for the acquisition and redevelopment was submitted in mid-1976 and focused on the reuse of the base for a limited aviation airport and controlled industrial development. At this point, Novato was participating solely as an "observer." Marin's plan included the following provisions:

- To "acquire" as soon as feasible, but no later than July 1977, all of the surplus property for use as a public airport at a 100 percent discount to value.<sup>59</sup>
- Relocate all municipal airport activities to the base from Gness Field (the county airport) and to close Gness Field as an aviation activity.
- Support relocation of the Coast Guard aviation activities from the San Francisco International Airport to the base. Although the Coast Guard would control its own compound within the base, it would reimburse the County for use of the runway and aviation support facilities. Furthermore, with this move, the Army flying mission would become a tenant of the Coast Guard.

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<sup>58</sup> Ibid.

<sup>59</sup> The federal government's suggestion that the land is being "acquired" at a "100 discount to value" suggests that they are not in the business of giving away property for free.

- Severely limit the aviation activities, prohibiting all commercial aircraft except small commuter airplanes.
- Acquire and develop, in a controlled manner, non-aviation related property to support the phased development of the airport.

The major federal players involved in the process, including the Air Force, the FAA, EDA, the Coast Guard, and the U.S. Army, all seemed amenable to this plan. However, Novato made it clear that they were against aviation.<sup>60</sup>

Between 1976 and 1979, while the federal government was completing the EIS, the mood in Marin County appeared to be changing. Because of the heated debate surrounding the reuse of the base as an airport, in 1979, the Marin County Board of Supervisors placed 4 measures addressing Hamilton on the ballot. The first measure would prohibit the County from spending money to improve or operate Hamilton air facilities. The second measure focused on the development of Hamilton into an energy efficient community, not including an airport. The third measure would require the County to take over Hamilton and develop it with limited aviation (which could include aircraft that could carry up to 20 passengers). The last measure would require the County to acquire Hamilton and develop it for general aviation purposes, that could include West Coast passenger services. All four measure were soundly defeated.<sup>61</sup> The results do not suggest that Marin voters were against aviation. Rather, they indicate that the County should not be required to reuse

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<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

Hamilton in this manner. Furthermore, the voters did not preclude the County from spending public funds to improve or operate the airfield. As a result of these referendums, in May 1979, the County pulled its application for acquisition of Hamilton AFB.

In 1980, the County held another referendum on the Hamilton airport issue. This measure would have required the county to move the regional airport from Gness Field to Hamilton. The voters rejected this idea. That same year, the GSA published the final EIS for the reuse. The FEIS generally recommended a public airport use, although other considerations were evaluated, such as residential, commercial/industrial use, "public service activities," and "no action" or land banking.<sup>62</sup>

The FEIS comments indicated a number of interesting attitudes surrounding reuse planning. First, it was clear from the documents that the airport debate was not simply a local issue. More specifically, The FAA and the U.S. Fish and Wildlife Service (Department of the Interior) sparred over the need for aviation vs. wildlife habitats on the former base. The FAA indicated that they could live with the existing habitat uses on the base, but rejected expansion of these areas if civil aviation use was approved. The Fish and Wildlife Service was more direct, requesting that the GSA not approve the civil aviation use (due to the need for expand habitated

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<sup>62</sup> GSA, "Final EIS on Disposition and Use of Federal Property at Hamilton Air Force Base," February 1980.

areas).<sup>63</sup> This federal level debate only served to further complicate reuse planning at the local level.

The conclusions reached by GSA reveal that battle lines had formed over the aviation use:

... opinion in the county appears strongly divided for and against general aviation uses at Hamilton, and significantly less support exists for commercial air carrier use. Those opposing public aviation uses will probably mount a major effort in opposition to any decision to dispose of the property for a public airport. Similarly, pro-aviation groups will oppose any disposal precluding aviation use...<sup>64</sup>

As Marin backed off on its advocacy for an aviation reuse, regional interests joined the fray, with an interest in both accommodating area aviation needs, and environmental protection (from a regional perspective). Two groups were prominent in this debate, the Bay Area Regional Airport Planning Committee (RAPC), and the Bay Conservation and Development Commission (BCDC). Both groups were essentially advocating aviation use at Hamilton, due to the need to expand area airports. Also of concern was the impact on the region if Hamilton was not reused for this purpose. BCDC argued that if this was the case, the San Francisco or Oakland Airports would require expansion, resulting in the need to fill parts of the bay, with adverse environmental consequences. As such, both groups opposed non-aviation uses unless a regional air traffic study would identify other alternatives.<sup>65</sup>

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

By the early 1980s, Marin County and Novato were fundamentally in agreement regarding the airport use. Both groups had rejected commercial air carrier use in their community plans. The difference was that Marin left the door open for limited aviation use (although the Board of Supervisors did not openly endorse aviation uses at Hamilton). In an effort to identify other uses, the County and Novato supported what came to be defined as the "balanced community" plan. This plan called for Hamilton to be developed with pollution-free industry which was less dependent on a resident workforce commuting to San Francisco, and which minimized traffic and related environmental impacts. The plan also suggested the need to meet low and moderate income housing needs. Yet, these proposals lacked specific suggestions for implementation, and failed to identify any associated employment sources.

By 1984, little had been accomplished in the disposition of Hamilton AFB, and the airport issue again came to a vote in the City of Novato. In this round, the City proposed a new ordinance severely limiting aviation uses and suggested reusing the base as a joint use military/civil general aviation airport. Under the proposed ordinance, civil general aviation would restrict use of the facilities for air carrier, air taxi or commuter operations. Furthermore, severe limits would be placed on noise, flight paths, hours of operation, and takeoff and landing patterns. Finally, the initiative indicated that Novato would "negotiate agreements with airport users to ensure that the City would be reimbursed or indemnified for 100 percent of its costs for the acquisition, development, maintenance, operation, management, and control of the airport." <sup>66</sup> The question was put to a vote as follows:

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<sup>66</sup> "Environmental Assessment and Environmental Impact Report on Joint Military/Civilian General Aviation Use of Hamilton Army Airfield, Novato, California," Turner Collie & Braden, Inc., October 19, 1984.

Do the people of the City of Novato desire Hamilton Air Force Base to be used for civil general aviation purposes consistent with and subject to the conditions imposed by the City's Ordinance Initiative governing such use?<sup>67</sup>

This proposal was very similar to what Marin County had proposed back in 1976, although the Novato plan placed greater constraints on aviation uses. In the November general election, the voters of Novato rejected the initiative, with close to 60 percent voting against the proposed aviation use.<sup>68</sup>

As a result of this indecision and inaction, in 1984, the GSA transferred approximately 980 acres of the property (essentially the surplus land) to the U.S. Army for Reserve Component use. Hamilton AFB was officially renamed Hamilton Army Airfield.

### **3.3 Referendums and Initiatives in the Base Reuse Planning Process**

As is evident in the Hamilton AFB case, placing issues associated with base reuse planning on the ballot seems problematic in a number of ways. Planning for the redevelopment of a large, self-contained community is complex and, in many regards, involves highly technical issues. Condensing these elements into ballot questions is practically impossible. Consider Marin County's ballot questions

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<sup>67</sup> Ibid.

<sup>68</sup> "Comprehensive Land Use Plan - Hamilton Army Airfield," November 7, 1991.

concerning the reuse of Hamilton. In all of the elections, this issue essentially boiled down to a question about reusing Hamilton for an airport. The voters of Marin were asked simply if they wanted an airport in their back yard. They predictably rejected this notion. Yet, in a regional sense, this issue is more complex. The regional planners (BCDC, etc.) are faced with the issue of either reusing Hamilton or expanding Gness Field, which would necessitate filling in wetlands; or, worse yet, filling in part of San Francisco Bay to expand the San Francisco or Oakland Airports. Thus, if the voters of Marin County were asked if they prefer reusing Hamilton for an airport or expanding Gness Field (requiring filling a wetlands area), the result may have been altogether different.

Another major problem with referendums is that they are generally worded to elicit a specific response. For instance, the 1979 and 1980 Marin County ballot questions ask if the voters would require the County to redevelop Hamilton for aviation uses. Not surprisingly, the voters overturned these proposals. But, what if the questions had focused on allowing the County to reuse Hamilton for aviation if required.

In the case of the City of Novato, the issues are even more complex. Should the City of Novato be able to vote on an issue which is regional in scope? More specifically, if additional airport facilities are required in Marin County, is it reasonable for the residents of Novato to make this decision? This is not a question which is easy to answer. But at a minimum, it seems inappropriate to place these issues on the ballot.

The public clearly has a right to have a voice in the base reuse planning process. Elected officials and public hearings seem well suited for this purpose. Yet, use of the referendums and initiative will, in most cases, be a poor tool for deciding these vexing issues.

### **3.4 The 1988 Closure**

In late 1988, approximately 710 acres of Hamilton Army Airfield (HAAF) (essentially, the airfield portion of the base) were identified by the Base Closure Commission to be excess to defense needs, and in the summer of 1989, what remained of the installation was officially placed on the base closure list.<sup>69</sup> In the same year, the Hamilton Reuse Committee was formed, with representation from pro-aviation constituencies from Marin County. The HRC was an unofficial, ad-hoc citizens group, with representation from business and community leaders throughout Marin County. As such, this committee was not formed under any special government authority.

This closure action resurrected many of the same issues which had been faced in the previous debates. But, in this round, Novato and Marin officials were more clearly in agreement in their opposition to airport use. As the events unfolded in this round, it became evident that the voters of Marin were against any type of development.

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<sup>69</sup> Ibid.

In June 1989, just prior to the official closure, Novato citizens had rejected a plan for a large-scale residential development on approximately 450 acres of the base. This plan, which had been proposed by a local developer, would have provided 2,550 residences and sufficient commercial space to support 7,300 jobs.<sup>70</sup> This was really a last ditch effort for any type of non-aviation development. In fact, some of the Marin County elected officials were cautiously in favor of this plan, as it would have expanded the area tax rolls, and created an alternative use to the airport plan. With the public disapproval of this plan, City and County officials recognized that few options remained for Hamilton.

One of the major issues seemed to be that neither Marin County nor Novato needed development at Hamilton. This was a wealthy region with a considerable tax base, and rising real estate values. If anything, Hamilton was a nuisance for the area, and with the most recent closure action, local officials hoped to put an end to this headache once and for all.

The final blow to private or public development of Hamilton came in September 1989 (just a few months after the official closure announcement), when the Marin County Board of Supervisors voted against the airport use and recommended that the runway be flooded, making the area a marsh. Just a week earlier, the Novato City Council had voted for essentially the same action.<sup>71</sup> Al

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<sup>70</sup> "Crushing defeat for Hamilton," Independent Journal, June 7, 1989.

<sup>71</sup> "Marin Backs Hamilton Field Wetlands Plan," San Francisco Chronicle, Sep. 13, 1989.

Aramburu, one of the Marin County Supervisors, summarized the feelings of the Board:

For the first time, we are literally going to lay the issue to rest. We've got to be realistic about what can and can't be done. The prospect of ... not having Hamilton as an issue is really refreshing.<sup>72</sup>

Marin County's "wetlands plan" called for the transfer of the entire runway area, approximately 700 acres, from the Army to the U.S. Fish and Wildlife Service. The bay dikes (which protect the runway) would be breached, flooding the runway, thus recreating a marsh.<sup>73</sup>

### **3.5 The Disputes Revisited**

In retrospect, the disputes surrounding the reuse of Hamilton seemed to focus on the community concerns regarding growth in the area, and regional interests associated with the need to accommodate current and future air traffic requirements.

In the first base closure, the City of Novato's immediate interest, as identified in the 1975 referendum, was to prevent the reuse of the base for general aviation. Later in the 1970s, Marin County adopted a similar posture. Yet, as is suggested by the 1989 vote regarding residential development, these communities also seemed concerned about the use of the land for any type of development. When placed in

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<sup>72</sup> "Airstrip Flooding Boosted," Independent Journal, Sep. 13, 1989.

<sup>73</sup> Ibid.

the context of Marin County's growth control mood during this period, the attacks on the airport use appear to be a proxy for a no development in my backyard posture.<sup>74</sup> The other interests in this dispute, which emerged more clearly in the late 1970s (when Marin backed out of its airport reuse plan), were the state and regional agencies concerned about area air traffic and alternatives to the Hamilton airport plan. These groups, represented in large measure by the BCDC seemed legitimately concerned with planning for regional airport requirements and mitigating the environmental impact resulting from required airport expansion. The Marin constituency appeared to recognize these needs, but didn't want to see new or expanded airports in their backyard.

This did not seem to be an issue of differing demographics between Marin County and Novato. Both areas were economically well heeled, and did not view the reuse of Hamilton as an engine for economic development. Early in the fray, Marin seemed open to the idea of an airport largely because, from a regional perspective, airport expansion seemed necessary. Yet, as Novato continued to voice opposition to this plan, Marin eventually backed off, supporting a "balanced community" or "do nothing" approach.

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<sup>74</sup> For a more detailed account of Marin County's growth controls, see Bernard J. Frieden, The Environmental Protection Hustle, (Cambridge, MA: The MIT Press, 1979).

For their part, the federal authorities involved in this action may have missed their opportunity to transfer title for Hamilton to Marin County back in the 1976-1977 time frame. Their lack of clear direction, however, coupled with the complex federal disposition procedures, resulted in a hold strategy, with increased costs associated with maintaining this property over the past two decades. At this point, the federal players seem to view Hamilton in the same way that Marin and Novato do. The base is a nuisance and they are under increasing political and financial pressure to "unload" it. As the Army makes plans for disposing of this land, they are quickly realizing that flooding the runway may be the only remaining viable solution.

## **CHAPTER 4 - THE GEORGE AFB CASE**

### **4.0 Introduction**

As is often the case in military base disposal, the community most affected by the closure looks to have a big voice in the reuse planning process. This is particularly true when the community faces such fundamental issues as the need for tax revenue, water, and control of its environment. In some instances, a town or city facing such challenges may take what Susskind calls a "positional bargaining" approach. Such is the case with the City of Adelanto in its dealings with other communities in the reuse of George Air Force Base.

### **4.1 The Context**

George AFB is located in the Victor Valley area of San Bernardino County in the high desert region of Southern California. The installation was developed at the beginning of World War II as a new town. Most of the base land was developed prior to the incorporation of the neighboring municipalities. In fact, of the 5,350 acres of property, only 537 acres have been annexed (to the City of Adelanto). Like Hamilton, the base is a self-contained community, with a flightline area, industrial district, major housing areas, community support facilities, and a golf course.

Victor Valley is comprised of four municipalities including Victorville, Hesperia, Apple Valley, and Adelanto. Adelanto is by far the smallest of the

communities, with a 1990 population of roughly 6,400 residents, as compared to the other three city populations of approximately 41,000 to 44,000 residents each. The area has experienced rapid growth over the past ten years, growing from 44,000 residents in 1980 to over 145,000 in 1990. When the region's unincorporated areas are included, the population is estimated at over 200,000. This growth scenario is not atypical for desert communities in Southern California in the 1980s.<sup>75</sup>

Forecasts for the 1990s and beyond suggest that growth in the area will be much less than that experienced in the 1980s. All four of the affected communities seem to agree on the need for additional jobs in the region. But, Adelanto sees the opportunity for major airport development, while its neighbors choose to pursue a more conservative strategy.

#### **4.2 The 1988 Closure and the Reuse Planning Process**

George Air Force Base was identified for by the Base Realignment and Closure Commission closure in December 1988. Immediately subsequent to the announcement, the federal government sent in a team from the Office of Economic Adjustment to assist the communities affected by the closure. To a large extent, as the GSA did with Hamilton, the OEA advocated reuse of the installation through a public benefit transfer of the aviation parcels of the base (runway, apron, and surrounding buildings).

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<sup>75</sup> "George Air Force Base Reuse Market Analysis and Strategy," Economics Research Associates, Los Angeles, February 1991.

In early 1989, the communities surrounding the base quickly galvanized to form the George AFB Reuse Task Force. The task force included representatives from San Bernardino County, Victorville, Adelanto, Apple Valley, and Hesperia. This ad hoc group began working with the OEA and the Air Force Base Disposal Agency (AFBDA) (the "owner" and disposal agent) to develop viable reuse plans for the land.<sup>76</sup> The five members were interested in the quick and sensible reuse of George to replace the jobs lost as a result of the closure. However, the communities were clearly affected in different ways. Being the smallest municipality, and, other than Victorville, the only one directly abutting the base, Adelanto was heavily impacted by the closure. Many of its residents worked on the base, and its businesses serviced base workers and residents. The other communities were impacted by the closure to a lesser extent, due to their more diverse industrial and residential base of activities.

By September 1989, the base was officially identified for closure (with the actual closure date set for December 1992), and the OEA was authorized to provide grant money to develop a community reuse plan. By this time, however, it was also clear that a schism had developed between the City of Adelanto and the other four members of the Reuse Task Force. Adelanto had unilaterally withdrawn as a member of this group and was pursuing its own objectives under the direction of the Adelanto-George Air Force Base Reuse Commission. Moreover, Adelanto applied for OEA financial assistance separately from the Task Force.<sup>77</sup>

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<sup>76</sup> Interview with Peter D'Errico, Director Victor Valley Economic Development Authority (VVEDA), George AFB, CA., June 23, 1993.

<sup>77</sup> Letter from the Office of Economic Adjustment to Adelanto-George Air Force Base Reuse Commission, September 1, 1989.

Concurrent with Adelanto's moves, the four other members of the George AFB Reuse Task Force formed the Victor Valley Economic Development Authority (VVEDA). VVEDA's mission was to continue the work of the task force in the reuse and redevelopment of George AFB. Adelanto had been invited to join this group, but declined to participate. By October, VVEDA had been awarded a planning grant from the OEA, while Adelanto was told that funds were not available to support two plans, and that they would need to work with VVEDA to develop a consensus plan.<sup>78</sup>

It is unclear why Adelanto pulled out of the cooperative effort. Adelanto City officials claim that their interests were not being adequately addressed through the task force. Specifically, Adelanto appeared to have concerns regarding such environmental impacts as noise, pollution, traffic, and control of the area's water supply.<sup>79</sup> In understanding the history of Adelanto, however, it appears that other issues were at play.

Adelanto is best characterized as a small "strip" town which, to a large extent, has grown around George AFB. The city is situated directly in the path of the base's primary aircraft approach, and, as such, approximately 85 percent of the municipality's land is in a "noise impaction zone."<sup>80</sup> The City was incorporated in 1970, almost 30 years after the base was opened. In 1976, the Adelanto

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<sup>78</sup> Ibid.

<sup>79</sup> Interview with Mary Scarpa, Mayor, City of Adelanto, Adelanto, California, June 23, 1993.

<sup>80</sup> Ibid.

Redevelopment Agency was formed with a conservative agenda of redeveloping a small area of the City. By the early 1980s, however, the city adopted ordinances which expanded the redevelopment district to include most of the city. By this time, the redevelopment agenda included citywide infrastructure improvements, the development of new municipal buildings (police station, fire station, and city office building), and, more recently, acquisition and joint public/private development of George AFB.<sup>81</sup>

Adelanto appears to have used their RDA as a means of encouraging growth through real estate development. This strategy has, to some extent, paid off. Some estimates indicate that the City of Adelanto has grown from a population of 6,400 in 1990 to close to 8,500 in 1993. Yet, from a fundamental economic standpoint, Adelanto needs some form of growth through new jobs.

According to some local officials, Adelanto sees the base as an opportunity for additional tax revenue. If its redevelopment district could include the base, it could increase revenues through the RDA. This argument seems plausible. However, a further look at Adelanto suggests that the city has pursued aggressive development as an alternative location for residents and businesses from Orange County. This "pro-development" strategy contrasts sharply with VVEDA's more cautious and, by design, more slow moving redevelopment approach.<sup>82</sup> The

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<sup>81</sup> "A Review of Financial Management Issues Relating to the City of Adelanto and the Adelanto Redevelopment Agency," Harvey M. Rose Accountancy Corporation, CPAs, May 1993.

<sup>82</sup> Interview with Peter D'Errico, VVEDA, June 23, 1993.

differences between the two reuse groups is, to some extent, played out further in the development of their reuse plans.

Other than the substantive issues concerning tax revenues and economic development, Adelanto also seems to have had concerns about their voting rights in the reuse planning collaboration. As one of five players, and the smallest in terms of population, Adelanto appeared legitimately concerned with their ability to influence the planning process. Yet, as the most affected community, Adelanto officials believed that they should have a larger impact. The voting process seemed to be unfair and failed to address Adelanto's concerns.

#### **4.3 The George AFB Reuse Plans**

The differences between the two competing plans are best explained in terms of scale and the timing of future development. Both VVEDA and Adelanto agreed that the reuse should be for an airport. However, VVEDA looked at the proposed uses in terms of a largely publicly funded regional airport. By 1991, VVEDA identified three alternatives for consideration.

- A regional commercial and corporate aviation airport within the base, and reuse of other areas of the base for industrial, higher education, office park, and recreational uses.
- An "evolving" airport, beginning as a regional airport, and expanding to serve the Pacific Rim market.
- An "evolving" airport targeted at becoming a large hub commercial airport.<sup>83</sup>

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<sup>83</sup> Ibid.

The common thread in all three development scenarios is a careful and cautious start as a regional airport in the early stages, with the potential for greater down stream growth and expansion. The VVEDA plans call for the long term use of approximately 7,500 to 8,500 acres of development. The additional land required would be authorized under an amendment approved under California development law, calling for the designation of an eight-mile radius around the base as a redevelopment district.<sup>84</sup> George AFB would form the core of the reuse plan, with the use of 2,000 to 3,000 acres of additional land in the unincorporated areas for airport expansion requirements.<sup>85</sup>

Adelanto has developed a much more aggressive concept involving 20,000 acres of planned development as a megaport (the "High Desert International Airport"). This proposal assumes the need for a large airport to serve the major population centers of Southern California, due to the expansion constraints of the John Wayne/Orange County Airport. Adelanto's scheme also relies on the development of a rapid ground transportation system between Victor Valley and major urban locations in Southern California. (However, the proposed high speed train to be built between Orange County and Las Vegas is currently without financing.)

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<sup>84</sup> California Assembly Bill 419 - the Eaves Bill.

<sup>85</sup> "George AFB Reuse Market Analysis and Strategy," p. III-8.

In addition to the differences in scale, the two competing interests offer alternative approaches to financing their redevelopment proposals. VVEDA plans to use public financing and FAA grant money to develop the airport, with additional revenue available from surrounding industrial and commercial uses. Their plan would require a public benefit conveyance of much of the base for this purpose. Adelanto's approach focuses on an outright "purchase" of the base property, followed by an aggressive large-scale development plan using private financing. The City of Adelanto has established a preliminary understanding with Koll Development wherein Koll would act as the lead developer.

Throughout the period between September 1989, when planning commenced, and January 1993, when the Air Force delivered their Record of Decision (ROD) on the reuse of the base, a number of federal agencies were involved in the disposition process. From the beginning of the federal disposal proceedings, it became apparent that the federal players recognized VVEDA's reuse plan as the most viable option. In fact, in identifying alternative reuse scenarios in the EIS process, The Air Force Base Disposal Agency identified the VVEDA plan as the "proposed action" (a.k.a. the "preferred alternative").<sup>86</sup> Furthermore, the OEA and FAA worked closely with VVEDA to monitor their airport planning efforts and to ensure compliance with the EIR process. Other components of the federal process appeared to be moving in tandem with the VVEDA plan. Adelanto appeared to be working almost independently of the process, spending most of their time and resources on litigating against VVEDA at every opportunity.<sup>87</sup>

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<sup>86</sup> Final Environmental Impact Statement - George AFB, January 1993.

<sup>87</sup> In fact, during the period between 1989 and 1993, Adelanto has initiated over 15 lawsuits against VVEDA and other players in the process.

#### 4.4 The Impasse

The federal government's hopes for a consensus plan seemed to have vanished by the time the two reuse plans were issued. By early 1992, concern for base reuse intensified, as the date for actual closure was quickly approaching. Each side viewed the debate in terms of their position and through the press and the courts, further distanced themselves from their counterpart. This was especially true for the City of Adelanto, which, through a series of lawsuits against every conceivable opponent, effectively delayed important processes like the EIS, interim leasing, and environmental cleanup and remediation. For its part, VVEDA seemed to focus more on complying with federal disposal procedures and, with federal grant aid, developing reuse plans, marketing strategies, and an airport master plan. Moreover, VVEDA worked with the State of California on a Redevelopment Plan for the base, which required a special amendment to the state's redevelopment law. In dealing with Adelanto, VVEDA focused more on defending itself in court, and quietly questioning the funding sources for its neighbors' expensive legal challenges.<sup>88</sup>

The impasse seemed to come to a head in July 1992 when the City of Victorville initiated proceedings with the Local Agency Formation Commission (LAFCO) to annex the base.<sup>89</sup> If approved, this action would place effective control

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<sup>88</sup> Interview with Peter D'Errico, VVEDA, June 23, 1993.

<sup>89</sup> Under California State Law, LAFCO will make an initial determination regarding which municipality within a given county is best suited to annex a given parcel. This recommendation is then voted on by the residents of that county. In the George AFB case, LAFCO determined that Victorville should be given annexation rights.

of the base with Victorville (and VVEDA). Adelanto challenged the action, but by April of the following year, the annexation was largely complete, with LAFCO determining that Victorville was the best prepared to provide urban services to the base.<sup>90</sup> Adelanto has continued to appeal this decision, however, it appears likely that Victorville will be given the authority to annex the base.

#### **4.5 Attempts at Mediation**

A number of efforts to mediate the dispute were throughout the period between 1991 and 1992. The first effort came relatively early in the reuse planning process. In early 1991, the City of Adelanto had retained the services of a professional facilitator to host a one-day workshop on planning for the reuse of George AFB. Numerous groups attended and participated in the meeting, including representatives from Adelanto, VVEDA, the federal government, state government, and other interested parties. Although no specific agreements were developed, most participants indicated positive impressions of the session, and a willingness to participate in future meetings of this type. The OEA representatives at the meeting were also impressed with the outcome. As such, they asked the facilitator to continue his work as a mediator for the entire consensus building effort. OEA agreed to fund the work through a special grant.

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<sup>90</sup> Letter from VVEDA to Curtis E. Cornelssen, Subject: Response to July 9, 1994 questionnaire, July 16, 1993.

Over the next three to four months, the facilitator and his team met with representatives from both Adelanto and VVEDA. He interviewed all of the players in private sessions, and in a number of group sessions, began to develop areas of common concern and interest. With this information in hand, the facilitator mapped out the positions of both parties and identified common points of agreement. He was now prepared to begin working intensively with both groups to develop preliminary agreements. Unfortunately, the participants decided against further facilitation/mediation, and walked away from the table.<sup>91</sup>

The second attempt at mediation came in April 1993 from the Office of Planning and Research (OPR) in the Governor's Office. OPR is one of the state agencies heavily involved in California base closure and reuse planning. The OPR Director contacted each party and offered to mediate some type of settlement. Both groups responded by outlining their "positions" in writing to the OPR. But, according to local officials from both Adelanto and VVEDA, the "mediator" was not acting as an objective party, and nothing was done by the state to follow up on this effort.<sup>92</sup>

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<sup>91</sup> Telephone Interview with Daniel Iacofono, Facilitator, MIG Associates, July 26, 1993.

<sup>92</sup> Interviews with Peter D'Errico, VVEDA and Mary Scarpa, Mayor, City of Adelanto, June 23, 1993.

#### 4.6 Federal Indecision

The issue of control of the reuse process came to a head in January 1993, when the Air Force released its Record of Decision (ROD) from the Final EIS. Based on their close coordination with federal officials, and diligence in adhering to the federal process, VVEDA officials had assumed that their reuse plan would be approved. At a minimum, VVEDA hoped for clear direction on the Air Force's intention for the property. Instead, what was delivered was essentially no decision.

In its ROD, the Air Force essentially determined that most of the base property was appropriate for a regional airport use. But, due to the lack of consensus between the different interests, the federal government was going to follow a "negotiated sale" process:

Parcels B and D, [which represent essentially all non-aviation portions of the base] with some minor exceptions discussed in the detailed summary, will be offered for competitive negotiated sale to VVEDA and the City of Adelanto. A formal request for proposals will be issued as soon as possible. Their proposals must identify the public body recommended to receive airfield parcels A and C [the runway and related aviation areas]. Selection criteria will include price, which must be at least fair market value; a practical plan for financing; a feasible, FAA-approved airport layout plan; and a qualified public airport sponsor. The Air Force must reluctantly adopt this course of action because of the lack of community consensus. If the current local impasse is resolved, negotiations would be conducted with the entity that is the consensus purchaser. In any event, if the Air Force does not receive at least one satisfactory proposal, price and all other factors considered, all or any of the property (including the airfield parcels) could be offered for public sale. In that case, neither VVEDA nor Adelanto would have a favored position.<sup>93</sup>

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<sup>93</sup> Record of Decision on George AFB, CA, Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment), Washington, D.C., January 14, 1993.

This procedure suggests that certain non-aviation parcels of the base property would be offered to the two groups via competitive bidding, and the successful (highest) bidder would also be the recipient (through public benefit conveyance) of the aviation parcels. If no acceptable proposal was presented, the Air Force would then open up for public sale.<sup>94</sup> Although from a technical standpoint, the Air Force may have been following federal disposition procedures, this "winner takes all" strategy is a new approach.

VVEDA's response was quick and resolute. Less than two weeks after the ROD was issued, VVEDA and its members initiated correspondence questioning the Air Force's decision. Moreover, VVEDA instituted its first and only lawsuit, claiming that the Air Force had not followed its own procedures, and further indicating that the federal government was ignoring the need to minimize the impact of the closure on the local community.<sup>95</sup> Furthermore, VVEDA suggested that the Air Force's approach in this case appeared to focus more on their desire to generate revenue than to assist the community.

For its part, Adelanto was generally pleased with the decision. This strategy meshed nicely with their plan to "purchase" the base and develop it to its "highest and best use".<sup>96</sup> Adelanto's primary concerns focused on the timing of the action (the sooner the better).

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<sup>94</sup> Ibid.

<sup>95</sup> Letter from Victor Valley Development Authority to Federal Officials concerning the Air Force Record of Decision, January 29, 1993.

<sup>96</sup> Interview with Mary Scarpa, Mayor, City of Adelanto, June 23, 1993.

#### **4.7 Current Affairs**

The George AFB case remains an ongoing dispute. At VVEDA's request, the Air Force is currently reviewing its disposition decision and has promised some response on this issue in the near future. LAFCO has given Victorville the green light for annexing the base. And, Adelanto City officials are currently under a San Bernardino County Grand Jury investigation for alleged misappropriation of city funds.

Unfortunately, for all parties involved, this stalemate has resulted in wasted resources and lost opportunities. From a federal perspective, significant time and money has been expended, and the Air Force has been left with maintaining the property. VVEDA has been unable to sign any leases or redevelop any property. And, Adelanto has practically gone bankrupt in litigating against its "opponents." In the meantime, its development partners appear to have walked from any potential deal.

## **CHAPTER 5 - ANALYSIS**

### **5.0 Introduction**

The Hamilton and George cases suggest that where base disposal and reuse planning involves multiple jurisdictions with different priorities for reuse of the land, some level of conflict may be inevitable. Yet, what other attributes explain this conflict? And, how do the participants manage this conflict? Were these disputes about constitutional or legal rights? Even if the impasses revolved around positional issues, was some key element present or missing which drove the outcomes?

In evaluating the events which lead to impasses in the Hamilton AFB and George AFB cases, I will consider the following issues:

- First, we must ensure that the disputes in question were based on positional arguments, rather than constitutional questions.
- It is also important to consider the factors in these cases that may have contributed to the less than desirable outcomes.
- Next, what role could mediation have played in resolving these conflicts? And, where would it have fallen short?
- Finally, I will re-introduce the mediation effort at George AFB to analyze where this endeavor may have gone awry.

### **5.1 The Issues Revisited**

In reconsidering the Hamilton and George AFB cases, a number of concerns exist which are not readily apparent to the players involved. Clearly, different issues

surfaced in each of the two cases. However, some commonalities do exist. The following paragraphs provide a brief synopsis of what I see as the players' root interests and concerns.

In the Hamilton case, both Novato and Marin County were concerned with the need to control growth in their region. Novato seemed to have greater concerns with this issue as it related to Hamilton. After all, the base was right in their backyard. Growth control advocates ended up in opposition to those groups advocating the need for sensible regional airport expansion. Airport proponents included the FAA, the two Bay Area regional planning agencies (BCDC and RAPC), and, in the early stages of the base reuse planning, Marin County. It seems apparent that all parties were concerned with the need for environmental protection. However, the Bay Area planning groups focused on mitigating the impact on other airports (by foregoing having to expand into wetland areas) through the reuse of Hamilton's existing facilities. Whereas, Novato (and later Marin) appeared largely unconvinced of (or, perhaps, unconcerned about) this need. The federal government's focus was on the orderly "disposal" of the base to reduce federal operating costs.

Airport expansion is always a controversial issue. No community wants to see or hear additional airline traffic. Nor do the residents want the associated noise and air pollution impacts. But this case arrived at a time when an ideal military airport facility was becoming available for civilian use. Marin County and Novato residents later proved that they saw no need for any type of development (even the most limited use airport) at the former air base.

The George AFB reuse planning game was somewhat different. All parties involved, particularly the local surrounding communities, recognized the need for economic development in terms of replacement jobs and additional tax base. VVEDA and Adelanto, however, parted ways beyond that point. As a small community on the edge of the base runway, Adelanto was initially concerned with the environmental impacts of a redeveloped base. Although, on a more fundamental level, it appears as though Adelanto was fighting for control and survival. The base presented an opportunity for an industrial base and increased tax revenues for Adelanto. The Air Force seemed to be concerned most with the cost savings associated with disposing of the base. However, based on the results of their Record of Decision, may have also seen the opportunity for additional revenue.

An interesting common element exists in both of these cases, which may help to explain some of the difficulties in arriving at a consensus. Both Novato and Adelanto were small communities heavily impacted by the closure of adjacent military bases. The effect on Novato was predominantly physical. Novato City officials and residents saw a potential problem in reusing the base for a regional airport due to the potential future environmental impacts. As such, the City saw a need to severely limit (if not stop) development on the base. The issues for Adelanto were different. Unlike Novato, Adelanto depended on their base for economic sustenance. City authorities recognized a need to control the redevelopment process to ensure that Adelanto would survive. Yet, from a process standpoint, both of these small communities pulled out of the larger planning consortiums due to a perceived lack of fair representation in the process. City officials in both communities were

clearly concerned with ensuring that their municipality's interests would be given a fair shake. Thus, an issue for consideration is whether or not the community most impacted physically, fiscally or otherwise should have a larger say in reuse of the closing bases, even though their populations may represent just a small fraction of the area population?

Because of the size of most military installations (in terms of both land mass and economic impact), a base closure will often end up being a regional planning problem. As this is the case, the county and other regional planning agencies will likely want to have a big say in base reuse planning. This was certainly true in the Hamilton and George experiences, where Marin County and VVEDA, respectively, emphasized a broader perspective. Thus, balancing the needs of the communities most directly impacted by the closure with the needs of the surrounding region becomes a major challenge in the base closure endeavor.

## **5.2 The Problematic Elements**

With some of the core issues in the open, let us now turn to a discussion of the second question. What elements were present or missing from these cases which may have contributed to the disputes which occurred?

### **5.2.1 Fairness, Voting Rights, and Power**

In both situations, a relatively small community, heavily impacted by the closure, fought for control of the reuse of the excess property. Further, in each case,

these small municipalities felt that their voting rights in a joint effort, coupled with their more intense desire for control, placed them at a disadvantage in the reuse planning process. The underlying issue here is equality of power and fairness in collaborative planning. In the planning forums for both cases, the larger community (or regional) interests were able to outvote the small communities, resulting in an uneven playing field. As such, the smaller community calculated their BATNA to be unilateral action. In their view, they had better chances in the courts than in a collaborative forum.

### **5.2.2 Lack of Face-to-Face Communication**

Another feature common to both the Hamilton and George cases is the lack of face-to-face contact between the competing interests. Much of the debate was carried on through lawyers, the press, federal and state agencies, and public referendums and initiatives, often resulting in positional bargaining and personal attacks. The players began to lose sight of the real issues, and interests were miscommunicated and misinterpreted. Additionally, because each of the players had different agendas, none of the parties involved, including the federal agencies, could provide objective advice to the disputants.

### **5.2.3 History of Conflict**

Both of these scenarios involved some history of conflict and tension among the competing interests. In the Hamilton case, Marin County and Novato had established a record of confrontation with regional planning authorities even before

the base was first closed.<sup>97</sup> And, according to the facilitator in the George case, Adelanto perceived itself as "second class" in comparison with its more economically vibrant neighbors.<sup>98</sup> With histories such as these in place, the potential for conflict was likely much greater.

#### **5.2.4 Complex Issues**

As with other public land use disputes, these cases involved complex technical issues, requiring expertise beyond that of many of the disputants. As such, experts were required to deal with federal disposal requirements. Before long, the key players were using their consultants and lawyers to promote their positions.

#### **5.2.5 Procedural Bureaucracy**

The federal government's "disposal" process appears to have been detrimental in both disputes. Both the GSA and the Air Force continued to work through the formal disposition processes (federal land clearance, EIS, etc.) even though no community consensus had been achieved. This further complicated matters as the numerous federal agencies involved tended to contribute to the impasse by taking positions with the different communities.<sup>99</sup> Moreover, the complex and expensive property disposition plans, most notably the EIS, have little meaning if no single coordinated reuse plan has been developed.

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<sup>97</sup> See Frieden

<sup>98</sup> Interview with Daniel Iacofono

<sup>99</sup> Recall from the Hamilton case where the FAA and the U.S. Fish and Wildlife Service took sides over the issue of airport vs. wetlands uses.

### **5.2.6 Federal Indecision**

One implementation problem apparent in both cases involves the lack of clarity of the federal goals and objectives relating to base disposal. In both the Hamilton AFB and George AFB actions, the federal disposal agencies (GSA and Air Force, respectively) were inconsistent in identifying their objectives. This is most notable in the George AFB Record of Decision (ROD) where the Air Force appeared to be more concerned with "selling" the base than with sensible community development. Fundamentally speaking, the federal disposal agencies seemed to fail to set out with clear, identifiable objectives. The end result was either indecision, or, like with George, a decision which caught the communities by surprise.

### **5.2.7 Lack of Effective Funding Delivery Systems**

Results from the two cases suggest that the federal agencies involved in base disposal and reuse planning have no effective delivery system for federal benefits (grants, technical support, etc.). This issue relates to the need for building consensus before the federal money spigot is turned on. Yet, even after consensus is reached, how do we ensure that federal benefits are used wisely? The communities involved will likely want to ensure that they have a say in how these funds are allocated. Moreover, different local players may require varying forms of federal and/or state assistance; and, to be effective, requests for aid should be coordinated with the overall reuse planning effort.

### **5.2.8 No Federal Default Options**

Finally, the federal "owner" seems to lack any undesirable default options which would encourage competing interests to come together and build a coalition. For example, in either of the two cases, in addition to encouraging collaboration, if the feds could have suggested that if collaboration was not reached, they would pick one of the plans (groups) over another, the local communities may have been more interested in working together than taking their chances separately. Other strategies might include federal land banking ("mothballing" the base), which, in the case of George AFB, would not have done much for economic development. Or, perhaps worse yet, the federal agency could indicate that the federal government has to identify locations for new prisons, homeless/low-income housing communities, nuclear disposal sites, or missile storage sites, and that without community consensus, they would likely exercise their rights to site these "noxious uses" on the closing base. The results of the Hamilton and George case indicate that the communities who broke away from the consensus planning endeavor were not confronted directly with such undesirable options.

### **5.3 Consensus Building Applied**

With some the missing elements exposed which may have contributed to the impasse, it seems appropriate to revisit the consensus building process and see if these tools might have been helpful. The following points focus on the role that mediation and consensus building might play in the base disposal and reuse planning process.

### 5.3.1 Fairness in Base Reuse Planning

Novato and Adelanto both indicated a reluctance to join a collaborative planning effort because of their minority status. This issue of fairness is common to many consensus building cases, and is typically addressed through the establishment of a more equitable decisionmaking protocol. One approach, utilized in many public policy disputes, is to require that all voices be given equal time, and that, on major decisions unanimous consensus must be reached. This approach will generally be more time consuming and frustrating than the simple majority vote strategy. Yet, if the traditional approach precludes full representation and participation, the consensual technique seems worth trying.

Another key feature of negotiation which may apply in achieving fairness is "inventing options for mutual gain."<sup>100</sup> Take the case of the Adelanto vs. VVEDA dispute. Both parties were looking for a strategy at George AFB which would promote economic development. Adelanto seemed to focus more on involving the private sector while, at least initially, VVEDA took a public sector approach. Boiled down further, however, VVEDA was most interested in the runway and its supporting environs, while Adelanto (and its development partner) was focused on private development rights. These are not wholly incompatible objectives. VVEDA could have taken the lead in developing the airport, while Adelanto could have been given rights to develop industrial and commercial space. Or, better yet, Adelanto may have rejoined VVEDA to pursue this strategy.

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<sup>100</sup> Susskind and Cruikshank, Breaking the Impasse, p. 117-120.

### **5.3.2 Objective, Third-Party Mediation**

Over time, in both of the cases analyzed, the disputes escalated from private disagreement to intense hostilities played out in the press, the courts, and, public meetings. In neither case did the parties negotiate face-to-face. This volatile atmosphere created a wall which separated the community interests. Throughout the land use planning process, most experts agree that productive debate is required to build consensus.

Third party, objective mediation may prove worthwhile in the reuse planning endeavor, particularly if this can be implemented at an early stage in the process. In the George AFB case, one of the reasons that joint planning was difficult was that both disputants "communicated" through the press and the courts. Because of the animosity that had developed over time (even before the base was closed), the parties found it cumbersome to negotiate.

According to public dispute resolution experts, the mediator's role is to provide a clear, unbiased channel of communication, and to slowly bring the parties into a working relationship, to establish a process by which the players can negotiate. In both the Hamilton and George cases, mediation may have provided a means of airing the different players' true interests and concerns, with the result being a potential for dialogue and, ultimately, some level of negotiation. Instead, the disputants made assumptions and predictions about their opponents intentions based on news articles, legal maneuvers, and political speeches.

### **5.3.3 Joint Fact Finding**

The base closure experiences analyzed suggest that the old saying "liars will figure, and figures will lie" takes on new meaning in a base reuse dispute. In both cases, each side had their own set of experts who, not surprisingly, generally provided "factual" support for their sponsor's position. Unfortunately, the technical issues surrounding military base closure actions are not well-suited to public debate. In these instances, the result of competing arguments was indecision and inaction.

"Joint fact finding" may provide some assistance in these debates. If the parties could support a single set of expert analyses, with some latitude for rebuttal, the process might proceed more smoothly. If nothing else, the agencies involved would likely save some time and money.

### **5.3.4 Delivery Vehicle for Federal Assistance**

The federal government has historically provided a significant amount of financial and technical support for communities affected by base closures. This support arrives through direct planning grants, funding for environmental analyses and property disposition plans, FAA airport planning studies, and ongoing technical assistance through the OEA and like agencies. In cases where consensus has been reached, decisions regarding the delivery of this support are relatively simple and straightforward. Where an impasse exists, however, the federal government has difficult choices to make regarding how and to which groups the authorities should provide this assistance. In the Hamilton and George cases, this much needed federal support was often placed on hold, misallocated, or, in some situations wasted on fruitless studies.

The NIS approach presented in the first chapter offers an alternative to the current system. NIS encourages the use of negotiation in the delivery of scarce federal and state resources.<sup>101</sup> In almost every base reuse scenario, alternative uses will exist and exploration is warranted. Yet these endeavors might be better coordinated through soliciting input from all of the players involved, and developing agreements on how the research will be completed, and in what ways funds/assistance will be delivered.

### **5.3.5 Forum for Discussion of the Issues**

As noted in the Hamilton AFB case study, open public debate and/or voting on complex issues is problematic in many ways. Base reuse planning is not easily boiled down to basic pro/con or yes/no questions. An informal forum for thorough discussion and analysis of these issues seems warranted.

Part of this effort might be accomplished through joint fact finding as discussed previously. Negotiation theory suggests that, in developing different options and drafting agreements, the parties should "focus on interests, not positions."<sup>102</sup> In identifying the different interests, the players may find that the issues are more complicated than they had imagined. For instance, in the Hamilton effort, if a negotiating forum had been developed, Novato City officials may have realized that their decisions impacted a much larger community, and that everyone was going to have to make some sort of sacrifice.

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<sup>101</sup> Moore, "Negotiated Investment Strategy."

<sup>102</sup> Fisher and Ury, Getting to Yes.

#### **5.4 Where Mediation Falls Short**

Although the Hamilton and George cases seem ideally suited to mediation, this approach may have proven cumbersome for a number of reasons. In both instances, an imbalance of power existed. Both Novato and Adelanto viewed their situation as a minority stakeholder with limited recourse against their more formidable opponents. As a result of this and other factors, these municipalities decided to take unilateral action through legal and political processes rather than sit at the negotiating table. Furthermore, it was unclear to the parties involved that a consensual solution would be any better than a unilateral approach. For some of the parties involved, delay and stalemate seemed to have been advantageous strategies. In such cases, one of the major concerns, therefore, is ensuring that the disputants are encouraged (or, if necessary required) to negotiate. Mediation may offer some glimmer of hope in this regard; however, other avenues may be required.

#### **5.5 The "Failure" of Mediation at George AFB**

Looking back, in the words of the George AFB facilitator, the players had a number of major hurdles to overcome. First, the representatives involved had very strong personalities, and both groups had a history of confrontation before the base closed. Secondly, Adelanto had a long history of feeling "second class" in the Victor Valley. The City of Victorville, which was a dominant force in VVEDA, was viewed as a more successful community. Adelanto refused to let go of this image. Finally, and probably most importantly, Adelanto was confident that they had more

to gain through unilateral action, where they had "equal footing" than in a cooperative effort, where the cards were stacked against them.<sup>103</sup> Many of these problems, however, are common to a public dispute resolution case, and would not necessarily negate the potential success of a mediation effort. As such, what other attributes of this effort might explain the lack of consensus?

### **5.5.1 Mediation vs. Facilitation**

The professional involved in this case described his role as a "facilitator" who, through a series of meetings, mapped out the positions of the two major disputants and attempted to identify common points of agreement.<sup>104</sup> Although the difference between mediation and facilitation may appear subtle, the complexity of this case may have required more intense and aggressive mediation rather than a third-party facilitator. Additionally, the facilitator involved in this effort did not specialize in land use disputes. The lack of substantive base for working through these complex issues may have been detrimental in the negotiating process.

### **5.5.2 "Contaminated" Entry**

Often how the mediator enters the dispute can have an effect on the outcome of the negotiations. For instance, in the George case, the facilitator was initially retained by the City of Adelanto. In the eyes of VVEDA, this relationship may have tainted the facilitator, even later when this professional is working in a larger context.

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<sup>103</sup> Ibid.

<sup>104</sup> Interview with Daniel Iacofono, Facilitator, July 26, 1993.

### **5.5.3 Commitment and Duration**

The facilitator indicated that the effort may have failed due to a lack of time and on-site support. The 3-4 month time frame is probably inadequate for a negotiation at this scale. Smaller efforts of this type have required much more time to resolve. Further, this endeavor is not a part-time effort. An intense, full-time commitment was likely warranted. As the facilitator aptly put it " We sunk one pillar, but did not build the foundation."<sup>105</sup>

### **5.5.4 Encouraging Participation**

Even with a full-time, concerted effort, the mediation may have proved fruitless without some means of bringing the parties to the negotiating table. The facilitator could not require the parties to participate, and in the end, had few if any means at his disposal to encourage cooperation. Adelanto recognized an opportunity to pursue its objectives through unilateral action.

For its part, the federal government seemed to underestimate both the importance and the complexity of this collaborative planning process. This was probably due to their lack of understanding of the local issues. Moreover, the federal representatives failed to recognize the importance of their role in these disputes. As a result, a number of the federal authorities involved characterized the experience as a "failed effort." This is unfortunate, as federal involvement in these endeavors is vital to a successful outcome.

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<sup>105</sup> Ibid.

This case suggests that some type of federal procedural or legislative framework is needed for requiring the parties to negotiate. This is not to suggest regulation of the outcome of the reuse planning process. Rather, I am proposing that the federal government mandate a negotiation process.

## **5.6 Summary**

The events of the George AFB mediation effort suggest that this endeavor may have been missing some critical elements. It is unfair and shortsighted to criticize this experiment as a "failed" mediation. As with other public disputes, the issues were complex and the participants were generally hostile towards each other. Greater commitment was needed from all players, and the federal government base disposal process seemed to lack the tools needed to encourage and promote a full-scale mediation effort.

## **CHAPTER 6 - CONCLUSION**

### **6.0 Life Without Negotiation**

It seems apparent from the two cases analyzed that mediated negotiation is not a panacea for resolving base reuse planning disputes. These tools provide a process that the federal government may choose to implement in cases where consensus cannot be achieved.

President Clinton's recently announced "five-point" plan goes a long way towards resolving many of the problematic features of the current base transitioning process. Yet, the focus still seems to be on federal withdrawal, and may provide limited assistance in cases involving multijurisdictional and other large-scale base reuse planning disputes. Additionally, it appears unclear how these new federal goodies will be delivered at the local level.

Consensual approaches to managing conflict, building collaboration, and establishing multi-party agreements seem to provide some potential value in the military base transitioning process. Moreover, federal procedures and guidelines are already in place to implement these efforts.

## **6.1 The ADR Law and Base Closure**

The federal ADR Law appears to provide many of the negotiation and mediation tools necessary for managing base reuse planning conflicts. Other federal agencies have already established pilot programs to institute these consensual processes.

The ADR Law, however, does not provide any prescriptions for federal default options in land use disputes. As noted in the previous chapter, such tools appear to be a necessary component of an effective dispute resolution system.

## **6.2 Federal Default Options**

One of the greatest challenges in arriving at some level of consensus is getting the parties to the table. As each group evaluates its BATNA (Best Alternative to a Negotiated Agreement),<sup>106</sup> they will consider the advantages and disadvantages of engaging in negotiation with the other parties. In the base disposal/reuse planning game, if no consensus is reached, as seen in the Hamilton and George cases, the federal government is left holding the property (and continuing to pay for its upkeep). As such, the federal authorities need both carrots and sticks to get the participants to play (and play fair).

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<sup>106</sup> Fisher and Ury, Getting to Yes.

### **6.2.1 Federal "Carrots"**

As noted in earlier discussions, the federal government provides much of the funding and assistance for base reuse planning. These funds should come with strings attached. For instance, at a minimum, the communities should be reminded that if no consensus is reached, no planning money will be forthcoming. A more proactive model might be to engage the players in negotiating the use of federal funds through some mechanism similar to the NIS. Finally, to encourage participation, the players should be shown "successful" cases where negotiation did occur (it does take place at some level in all base closures).

### **6.2.2 Federal "Sticks"**

Even with these positive incentives for participation, the local players may feel that they are better off not engaging in negotiation and consensus building. Furthermore, they may freeze the process through unreasonable legal actions or via the press. In these instances, harsher measures may be necessary.

One "stick" for encouraging negotiation is for the federal authorities to suggest that without consensus, they will be forced to choose one group's plan over the other. Clearly, both sides will weigh the pros and cons of this gamble and may still decide not to participate. But, in the end, the federal agency will be able to make a decision. This will likely result in litigation. Yet, as we've seen in both of our dispute experiences, litigation will likely occur in any case. The other problem that this may pose is where neither of the planning groups has developed a reasonable strategy. Here, the federal authorities may want to exercise their right to follow federal disposition procedures and move to an open bidding/public auction process.

If the local communities affected by the closure are all looking for some form of quick economic development, as was the case at George AFB, and, in the event that consensus has not been achieved, the federal agency may want to threaten to "bank" the land. In other words, the federal authorities may indicate that they will be forced to follow a "do nothing" or "hold" strategy. Jobs and tax revenues are great motivators for negotiation, and this approach may yield some benefits. The down side is that the locals may call the bluff and agree to the banking. In this scenario, the federal government would be left paying for maintenance of the land. But, they might have done so in any case; so, this strategy may be worth a try.

Perhaps the most harsh federal action would be the threat of siting noxious land uses at former military bases. For example, in a case where an impasse has occurred, the federal agencies involved may encourage a negotiated solution by suggesting that without some form of consensus, they will be forced to dig into their federal priorities grab bag and, through the federal disposition process (where the federal authorities can literally preempt the local communities with a federal use at any time before title transfer), site an "undesirable" federal facility. Noxious uses might include a federal prison, nuclear storage facility, hazardous waste storage compound, missile silos, or some similar LULU (locally undesirable land use). Clearly, this may end up backfiring, with community claims of federal preemption of local land use authority.<sup>107</sup> The strategy may, however, yield some results.

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<sup>107</sup> For a thorough discussion of federal vs. state and local land use rights and disputes, see Lyn Lloyd Creswell's "Federal Agency - Local Government Land Use Negotiations: Vulnerabilities of the Federal Bargaining Position," Journal of Urban and Contemporary Law, Vol. 33, 1988.

Ironically, this tool may end up galvanizing local opposition, with the federal response being: "OK, now that you've built consensus against this noxious use, let's work on building consensus for some positive outcome."

The proactive approaches suggested above will likely yield more benefits than reactive, after-the-fact solutions. Moreover, the use of federal default options fall on some sort of continuum, with carrots being employed early in the process, and harsher sticks being employed as required. With careful and thoughtful use of these carrots and sticks early in the reuse planning game, it appears that some consensus may have been attained in the George and Hamilton cases.

### **6.3 Negotiation in Future Base Closures**

With the application of key components of the ADR Law, as well as the development of new federal default options, mediated negotiation in future base closure cases may be a viable approach to resolving multi-party disputes. In many impasse situations, these tools will be worth trying. Otherwise, as this thesis suggests, the federal government may be left holding excess property, and the affected local communities might end up with no job replacement or new economic development.

## BIBLIOGRAPHY AND SELECTED REFERENCES

Administrative Dispute Resolution Act [Pub. L. No. 101-552, 104 Stat. 2736 (1990)].

Amy, Douglas J., "Environmental Dispute Resolution: The Promise and the Pitfalls," reprinted in Environmental Policy for the 1990s, edited by Vig, Norman J., and Kraft, Michael E., Washington, D.C.: CQ Press, 1990.

Carpenter, Susan L., and Kennedy, W.J.D., Managing Public Disputes: A Practical Guide to Reaching Agreements, San Francisco: Jossey-Bass, 1988.

Civilian Reuse of Former Military Bases, 1961-1990: Summary of Completed Military Base Economic Adjustment Projects, Office of Economic Adjustment, Washington, D.C., April-June 1990.

Community Environmental Response Facilitation Act (CERFA) [Pub. L. 102-426, 106 Stat. 2174 (1992)].

Creswell, Lyn Lloyd, "Federal Agency - Local Government Land Use Negotiations: Vulnerability of the Federal Bargaining Position," Journal of Urban and Contemporary Law, Vol. 33, 1988.

Defense Economic Adjustment Programs [Executive Order No. 12049, 3 C.F.R. 169 (1978), reprinted in 10 U.S.C. S 111 notes (Supp. 1992)].

Defense Reauthorization Amendments and Base Closure and Realignment Act, as amended [Pub. L. No. 100-526, 102 Stat. 2623 (1988)].

"Denver Metropolitan Water Roundtable," Case Study Presented by Susan Carpenter, ACCORD Associates, National Conference of State Legislatures Annual Meeting, Boston, July 22, 1984.

Environmental Assessment and Environmental Impact Report on Joint Military/Civilian General Aviation Use of Hamilton Army Airfield, Novato, California," Turner, Collie & Braden, Inc., October 19, 1984.

Federal Administrative Procedure Sourcebook: Statutes and Related Materials, Second Edition, Administrative Conference of the U.S., 1992.

Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. S 484].

Fisher, Roger, Ury, William, and Patton, Bruce, Getting to Yes: Negotiating Agreement Without Giving In, Second Edition, New York: Penguin Books, 1991.

Frieden, Bernard J., The Environmental Protection Hustle, Cambridge, MA: MIT Press, 1979.

"George Air Force Base Reuse Market Analysis and Strategy," Economics Research Associates, Los Angeles, February 1991.

Goldberg, Stephen B., Green, Eric D., and Sander, Frank E.A., Dispute Resolution: Negotiation, Mediation and Other Processes, Second Edition, Boston: Little Brown, 1992.

Hamilton Reuse Committee, "Comprehensive Land Use Plan - Hamilton Army Airfield," November 7, 1991.

Independent Journal, "Airstrip Flooding Boosted," September 13, 1989.

Independent Journal, "Crushing Defeat for Hamilton," June 7, 1989.

Interviews with Peter D'Errico and Richard Cole, Victor Valley Economic Development Authority (VVEDA), George AFB, CA, June 23, 1993.

Interview with Johanna Hunter, Regional Administrator, Environmental Protection Agency, Boston, April 1993.

Interview with Daniel Iacofono, MIG Associates, July 26, 1993.

Interview with Dr. John Lynch, Former Associate Director, Office of Economic Adjustment, Washington, D.C., June 8, 1993.

Interviews with David A. MacKinnon, Office of Economic Adjustment, March-June 1992.

Interview with Kenneth Matzkin, Office of Economic Adjustment, Washington, D.C., June 8, 1993.

Interview with Mary Scarpa, Mayor, City of Adelanto, Adelanto, CA, June 23, 1993.

Joint Statement of Sherri Wasserman Goodman, Deputy Under Secretary of Defense (Environmental Security) and Thomas L. McCall, Jr., Acting Deputy Administrator for Federal Facilities, U.S. Environmental Protection Agency, before the Committee on Environment and Public Works, U.S. Senate, May 23, 1993.

Letter from Victor Valley Economic Development Authority to Federal Officials concerning the Air Force Record of Decision on George AFB, January 29, 1993.

Letter from VVEDA to Curtis E. Cornelssen, Subject: Response to July 9, 1994 questionnaire, July 16, 1993.

Mauring, Nancy J., "Dispute Systems Design and the U.S. Forest Service," Negotiation Journal, January 1993.

Memorandum from the Office of the Under Secretary of Defense, Subject: Strategy for Economic Transition and Base Closure, Washington, D.C., June 3, 1993.

Moore, Carl M., "Negotiated Investment Strategy," Journal of Dispute Resolution, January 1989.

National Environmental Policy Act (NEPA) [Pub. L. No. 91-190, 83 Stat. 852 (1970)].

Office of Economic Adjustment, "Status Report: Hamilton Air Force Base," Washington, D.C., June 1976.

Planning Civilian Reuse of Former Military Bases (and Supplement), Washington, D.C.: Office of Economic Adjustment, 1978.

Raiffa, Howard, The Art and Science of Negotiation, Cambridge, MA: Belknap Press of Harvard University, 1982.

Resolution of A Community Land Use Dispute: A Rhode Island Case Study, Community Guidance Manual IV, The President's Economic Adjustment Committee, May 1980.

Record of Decision on George AFB, CA, Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment), Washington, D.C., January 14, 1993.

"A Review of Financial Management Issues Relating to the City of Adelanto and the Adelanto Redevelopment Agency," Harvey M. Rose Accountancy Corporation, CPAs, May 1993.

San Francisco Chronicle, "Marin Backs Hamilton Field Wetlands Plan," September 13, 1989.

Schlossberg, George R., "Planning and Managing Military Base Adjustments: Federal, State and Local Perspectives," Presentation at George Mason University Conference, January 23, 1992.

Sullivan, Timothy J., Resolving Development Disputes Through Negotiations, New York: Plenum Press, 1984.

Susskind, Lawrence, Babbitt, Eileen F., and Segal, Phyllis N., "When ADR Becomes the Law: A Review of Federal Practice," Negotiation Journal, January 1993.

Susskind, Lawrence, and Cruikshank, Jeffrey, Breaking the Impasse: Consensual Approaches to Resolving Public Disputes, New York: Basic Books, 1987.

Susskind, Lawrence, McMahon, Gerald, and Rolley, Stephanie, "Resolving Development Disputes: A Briefing Paper," Working Paper #5, Center for Real Estate Development, M.I.T., 1986.

U.S. General Services Administration, "Final EIS on Disposition and Use of Federal Property at Hamilton Air Force Base, February, 1980.

Wheeler, Michael, "Promoting Negotiation: Yes in My Backyard," Working Paper #27, Center for Real Estate Development, M.I.T., 1990.

White House Press Release, "Revitalizing Base Closure Communities," Office of the President of the U.S., July 2, 1993.