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Turning Closed Military Property into Affordable Housing and Homeless Services

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The U.S. Congress closes and realigns military installations from time to time based on changing strategic and military needs. Various federal laws and regulations inform this sensitive and complex process. Homeless service providers and coalitions should pay particular attention to one law: the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.¹

The Base Closure Act requires that plans to convert surplus military properties from military to nonmilitary use take into account the needs of homeless persons.² Federal regulations establish a process for homeless service providers to receive base property at no cost.³ After touching on the benefits of using the Act to assist homeless persons, I explain the base closure and redevelopment process, how to build a coalition to obtain property successfully, drafting a notice of interest (i.e., an application for base property), the importance of the legally binding agreement, and how legal advocates can help. Throughout the article, I offer strategies for service providers and advocates to gain the most resources and make the best use of them to assist homeless persons.⁴

I. Benefits

Because military bases often contain a significant number of housing units, warehouses, office space, and other buildings that can be excellent locations for homeless services and housing, base closures can be a great resource for homeless people and their advocates. Past base closures have resulted in the conversion of hundreds of acres of former military property into transitional housing, shelters, job training programs, child care centers, treatment programs, and other services for homeless adults and children.⁵ Base redevelopment plans have established affordable hous-

¹Base Closure Community Redevelopment and Homeless Assistance Act of 1994, 10 U.S.C. § 2687 note (2006).

²*Id.* For CLEARINGHOUSE REVIEW articles using this law, see page 663.

³The process is outlined in regulations issued jointly by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Defense. 24 C.F.R. §§ 586.1–586.45 (2006); 32 C.F.R. §§ 176.1–176.45 (2006).

⁴For further information, including specific strategies and tools, see NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, UTILIZING THE BASE CLOSURE COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE ACT: A TOOLKIT FOR NONPROFITS (2006), available at www.nlchp.org/FA%5FHousing/Base%20Closure%20Toolkit%20Part%201.pdf.

⁵NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, UNUSED BUT STILL USEFUL: ACQUIRING FEDERAL PROPERTY TO SERVE HOMELESS PEOPLE iii, 27–100 (2004), available at [www.nlchp.org/content/pubs/Surplus%20Property%20Report%20FINAL%20\(Dec.%202004\).pdf](http://www.nlchp.org/content/pubs/Surplus%20Property%20Report%20FINAL%20(Dec.%202004).pdf).

ing trust funds, reservations of funds for homeless services, job set-asides for homeless and low-income workers, and the use of off-base property for homeless services and housing programs.⁶

In 2005 Congress approved the most recent round of base closures and realignments, affecting more than 800 military properties in almost all fifty states. To locate available military property in your community, see the National Law Center on Homelessness and Poverty's list of all approved base closures from the 2005 round of the Base Realignment and Closure Commission at www.nlchp.org/FA%5FHousing/2005%20Base%20Closures%203-7-06.pdf. By following the process outlined in this article, advocates can obtain these properties for affordable housing developments and homeless service centers in their communities.

II. Basic Process

The U.S. Department of Defense deems as "surplus" closed military properties that other military or federal government agencies do not wish to use.⁷ These surplus properties are redeveloped for nonmilitary use in collaboration with the local communities in which they are located. The Base Closure Act gives homeless service providers and coalitions a powerful voice in redevelopment.

Generally each community affected by a base closure establishes a local rede-

velopment authority to coordinate the property's conversion from military to nonmilitary use.⁸ The local redevelopment authority prepares a comprehensive redevelopment plan for the base property and submits it to the Defense Department and the U.S. Department of Housing and Urban Development (HUD).⁹ Both departments must approve the plan for it to be enacted.¹⁰ For contact information for local redevelopment authorities, see Office of Economic Adjustment, BRAC [Base Realignment and Closure] 2005—Recognized Local Redevelopment Authorities (last updated Jan. 5, 2007), www.oea.gov/oeaweb.nsf/LRA?readform.

Local redevelopment authorities have much flexibility in redeveloping bases to maximize the economic and social benefit to the community. However, they must balance the community's economic and development needs with the needs of homeless persons.¹¹ Local redevelopment authorities must

- publish in a newspaper the availability of the property and information for providers interested in pursuing the property;¹²
- conduct outreach to homeless service providers in the community;¹³
- seek notices of interest from service providers who propose to use the base property to serve homeless persons;¹⁴

⁶*Id.*

⁷24 C.F.R. § 586.20(b) (2006); 32 C.F.R. § 175.3(i) (2006).

⁸24 C.F.R. § 586.20 (2006). Occasionally a community may fail to designate a local redevelopment authority. In such cases the Defense Department asks the state government to assume the role of local redevelopment authority within thirty days. Should the state refuse or fail to respond, HUD must consult with representatives of homeless people and manage the redevelopment process with the Defense Department. *Id.* §§ 586.35(c)(2), 586.40.

⁹*Id.* § 586.30.

¹⁰*Id.* §§ 586.35, 586.45.

¹¹*Id.* §§ 586.20(c)(5), 586.30(b)(4)(1).

¹²*Id.* §§ 586.20(c)(1), 586.30(b)(5).

¹³*Id.* §§ 586.20(c)(3), 586.30(b)(5).

¹⁴*Id.* § 586.20(c)(2). Notices of interest are applications for base property. The local redevelopment authority must negotiate with those providers who submit notices of interest to create a redevelopment plan to meet the needs of homeless persons in the community. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *GUIDEBOOK ON MILITARY BASE REUSE AND HOMELESS ASSISTANCE 6* (2006), available at www.hud.gov/offices/cpd/homeless/programs/brac/guide/index.cfm. For more information, see IV. Drafting the Notice of Interest.

Base Closure and Redevelopment Process

The base closure process, as it relates to developing services for homeless persons, follows this basic sequence:



Note: For the base closure process, see 24 C.F.R. §§ 586.20, 586.35 (2006); 32 C.F.R. § 174.6 (2006). However, the Defense Department is authorized to extend any deadline contained in the regulations, and the timelines are generally much longer than those specified in the regulations. 24 C.F.R. § 586.15 (2006). From the announcement of the base closure to the approval of the redevelopment plan likely takes several years.

Source: 24 C.F.R. §§ 586.20, 586.35 (2006); 32 C.F.R. § 174.6 (2006); 24 C.F.R. § 586.15 (2006).

- make a draft redevelopment plan available for public comment;¹⁵ and
- create legally binding agreements with providers whose notices of interest are accepted.¹⁶

See the diagram of the base closure and redevelopment process for the timelines for these requirements.

III. Building a Coalition to Obtain Property

Homeless service providers are eligible to submit notices of interest individually or jointly with other providers. The National Law Center on Homelessness and Poverty's experience is that applications prepared and submitted jointly by a group of providers are usually more successful in obtaining the greatest amount of property and other resources and in using such resources in the most comprehensive way. Thus, at the outset of their efforts to obtain base property, providers and advocates should form a base property coalition of agencies working together to make the best use of the property for homeless people in the community.

Building a base property coalition requires an investment of time and effort. However, the payoff is well worth the investment for at least five reasons:

- A coordinated group of providers can meet the needs of homeless people in the community better with higher-quality, more comprehensive services. When housing agencies, treatment programs, food banks, schools, child care providers, job training programs, and others coordinate services, they can offer an extensive package of services to support people in finding and maintaining safe, stable housing.
- A base property coalition is more likely to be able to assemble a strong, persuasive notice of interest. Regulations

require that applicants demonstrate in their notice of interest their capacity to implement the proposed program.¹⁷ A coalition of providers likely can better prove their capacity to implement a variety of services, thereby maximizing their chances of obtaining the property and minimizing the risk of losing the property later for noncompliance with program goals.

- A coordinated group of providers is much more likely to be successful in securing community support for the notice of interest. Communities often greet homeless service providers with opposition. These "not in my backyard" reactions can defeat a notice of interest before it is even submitted. To prevent and combat this type of opposition, the base property coalition must engage in consistent, coordinated efforts to educate the community about its program proposal, its capacity to manage the program, and the benefits that its program offers the community. A broad-based coalition appeals to diverse elements of the community and instills more confidence in the feasibility of implementing the program safely and successfully.¹⁸
- A coalition of providers presents a more formidable force in negotiations with the local redevelopment authority. Applicants must develop and sustain a positive relationship with their local redevelopment authority, from the initial contact to the ultimate implementation of their programs. A base property coalition can offer more resources and strength to manage this long and sometimes complex relationship.
- Joint notices of interest reduce the problem of service providers undercutting one another and thereby failing to maximize the benefits of the process for the notice of interest. As noted above, the local redevelopment authority must demonstrate to HUD

¹⁵24 C.F.R. §§ 586.20(c)(6), 586.30(c) (2006).

¹⁶*Id.* § 586.30(b)(3). For more information, see V. Legally Binding Agreements.

¹⁷*Id.* § 586.20(c)(2)(ii)(E).

¹⁸For more information on and resources for preventing and combating "not in my backyard" opposition, see NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *supra* note 4, at 30–34.

that it has considered the needs of homeless persons in the community.¹⁹ However, if the local redevelopment authority receives multiple notices of interest and awards base property to at least one applicant, HUD may deem that the local redevelopment authority has met its legal requirements. This could be the case even if the local redevelopment authority accepts the most modest and inexpensive notice of interest, while rejecting more comprehensive proposals. Thus, by applying for and jointly advocating comprehensive services instead of submitting several separate proposals, applicants can help ensure the most extensive services for homeless persons, while improving their own chances to receive property.

Ideally this coalition is broad enough to include a creative mix of participants; the list of potential partners is as large and diverse as the community.²⁰

Other community groups and local government agencies may shore up notices of interest by publicly supporting the proposal. For example, applicants may seek letters of support or commitments to coordinate services from the following agencies: mayor's office, city council, county supervisors, veterans' affairs office, law enforcement, Chamber of Commerce, local school board, local parent-teacher associations, neighborhood associations, faith-based communities, civic groups, and state government agencies.

An investment of funds helps the coalition start strong and remain so throughout the long process of obtaining base property. Seeking outside funding to hire a full-time coalition coordinator can help providers and advocates pre-

pare a successful notice of interest and ultimately make good use of the property. Local foundations or local government may offer planning grants or other funding opportunities.

IV. Drafting the Notice of Interest

The notice of interest is an application for base property. The local redevelopment authority must publish a newspaper advertisement requesting notices of interest.²¹ The advertisement must state a deadline of between 90 and 180 days from the date of the advertisement.²²

Federal regulations require that notices of interest include six basic elements: program description, description of the need for the program, description of community coordination, information about the requested property, applicant information and financial plan, and timeline. They should be listed clearly as separate subheadings in the notice of interest.²³

A. Program Description

The notice of interest must describe the program and services that the applicant intends to provide on the property.²⁴ Closed military property may be used for a variety of services and programs. However, the notice of interest *must* demonstrate that the program “clearly meets an identified need of the homeless and fills a gap in the continuum of care.”²⁵

Potential uses for closed military property include permanent and transitional housing, shelters, domestic violence programs, child care and early childhood programs, after-school programs, runaway youth programs, food and clothing banks, job and skills training, employment programs, supportive services, and treatment facilities.²⁶

¹⁹*Supra* note 11 and accompanying text.

²⁰For more information on and tools and resources for coalition building, see National Center for Homeless Education, A McKinney-Vento Toolbox (forthcoming April 2007), www.serve.org/nche.

²¹24 C.F.R. § 586.20(c)(1) (2006).

²²*Id.*

²³*Id.* § 586.20(c)(2)(ii).

²⁴*Id.* § 586.20(c)(2)(ii)(A).

²⁵*Id.* “Continuum of care” is discussed in IV.B.2.

²⁶NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *supra* note 5, at iii, 27–100.

Some communities have worked with their local redevelopment authorities to develop other creative ways to serve the homeless community, such as selling some of the military property to generate funds for an affordable housing trust fund or homeless services, as long as the funds respond to an identified and substantiated need (see IV.B for more information on substantiating need); requiring that a percentage of new jobs created in the redevelopment and future use of the property be reserved specifically for homeless or low-income individuals; and requiring that a percentage of the housing units developed by commercial developers be rented as affordable housing.²⁷

HUD periodically alters the specific requirements for using base closure property. Thus applicants should contact their HUD field office for current information about allowable uses of base property.²⁸

B. Description of the Need for the Program

As stated in IV.A, the notice of interest must demonstrate that the proposal “clearly meets an identified need of the homeless and fills a gap in the continuum of care.”²⁹ To make this case, the notice of interest should use homelessness data and refer to service priorities published in local sources.³⁰ HUD’s criteria for reviewing redevelopment plans specifically include “whether the selected notices of interest are consistent with the Consolidated Plan

or other housing, social service, community, or development plans.”³¹

Important data to outline in a notice of interest include basic statistics about the number of children, youth, and adults experiencing homelessness in the community; detailed information about unmet needs; and an explanation of how the proposed program will meet those unmet needs. The most significant sources of these data are outlined below.

1. Consolidated Plan

Every community that receives certain funds from HUD must have a consolidated plan.³² The consolidated plan includes extensive information—including an assessment of affordable housing and homeless service needs, available services, estimates of the numbers of homeless persons and families in the community, and gaps in services—that can support notices of interest. Some consolidated plans are available from HUD online.³³ Others can be obtained from state or local government websites or by contacting state or local governments’ housing or homelessness agencies.

2. Continuum of Care

Every community that receives McKinney-Vento Homeless Assistance Act funds from HUD must implement a continuum of care, which is a coordinated, community-based process of identifying the homeless community’s needs and building a system to meet those needs.³⁴

²⁷*Id.* at 10.

²⁸For HUD field office contact information, see U.S. Department of Housing and Urban Development, Local Office Directory (last updated Jan. 12, 2007), www.hud.gov/localoffices.cfm.

²⁹24 C.F.R. § 586.20(c)(2)(ii)(A) (2006).

³⁰U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 14, at 15–18.

³¹24 C.F.R. § 586.35(b)(2)(ii) (2006).

³²Each state and local government receiving grant funds from HUD under four formula grant programs must develop a consolidated plan: Community Development Block Grant, HOME Investment Partnerships Program, Housing Opportunities for Persons with AIDS, and Emergency Shelter Grants. *Id.* § 91.2. For additional information on consolidated plans, see Ed Gramlich, *Consolidated Plan and Community Development Block Grant Advocacy*, 32 CLEARINGHOUSE REVIEW 173 (Sept.–Oct. 1998); Michael Rawson, *Administrative and Judicial Enforcement of the Department of Housing and Urban Development’s Consolidated Plan Obligations*, *id.* at 192.

³³See U.S. Department of Housing and Urban Development, State and Local Consolidated Plans (updated April 6, 2006), www.hud.gov/offices/cpd/about/conplan/local/index.cfm.

³⁴McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301–11435 (2006). For HUD’s most recent application for funding (which sets the requirements for grantees), see Notice of HUD’s Fiscal Year (FY) 2007 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the FY2007 SuperNOFA for HUD’s Discretionary Programs, 72 Fed. Reg. 2396 (Jan. 18, 2007).

Funding applications and documents regarding continuum of care contain data about homelessness in the community, identify gaps in services, and establish service priorities for the local community. Contact information on continuum of care is at HUD online.³⁵

3. Local School District McKinney-Vento Programs

Pursuant to the McKinney-Vento Act, every school district in the country has a homeless education liaison.³⁶ In many cases these liaisons have extensive information about the numbers and unmet needs of homeless children, youth, and families in the community. Every state also has a homeless education coordinator, who can supply additional information.³⁷ Contact information on state coordinators is available from the National Center for Homeless Education.³⁸

4. Assessment of Other Community Needs

Additional helpful data may come from other government and community agencies, for example, their state or local plans to end homelessness; strategic plans from empowerment zones or enterprise communities; plans for economic development completed by state or local economic development authorities, councils of government, planning agencies, chambers of commerce, or other state or local agencies; affordable housing or homeless services collected by nonprofit organizations, service providers, or homeless coalitions, particularly waiting lists and unmet needs; and strategic plans from the local Federal Emergency Management Agency Emergency Food and Shelter Board.³⁹

C. Description of Community Coordination

The goal of the notice of interest is to explain how the proposed program will deliver services efficiently through strong collaborations. It should describe the coordination and collaborations that have been implemented among service providers, with the local community, and with other agencies and programs in the vicinity of the base property. It should offer some evidence of community support for the proposal, ideally including letters of support from community groups and local government agencies.

D. Information About the Requested Property

The notice of interest must describe the physical requirements necessary to implement the program, specify the buildings and property that will be used, and demonstrate that the buildings and property are suitable for the program.⁴⁰

Obviously the physical requirements necessary to implement the program depend on the specific services contemplated by the program. Applicants may choose to develop a grid outlining each proposed service and the specific building and property requirements for that service. After the property needs are identified, applicants should ensure that the notice of interest specifies the exact buildings and property sought, including area in acres or square feet.

Demonstrating that the buildings and property sought are suitable for the proposed uses requires a fairly detailed analysis of environmental and legal issues. As noted, the suitability of the buildings and

³⁵See U.S. Department of Housing and Urban Development, Continuum of Care Contact Information (updated Jan. 25, 2005), www.hud.gov/offices/cpd/homeless/programs/cont/coc/.

³⁶McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11432(g)(1)(J)(ii) (2006).

³⁷*Id.* § 11432(d)(3).

³⁸See National Center for Homeless Education at SERVE [at the University of North Carolina at Greensboro], State Coordinators for the Education of Children and Youth Experiencing Homelessness (updated Jan. 10, 2007), www.serve.org/nche/downloads/sccontact.pdf.

³⁹For many plans to end chronic homelessness, see United States Interagency Council on Homelessness, 10-Year Plans to End Chronic Homelessness (last updated Oct. 2, 2006), www.ich.gov/slocal/10yrchronic.html.

⁴⁰24 C.F.R. § 586.20(c)(2)(ii)(D) (2006).

property depends on the specific program proposal. If the proposal includes on-site housing or programs, applicants need to ensure that the property is appropriate for human use or habitation. Environmental hazards have deterred the redevelopment of some closed bases. For example, some military properties housed dangerous chemicals or might contain asbestos or lead paint that must be isolated or removed safely.

Applicants may want to obtain a property inspection or appraisal before completing the notice of interest to account for environmental hazards. In many cases the local redevelopment authority coordinates basewide property inspections in which applicants may participate. Without such inspections, applicants may want to attempt to convince the local redevelopment authority to bear at least a portion of the costs of an independent assessment.

State and local land-use laws also affect the property's suitability for a particular program. For example, zoning regulations establish basic requirements and limitations for property. As federal property, a military base is not subject to local zoning laws. However, upon the property's transfer to the local redevelopment authority, zoning regulations do apply. Bases also may be out of compliance with building codes, other state and local land-use laws, and federal laws such as the Americans with Disabilities Act.⁴¹ For example, military buildings may not meet applicable requirements for seismic resistance, sloping of roofs, parking areas, or access for persons with disabilities. To the extent possible, applicants should determine if existing structures meet local, state, and federal land-use requirements and account in the notice of interest for any necessary changes.

The military may remove infrastructure such as water, electricity, and heating when vacating the property. Applicants should consult with the local redevelop-

ment authority, the Defense Department, and the military units occupying the property to determine what infrastructure will remain when they leave. Advocates should keep in mind that the property may remain vacant for months or even years before applicants finally receive it. Applicants should consult with the Defense Department and the local redevelopment authority to find out about maintenance plans and negotiate any necessary maintenance, rehabilitation, or public safety services.

The local redevelopment authority's support and cooperation is critical to determining if environmental or other hazards, zoning restrictions, building codes, or the removal of key infrastructure impede locating the proposed program on the property. If the property requires adjustments, the notice of interest should contemplate the necessary time and funding. Applicants should negotiate with the local redevelopment authority to apportion the cost of property inspections, maintenance, adjustments, and improvements.

E. Applicant Information and Financial Plan

The notice of interest must establish that the applicants have both the organizational capacity and legal status to carry out the program.⁴² It also must describe the general budget and projected funding sources for the program.⁴³

The applicant information in the notice of interest should include the names of all applicants, including coalitions and providers; the applicants' vision or mission statement; the legal status of the applicants (e.g., nonprofit corporation); a summary of the applicants' experience in and qualifications for homeless services; a listing of key measurable outcomes and achievements of the applicants' programs; and a demonstration of the applicants' capacity to implement each element of the proposed program.

⁴¹Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12514 (2006).

⁴²24 C.F.R. § 586.20(c)(2)(ii)(E) (2006).

⁴³*Id.*

The financial plan should contemplate all likely expenditures and demonstrate that the applicants will be able to meet those expenses. Any needed changes or improvements on the property, including maintenance during its vacancy, should be accounted for in the budget. Applicants should verify with the Defense Department and the local redevelopment authority if any structures or infrastructure will be removed when the military vacates the property. Accounting for potential expenses related to zoning regulations and environmental hazards is prudent. Preparing the financial plan is complicated by many expenses not becoming clear until the redevelopment of the property is under way. The local redevelopment authority may have general estimates of many of the expenses that the notice of interest should include.

F. Timeline

The notice of interest must estimate the timeline for completing the major milestones of program implementation.⁴⁴ The estimate should include some flexibility for unforeseen complications and delays. The application and approval process for base property redevelopment can be protracted. Consulting the local redevelopment authority for information about the Defense Department's anticipated timeline for vacating the base and the local redevelopment authority's timeline for completing and implementing the redevelopment plan can be useful for applicants.

V. Legally Binding Agreements

The legally binding agreement between the local redevelopment authority and the homeless service provider(s) (i.e., the applicant) is perhaps the most important document in the redevelopment process. The legally binding agreement establishes (1) the benefits that the homeless community will receive and (2) the rights and obligations of the homeless service provider and the local rede-

velopment authority in the delivery of those benefits.⁴⁵ However, in their rush to secure the property or other benefits for a needy community, providers often give insufficient attention to this agreement. To ensure that the homeless community receives the benefits agreed to, providers should devote extra time and resources to drafting, negotiating, and reviewing the legally binding agreement carefully.

Federal regulations direct local redevelopment authorities to include legally binding agreements for "buildings, property, funding, and/or services" as part of the redevelopment plan that the local redevelopment authority submits to HUD; this document details the benefits for the homeless community.⁴⁶ The regulations, however, provide little guidance as to what terms and conditions should or should not be included in the legally binding agreement. For example, these are the only required pieces of information:

- alternative arrangements in case an environmental analysis indicates that any property identified for transfer in the legally binding agreement is not suitable for the intended purpose;
- where the benefit to be conferred is the use of base property as a homeless assistance facility, provision for the reversion or transfer, either to the local redevelopment authority or to another entity or entities, of the buildings and property if they cease to be used for the homeless (the local redevelopment authority is not required to use the building or property to assist the homeless after reversion);
- a description of how buildings, property, funding, services, or some combination of these either on or off the base will be used to fill some of the gaps in the current continuum of care and an explanation of the suitability of the buildings and property for that use; and

⁴⁴*Id.* § 586.20(c)(2)(ii)(F).

⁴⁵See *id.* § 586.30(b)(3).

⁴⁶*Id.*

- the availability of general services such as transportation, police, and fire protection and infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activity at the base.⁴⁷

The legally binding agreement must be accompanied by the local redevelopment authority's chief legal advisor's legal opinion that the legally binding agreement, when executed, will constitute legal, valid, binding, and enforceable obligations on the parties.⁴⁸ Obtaining this opinion is not directly the providers' responsibility.

The regulations do not provide any additional guidance as to what HUD is looking for when reviewing a legally binding agreement. As part of HUD's review of the local redevelopment authority application, the only information that HUD must verify is that each legally binding agreement includes all documents legally required to complete the transaction necessary to realize the homeless uses described in the application and "all appropriate terms and conditions" (but does not state what those terms and conditions should be); deals with, as mentioned above, the full range of contingencies regarding environmental unsuitability and reversion; stipulates that the benefit will be made available in a timely manner to the representatives of the homeless; and is accompanied by the required legal opinion.⁴⁹

Thus local redevelopment authorities and providers can draft the legally binding agreement freely and flexibly to fit the needs and circumstances of the particular benefit being negotiated. However, the lack of regulatory guidance can lead to significant variations in the form and content of each legally binding agreement. When drafting and negotiating the agreement, providers thus should seek appropriate legal counsel.

The National Law Center on Homelessness and Poverty reviewed sixty-one le-

gally binding agreements from the base realignments and closures in 1996. The review confirmed that there was little consistency in the form or content of the legally binding agreements. The review, however, identified several common provisions and helped the center develop guidance as to how to avoid pitfalls and harmful language in drafting a legally binding agreement. Including the following types of provisions helps protect the long-term interests of the homeless community.

A. Default and Reversion

As noted above, one of the few required clauses in a legally binding agreement is a default or reversion clause. A key component of a default or reversion clause is what event or condition must occur to trigger the default or reversion. Thus providers should be careful to request reversion clauses that contain safeguards to prevent the premature or unnecessary reversion of property to the local redevelopment authority. For example:

Create Flexibility with Property Uses.

Default or reversion clauses are often triggered when the property is no longer used for the homeless community. The provider should take care to mention any special activities such as job training or food banks that it intends to implement. The provider should insist on having flexibility to change activities as the needs of the homeless population change or funding fluctuates. The provider should attempt to remove language that specifies exact numbers of persons to be served at any given time or any other facet beyond the provider's control.

Allow for Notice and Time to Cure. The provider should request that, before a reversion plan takes effect, it be given detailed notice of the alleged deficiency and allowed a reasonable time to implement a plan and cure the alleged deficiency.

Specify Substitute Service Provider in the Event of Reversion. The law requires that the local redevelopment au-

⁴⁷*Id.* § 586.30(b)(3)(i)-(iii).

⁴⁸*Id.* § 586.30(b)(3)(i).

⁴⁹See *id.* § 586.35(b)(3).

thority “shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless,” but “[a local redevelopment authority] may not be required to utilize the building or property to assist the homeless.”⁵⁰ Reversion clauses thus should specify that the local redevelopment authority would find another homeless service provider to take the property in case the provider in the initial agreement defaults. To ensure that the homeless community receives the benefit to which it is entitled, the provider may want to find—before it signs the agreement—a backup provider to use the property so that the local redevelopment authority cannot claim to be unable to find a replacement provider. Alternatively the provider could request a clause specifying that the local redevelopment authority find an adequate service provider within a specified time after reversion.

B. Oversight

A provision often associated with the default clause is the local redevelopment authority’s right to inspect and oversee the use of the property. A common inspection clause permits the local redevelopment authority to inspect the property at all reasonable times with reasonable notice. In accordance with the homeless community being served, however, the provider may want to tailor the clause to limit the breadth and duration of the inspections. Also, to the extent that local redevelopment authorities request that the provider submit reports to ensure that the property is used for the purposes set forth in the legally binding agreement, the provider should ensure that these reporting requirements are not overly burdensome and that they occur at reasonable intervals.

C. Indemnification

Nothing in the regulations requires that the provider indemnify the local rede-

velopment authority for third-party liability arising out of the service provider’s activity under the legally binding agreement. If the local redevelopment authority insists on such indemnification, the provider should try to limit the scope of the indemnification as much as possible to liability arising out of the negligence of the service provider in the operation of the program set forth in the legally binding agreement. Excluding liability resulting from certain conduct by the local redevelopment authority also may be possible. For example, liability arising out of a hidden property defect that the local redevelopment authority knew or should have known about at the time of the property disposition or liability arising out of the local redevelopment authority’s gross negligence or willful misconduct might be excluded.

D. Associated Costs

Legally binding agreements are required to provide for “alternative arrangements in the event that an environmental analysis ... indicates that any property identified for transfer in the agreement is not suitable for the intended purpose.”⁵¹ However, the regulations do not give any guidance as to what acceptable “alternative arrangements” might include. The provider thus should seek to insert provisions that can mitigate their exposure in the event of a negative environmental analysis. For example, the provider could request that the local redevelopment authority disclose the extent to which the property is contaminated before declaring it “suitable” for use or propose that the local redevelopment authority pay for removal or remediation costs beyond a certain threshold.

To the extent that the alternative arrangements involve finding alternative property for the provider off the base, the provider should include provisions to help defray some of the unexpected additional expenses. For example, undertaking the proposed program in an off-base building should not be more expensive than it would have been on the govern-

⁵⁰*Id.* § 586.45(e).

⁵¹*Id.* § 586.30(b)(3)(i).

ment property. If a provider anticipates an increase in the costs on account of blight or crime in the off-base location, then the provider should be able either to reject the property and require the local redevelopment authority to present new alternatives or to receive compensation for the additional expenditures.

Operating costs for the facilities as provided in the legally binding agreement may be very high. If the provider anticipates difficulty in procuring needed funds, it should negotiate with the local redevelopment authority to provide or assist in finding some external revenue source to cover some of the costs. For example, the provider could request that a percentage of revenue from the sale or rental of all property on the base be contributed to the provider to cover operating costs.

E. Coalitions Versus Single Providers

As discussed above, applications prepared and submitted jointly by a group of providers are often more successful in obtaining the most property and making the best use of it. Legally binding agreements negotiated by a coalition of providers also are generally more comprehensive and balanced because the coalition can combine its resources in drafting, negotiating, and reviewing the agreement. Although the needs and interests of each community determine whether providers negotiate individually or as a coalition, providers should coordinate their efforts.

One of the challenges for a coalition drafting a legally binding agreement is that the parties often cannot specify at the time of the agreement which service provider or providers will receive the assistance (e.g., property, funds) under the agreement. In these circumstances some legally binding agreements provide only that “the parties” will decide who the providers receiving the assistance will be. However, the coalition should specify in the agreement either who the providers will be or that the coalition will have the decision-making authority to decide which alternative provider should be allowed to assume responsibility when a

provider originally identified in a legally binding agreement no longer can supply the assistance negotiated.

F. Practical Tips

Providers should keep in mind a number of practical tips when drafting and negotiating the agreements:

- Before agreeing to accept a piece of property and carry out the proposed programs, a provider may want to consider enlisting a realtor to appraise the property and an inspector to uncover any potentially costly defects. These professionals may help a provider contemplate modifications and other unplanned or unbudgeted costs.
- A provider should assess public transportation and accessibility of the property to the targeted clientele, especially if an agreement stipulates that a certain number of people will be served each year. Factors such as the proximity of hospitals, public schools, and places of possible employment are not contemplated by the regulations, but providers legally bound to arrange for transportation to such facilities may want to seek a location conveniently reached from these places.
- Wherever possible, a provider should seek cooperation from the local redevelopment authority in fulfilling the provider’s mission. For example, a provider should seek commitments from the local redevelopment authority in securing additional funding for provider operations, permitting providers to sublease property to additional providers to alleviate the burden of rent or enhance their program offerings, and working with the surrounding community to foster acceptance of the homeless who would be served in the neighborhood.

VI. How Legal Advocates Can Help

Legal aid providers, pro bono law firm attorneys, and other legal advocates are critical members of any coalition seeking to obtain closed military property for homeless services. They are an important part of any continuum of services

for homeless people. Families, young people, and single adults experiencing homelessness can benefit from legal advice covering such issues as education rights, public benefits, housing rights and benefits, emancipation and parental rights and responsibilities, domestic violence, criminal matters, and civil rights. Thus attorneys may wish to locate a legal aid office for homeless people on base property, particularly as part of a continuum of services provided by a group of property applicants. Legal advocates can support efforts to combat “not in my backyard” opposition and campaigns to secure community involvement in notices of interest.

Attorneys’ experience and skills with legal requirements, negotiations, legal drafting, and advocacy will help at various points in the application process. First, developing a strong notice of interest requires familiarity with various land-use, environmental, and antidiscrimination laws as well as with the specific legal requirements of the Base Closure Act. Local attorneys are far better able to navigate these laws and regulations than other service providers. Second, applicants must engage in continuous negotiations with the local redevelopment authority over the use and allocation of the property and the responsibility for expenses for items such as environmental cleanup and compliance with land-use and zoning laws. Having strong legal advocates in the base property coalition will help ensure a fair allocation of such responsibilities and a sustainable legally

binding agreement. Third, attorneys can lend expertise in legal drafting to the development of the legally binding agreement. Many attorneys are accustomed to drafting contracts, and their participation ensures that the agreement conveys the rights and responsibilities that the coalition intends. Fourth, if the local redevelopment authority fails to comply with its legal responsibilities, attorneys can seek to force compliance through legal advocacy.

Both legal aid organizations and pro bono assistance from law firms are key elements in obtaining and making the best use of closed military property for homeless people.



The Base Closure Act gives homeless service providers a remarkable opportunity to obtain property or funds or both to remedy homelessness in their communities. Past base closures have resulted in the conversion of hundreds of acres of former military property into housing and services for homeless adults and children. Information in this article can, I hope, enable and encourage advocates, including lawyers, to form base property coalitions and pursue the benefits of the Base Closure Act in their communities.

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