



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

January 18, 2007

Mayor Mark Peterson
City of Concord
1950 Parkside Drive
Concord, CA 94519

Dear Mayor Peterson:

As we discussed, the Navy believes it most advantageous to team with the City of Concord to identify the best way forward. We continue to believe a meeting with City staff to jointly examine a potential process for the use of Title 10 of the United States Code, Section 2869, at Naval Weapons Station Seal Beach Detachment Concord will be productive. I understand that you and the City staff are keenly interested in seeing answers to some of the City's questions concerning the use of the Exchange Authority prior to meeting with us. Enclosed are the responses that the Navy is comfortable delineating that should not impede our ability to be innovative in our general process discussions. I hope you find these responses helpful in your analysis.

We look forward to meeting with City staff to discuss your responses to our questions and to discuss a mutually beneficial way forward as we further formulate the Exchange Authority process. I will ask my staff to contact Mr. Michael Wright to coordinate a meeting in the next week.

As we also discussed, I will arrange to attend the first City Council meeting in February, and I would ask that we jointly agree to recommend a 90-day extension to the current Surplus Determination. This would allow us more time to work with the City and with the Office of the Secretary of Defense to design a process that works best for both the Navy and the City and has OSD's complete coordination. If you are in agreement, I would ask that you express your concurrence for delaying the surplus determination for 90 days while we continue our discussions. I appreciate the continued thought and energy that the City is devoting to this matter, and I am encouraged that this will ensure that the process will advance successfully.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Army", written over a horizontal line.

Wayne Army
Deputy Assistant Secretary
(Installations and Environment)

Enclosure

Copy to:

Bill Shinn, Vice Mayor

Helen Allen, Council Member

Michael Chavez, Council Member

Laura Hoffmeister, Council Member

Lydia Du Borg, City Manager

Responses to City of Concord Questions Concerning Use of Exchange Authority under Title 10, Section 2869 of United States Code at Naval Weapons Station, Seal Beach Detachment Concord

1. Our understanding of the BRAC regulations is that subject to extensions of time, the Navy is required to issue a surplus determination after it has completed the process of identifying any portions of the CNWS that are to be retained for use by other components of the Department of Defense or other federal agencies. Are there any unresolved issues with respect to potential transfers either within the DOD or to other federal agencies?

R: Federal screening has been completed. There are currently no unresolved issues with respect to potential DoD or other federal agency transfers.

2. What legal authority is the Navy relying on for extending the deadline for issuance of a surplus determination?

R: The implementing regulations at 32 CFR 174.7(m)(1) allow the Deputy Under Secretary of Defense (Installations & Environment) to extend the period for making the surplus determination in unusual circumstances.

3. What are the advantages and drawbacks associated with further delays in issuance of the surplus determination?

R: Postponement of the surplus determination provides us with an opportunity to fully analyze the potential for utilization of the Exchange Authority under 10 U.S.C. § 2869.

9. Are you aware of any other closed military bases at which the Exchange Authority has been exercised successfully without completion of the State/Local screening process and preparation of a Reuse Plan by the LRA?

R: No.

26. Do you believe the Navy could enter into an "agreement to convey property" under Section 2869 prior to approval of an Environmental Impact Report prepared pursuant to NEPA?

R: An Environmental Impact Report (EIR) is prepared pursuant to CEQA, rather than NEPA. The Navy cannot enter into an agreement to convey property until the appropriate level of environmental impact analysis under NEPA is complete. Property disposals are typically supported by an EIS and Record of Decision (ROD) or Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) before entering into an agreement that results in an irretrievable commitment of resources.

27. Section C.8.2 of the BRRM states that the NEPA analysis under the BRAC process must [sic] the environmental impacts of the proposed Federal action and alternatives thereto, including "proposed disposal and reuse actions, and planned community redevelopment." In light of this guidance, would it be possible for an EIS to focus solely on property disposition without evaluating future civilian land uses, including a range of alternative development scenarios?

R: In a manner similar to that discussed in Section C8.2.3.4 of the BRRM, the Navy will analyze the environmental impacts of the proposed property disposal associated with the reasonably foreseeable reuse of the property. In determining the reasonably foreseeable reuse, Navy would rely on market conditions, current property use, surrounding land use, local zoning ordinances, community needs, and other factors that are typically used to determine highest and best use.

28. The BRAC law states that the Reuse Plan prepared by an LRA must be treated as part of the proposed Federal action for purposes of environmental analysis under NEPA. Assuming the existence of an LRA with the willingness and capability to undertake and complete a Reuse Plan, what legal authority would exist for the Navy to utilize an EIS that did not fully analyze anticipated future development and alternatives as identified in the Reuse Plan?

R: If a reuse plan developed and adopted by the local zoning authority were in place at the time the NEPA analysis was prepared, that reuse plan would serve as the primary basis for determining the reasonably foreseeable reuse for purposes of analyzing the environmental impacts of the proposed property disposal.

29. How would the use of Exchange Authority expedite the NEPA process?

R: Should a determination of surplus not be issued, use of the Exchange Authority could allow the NEPA process to begin earlier.

30. How would the use of Exchange Authority expedite the regulatory processes required by federal agencies with jurisdiction over natural resources (historic structures, endangered species, wetlands, etc.)?

R: Timelines for any required permits and consultations as required under other environmental laws and regulations would not be any shorter by exercising the Exchange Authority. However, consultations and processing required permits could begin earlier.

31. What timetable does the Navy anticipate for approval of an EIS?

R: The level of NEPA analysis and scope of the documentation are yet to be determined. The timetable for completion of NEPA depends on the level of NEPA documentation, complexity of the proposed action, and the severity of environmental impacts. For example, a typical Navy EIS could take 18 months to complete.

32. How would the use of Exchange Authority expedite the process of obtaining necessary approvals from federal and state agencies with jurisdiction over cleanup of hazardous chemicals and munitions of explosive concern (Environmental Protection Agency, State Department of Toxic Substances Control, Bay Area Regional Water Quality Control Board)?

R: The Exchange Authority in and of itself has no impact on the environmental processes.

33. What timetable does the Navy anticipate for approval of FOSTs and/or FOSETs?

R: The Navy is not anticipating an "early transfer" under CERCLA and thus a Finding of Suitability for Early Transfer would not be required. The Finding of Suitability to Transfer documentation will be completed while the NEPA analysis is being performed.

34. Has the Navy discussed the proposed early use of Exchange Authority with the EPA and DTSC?

R: No.

43. OEA has stated that it would consider continuation of the City's grant for reuse planning, even if the surplus determination is deferred and the City is not subject to the reuse planning process set forth under the BRAC law. What legal authority would OEA have to fund a non-BRAC planning process?

R: The Office of Economic Adjustment (OEA) is in the best position to address this issue. We have forwarded your question to OEA and anticipate it will contact you to discuss.

44. OEA further stated that the City should be "flexible on scope" if the surplus determination does not occur. We interpreted this statement to mean that grant funding could be reduced, possibly by withdrawing some of the funding which has already received OEA approval. Would the City be at risk of a reduction in the current grant and/or future OEA grants if no surplus determination is issued?

R: The Office of Economic Adjustment (OEA) is in the best position to address this issue. We have forwarded your question to OEA and anticipate it will contact you to discuss.