



ACQUISITION AND
TECHNOLOGY
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October 29, 1999

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS AND HOUSING)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (CONVERSION
AND REDEVELOPMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS)

SUBJECT: No-Cost Economic Development Conveyance Authority

Following the July 1993 announcement of the President's program to revitalize base closure communities, Congress created a new property conveyance authority, designed specifically to ease the economic hardship caused by base closures and realignments and to foster rapid job creation in the adversely impacted local communities. This authority gave the Department of Defense (DoD) the ability to transfer property to Local Redevelopment Authorities (LRAs), for consideration at or below estimated fair market value, to spur economic redevelopment and job creation. This tool was referred to as the "Economic Development Conveyance (EDC)." Since its creation, the EDC has been an effective tool in spurring economic redevelopment and job creation efforts at realigned and closed installations throughout the United States. While successful, the EDC process in some cases involved lengthy and sometimes contentious negotiations over fair market value, which not only slowed the pace of redevelopment efforts, but also resulted in increased caretaker requirements on the part of DoD while these negotiations were ongoing. In addition, most communities still faced significant financial roadblocks to rapid and successful reuse.

On April 21, 1999, the President and the Secretary of Defense announced their intent to submit legislation that provided for no-cost transfers of EDC property in order to further stimulate economic redevelopment and long-term job creation, and to eliminate delays resulting from prolonged negotiations over fair market value. The initiative also provided for modifying existing EDC agreements, where appropriate, consistent with this new authority. By September 22, 1999, Congress had passed the legislation as part of the National Defense Authorization Act for Fiscal Year 2000, and the President signed it into law on October 5, 1999.

This legislation is designed to directly address the two major hurdles base closure communities currently face while attempting to effectively reuse closed or realigned bases. First, delays in obtaining control or possession of former base assets delay planning, rehabilitation, modernization, infrastructure improvements and marketing efforts and, thus, job creation. Second, the costs of basic infrastructure work at a former base necessary to allow these assets to successfully compete for new economic activity is typically extremely high. The No-Cost EDC authority provides an opportunity for a collaborative relationship by assisting communities with creating new jobs on the former installation and relieving the Department of needless caretaker expenses.

This memorandum sets forth policies for the conveyance of real and personal property, and the modification of existing EDC agreements, under the No-Cost EDC authority. Effective this date, the Military Departments shall begin implementing the new No-Cost EDC authority under the aegis of this policy memorandum pending the issuance of new regulations and the revision of existing guidance contained in the Base Reuse Implementation Manual (DoD 4165.66-M). Neither the legislation nor this memorandum makes any change in current Departmental policies on caretaker support and environmental clean-up. Similarly, the Military Departments must not alter their policies and procedures governing caretaker support and environmental clean up because of the change in consideration for EDC property.

I. New No-Cost Economic Development Conveyances

Eligibility Requirements

Applicants

A Local Redevelopment Authority (LRA), officially recognized by the Secretary of Defense through the Office of Economic Adjustment (OEA), remains the only eligible applicant for an EDC.

Property Uses

The Department's existing policy on real and personal property uses that qualify for an EDC remains unchanged. Accordingly, property transferred under an EDC must support the LRA's long-term job creation and economic redevelopment efforts. While the primary purpose of the EDC is to provide BRAC communities with the property necessary to stimulate direct job creation and economic redevelopment, the inclusion of other properties on the installation that facilitate this goal may be acceptable. For example, while the transfer of property for housing in and of itself does not qualify for an EDC, such property may be included in an EDC with those portions of the installation that are used for long-term job creation if the revenue it would generate is necessary to realize that job creation.

Relationship to Public Benefit Conveyances

No-Cost EDCs should not be used to supplant existing public benefit conveyance authorities. These conveyances are established by the Federal Property and Administrative Services Act (FPASA) of 1949, as amended (40 U.S.C. § 484(k), (p), and (q)). General categories of public benefit conveyances under the FPASA include those for historic monuments, education, public health, parks and recreation, maritime commerce, and non-Federal correctional facilities. In addition, conveyances of property to support public airport uses under 49 U.S.C. §§ 47151–47153, and wildlife conservation

under 16 U.S.C. §667b-d, are considered equivalent to public benefit conveyances for the purposes of this policy memorandum. As was the case under the original EDC legislation, before entering into a No-Cost EDC agreement, the Military Department must find that these public benefit conveyance authorities cannot be used to accomplish the long-term job creation and economic redevelopment goals. However, with this new authority, the Military Departments no longer need to show why the property is not being transferred by public bid or negotiated sale.

Application Procedures and Contents

The LRA must prepare an application as its formal request for property and submit it within one year from the date of this memorandum. The Secretary of the Military Department may extend this deadline at the request of the LRA provided the LRA demonstrates a good faith effort to complete its application. If the LRA does not submit an application within this timeframe and an extension has not been granted, or if the LRA no longer desires to apply for an EDC, the Military Department may proceed with disposal under alternative methods including a negotiated or public bid sale of the property.

Our intent under this authority is to streamline and reduce the complexity of the EDC application process. If an LRA has already submitted an application for an EDC, it does not need to submit a new application, although the Military Department may request that the LRA submit additional information, as needed, to satisfy the elements discussed below. Generally speaking, however, the LRA's application should contain the following elements:

- A. A copy of the most current redevelopment plan approved by the LRA.
- B. A project narrative including the following:
 1. A description of the property requested using generally recognized boundaries.
 2. A description of the intended uses focusing on long-term job creation and economic redevelopment of the installation.
- C. A business/operational plan for the EDC parcel designed to help the LRA plan for and manage redevelopment of the property. The plan should include such elements as:
 1. A development timetable, phasing schedule and cash flow analysis.
 2. A market and financial feasibility analysis describing the economic viability of the project, including a cost estimate and justification for infrastructure and other investments needed for the redevelopment of the EDC parcel and an estimate of net proceeds over at least a seven-year time period.
 3. Local investment and proposed financing strategies for the redevelopment.
 4. A description of how the LRA plans to use any proceeds, including those from a sale, lease, or equivalent use of the property, and a description of the mechanism the LRA will use to track the reinvestment of proceeds.
- D. A description of how and when the LRA plans to assume control of the property, including its legal authority to do so.
- E. A statement describing why Federal public benefit conveyance authorities cannot be used to accomplish the LRA's long-term job creation and economic redevelopment goals.

The intent of the no-cost EDC authority is to stimulate long-term job creation and economic redevelopment. Communities may reinvest proceeds from the use of former military base assets into job generating and economic redevelopment activities at or related to the installation. Accordingly,

the submitted business plan should represent how any proceeds will be reinvested and how these expenditures will support the proposed long-term job creation and economic redevelopment.

Military Department Review and Approval

The Military Departments shall conduct their review of the LRA's application in an expeditious manner. In reviewing the application, the Military Department shall determine whether the business plan reasonably accomplishes the proposed long-term job creation and economic redevelopment activities. The Military Department shall not substitute its judgment for the LRA's investment needs, provided a rational relationship exists between the LRA's business plan and its job creation and economic redevelopment activities at or related to the installation. An appraisal is no longer a prerequisite for an EDC. Therefore, there is no requirement for the Military Department to conduct an appraisal of the EDC property. The Military Departments should consider the following factors in evaluating an LRA's application:

- A. The extent of long-term job generation.
- B. The reasonableness of the LRA's plan for long-term job generation and economic redevelopment.
- C. The extent of state and local investment and the LRA's ability to implement the plan.
- D. The consistency with the redevelopment plan.
- E. The applicability of federal public benefit transfer authorities.
- F. The LRA's timetable for assuming control of the property.
- G. Compliance with applicable federal, state, and local laws and regulations.

A representative from OEA shall be included in each Military Department's EDC review process. Additionally, the terms and conditions of a proposed No-Cost EDC shall be presented to the Deputy Under Secretary of Defense (Installations), through OEA, for coordination prior to an announcement of its approval.

Terms and Conditions

The Secretary of the Military Department is responsible for negotiating the terms and conditions of the EDC agreement with the LRA. Although the Military Departments have the discretion and flexibility to enter into agreements that meet site-specific circumstances, all No-Cost EDC agreements must comport with the following requirements:

1. Any proceeds from a sale, lease, or equivalent use of the EDC property (i.e., any mechanism that serves to accomplish the same purposes of a sale or lease such as licenses, permits, concession agreements, etc.), received by the LRA for the EDC property, including personal property, during the first seven years after the execution of a deed or lease in furtherance of conveyance must be used to support long-term job creation and the economic redevelopment of, or related to, the installation. The Military Departments shall make every effort to expedite execution of deeds and leases in furtherance of conveyance in a collaborative effort with the LRA to support job creation and economic development. There shall no longer be a holding period for personal property conveyed under this authority. LRAs should make every effort to reinvest such proceeds as quickly as practicable. Allowable uses of proceeds include the following categories:

- Road construction
- Transportation management facilities
- Storm and sanitary sewer construction
- Police and fire protection facilities and other public facilities
- Utility construction
- Building rehabilitation
- Historic property preservation
- Pollution prevention equipment or facilities
- Demolition
- Disposal of hazardous materials generated by demolition
- Landscaping, grading, and other site or public improvements
- Planning for or the marketing of the redevelopment and reuse of the installation

Other activities on the installation that are related to those listed above (for example, new construction related to job creation and economic redevelopment, capital improvements, and operation and maintenance of the facility needed to market the redevelopment and reuse of the installation) would also be considered an appropriate, allowable use of proceeds. In order for investments made off the installation to be considered allowable uses of proceeds, the LRA must demonstrate that they are related to those listed above and directly benefit the LRA's economic redevelopment and long-term job generation efforts on the installation.

EDC agreements must require the LRA to submit an annual financial statement certified by an independent Certified Public Accountant (CPA). This statement should cover the LRA's use of proceeds from a sale, lease, or equivalent use of the EDC property. The agreement also must provide that the Military Department may recoup all proceeds that are not appropriately reinvested.

2. The LRA must agree to accept possession of the property and assume operation and maintenance responsibilities within a reasonable time frame after the date of execution of the EDC.
3. The Military Departments have no authority to waive lease payments. As a result, parties to existing leases that require payment in excess of protection and maintenance costs are encouraged to enter into new leases, where allowable under law, that are consistent with the no-cost policy.
4. New leases and lease renewals must state that upon execution of the EDC agreement the lease between the Military Department and the LRA shall be for no more than the government's cost of protection and maintenance of the property.

Because of the unique economic redevelopment challenges faced by rural communities, the Military Departments are encouraged to ensure that the conveyance does not burden rural recipients of property in a manner greater than under the Department's previous EDC authority.

II. Agreements Entered Into Between April 21, 1999 and October 5, 1999

At the request of the LRA, the Military Departments shall modify any agreement concluded between April 21, 1999 and October 5, 1999 so that it conforms to the terms of Section 2821 of the National

Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and the policies on new No-Cost EDCs outlined above. The Military Department should limit its review to only those aspects of the LRA's application that require evaluation due to differences between the No-Cost EDC requirements and the requirements of the Department's previous EDC authority. If the Military Department finds that the LRA's application is inadequate for addressing any of the review factors listed above, it should request that the LRA submit any necessary information to assist its review. The review criteria and terms and conditions listed above shall apply to the modification of all such agreements.

III. Modifications to Agreements Concluded Prior to April 21, 1999

In the case of an EDC agreement entered into prior to April 21, 1999, the Military Department is authorized to modify the amount and/or terms of the agreement under the circumstances specified below. The LRA may request a modification when it can demonstrate that changed economic circumstances adversely affect the long-term job creation and rapid economic redevelopment of the installation.

Eligibility Requirements

In order for an EDC agreement to be eligible for modification, the LRA must submit a letter containing supplemental information that addresses the changed economic circumstances necessitating a modification to the original EDC agreement. The supplemental information shall contain a comparison between the original business plan and/or other assumptions upon which the agreement was premised, and a revised projection reflecting the changed economic circumstances. The LRA may demonstrate changed economic circumstances either by identifying specific economic assumptions underlying the original EDC agreement that have changed (such as increased cost of obtaining capital, making infrastructure improvements, or carrying the property, changes in absorption rates, decreases in installation revenue receipts, and the related need for increased capital) or by otherwise demonstrating that the LRA cannot sustain the current or originally projected level of economic redevelopment or jobs (such as the adoption of new industry technical standards that will phase out particular jobs or business areas), even if it cannot identify a specific economic assumption that has changed. The supplemental information must demonstrate that as a result of the changed economic circumstances the LRA has been hindered in achieving rapid economic redevelopment and long-term job creation on the installation or that it will be unable to sustain the current or originally projected level of economic development or jobs. The supplemental information shall also include a reinvestment plan showing how a modification of the EDC will facilitate rapid economic redevelopment and long-term job creation or will permit the LRA to sustain the current or originally projected level of economic development or jobs.

Military Department Review and Approval

The Military Department must determine whether a change in economic circumstances has occurred, and if so, to what extent a modification of the terms and conditions of the existing EDC is necessary to address such changed economic circumstances. If the LRA's submission shows that it cannot sustain the current or originally projected level of economic development or jobs, the Military Department shall conclude that there has been changed economic circumstances, even if the LRA cannot identify a particular assumption underlying the original agreement or business plan that has changed. In conducting this review, the Military Department shall focus primarily upon the LRA's plan to reinvest the money made available from reduction of the EDC price to redress the effects of

the changed economic circumstances. The Military Department shall reduce the amount of outstanding consideration to the absolute minimum consistent with the extent to which the reduction is needed to redress the effects of the changed economic circumstances, and subject to the limitations listed below.

In reviewing requests for modifications, the Military Department shall give substantial deference to the LRA's expertise in matters of local economic redevelopment and job creation, and the Military Department shall not substitute its judgment as to the priority of LRA reinvestment needs nor the amount required to redress the effects of the changed economic circumstances, provided a rational relationship exists between the LRA's reinvestment plan and the extent to which the reinvestment is needed to redress the effects of the changed economic circumstances.

A modified agreement:

1. Cannot require the return of any payments that have been made by the LRA to the Military Department or that come due prior to execution of the modification;
2. Cannot compromise the agreed upon in-kind consideration that has been or will be provided by the LRA to the Military Department;
3. Must ensure that the cash consideration under the modified agreement, when combined with other cash proceeds generated from the disposal of other assets at the installation, are as sufficient as they were under the original agreement to fund the reserve account for the depreciated value of the commissary surcharge fund and/or nonappropriated fund investment in facilities within the EDC footprint; and,
4. Must require that any proceeds from a sale, lease, or equivalent use of the EDC property, received by the LRA during the first seven years after the date of execution of the modification or transfer of the property by lease in furtherance of conveyance or deed (whichever is later), must be used to support the economic redevelopment of the installation, or economic redevelopment related to the installation. LRAs should make every effort to reinvest such proceeds as quickly as practicable. To ensure compliance with this requirement, the LRA must comply with the reporting requirements described above for new No-Cost EDCs.
5. Must provide that the Military Department may recoup all proceeds that are not appropriately reinvested.

The Department does not have the authority to forgive any payments that are due prior to the execution of a modified EDC agreement. Accordingly, the Military Departments shall make every effort to expeditiously process requests for modifications.

A representative from OEA shall be included in each Military Department's EDC modification review process. Additionally, the terms and conditions of a proposed modification shall be presented to the Deputy Under Secretary of Defense (Installations), through OEA, for coordination prior to an announcement of its approval.

IV. Congressional Notification Procedures

The Secretary of the Military Department must notify the House and Senate Armed Services Committees after the execution of a No-Cost EDC, a copy of which must be provided to the Deputy Under Secretary of Defense (Installations). This notification must include a report on the terms and conditions of the conveyance. A sample format is attached.

A handwritten signature in black ink, appearing to read "R. Yim", is written over a faint rectangular box.

**Randall A. Yim
Deputy Under Secretary
(Installations)**

**Attachment:
As Stated**