



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

MAY 13 2008

Dear Local Redevelopment Authority:

As you continue to develop the base realignment and closure (BRAC) application(s) for the military installations in your community, HUD would like to share some helpful hints with you. This guidance was prepared after reviewing a number of BRAC applications received to date, and is provided in order to help you avoid the most common mistakes the Department has encountered. Please review this list carefully and fill out the Completeness Review Checklist provided in the *HUD Guidebook for Military Base Reuse and Homeless Assistance* prior to submitting your application. A copy of the guidebook is available online at: <http://www.hud.gov/offices/cpd/homeless/programs/brac/guide/index.cfm>. While these pointers cannot anticipate every potential issue that might arise in developing your application, following this guidance can help improve the timeliness of application approval and the subsequent property transfer process.

Missing Information. The most common deficiency found is that the application is missing required information. A BRAC application consists of a redevelopment plan, a homeless assistance submission, and the summary of public comments. The Department of Defense Base Redevelopment and Realignment Manual (BRRM), available at www.defenselink.mil/brac, states in paragraph C3.6 that a redevelopment plan should address numerous factors, including describing the overall redevelopment of the installation in a comprehensive and coordinated manner and describing the proposed land uses, including development controls, such as zoning. We suggest you include a description of the property (acreage, number and type of buildings or structures) and other land improvements such as parking lots or sidewalks. HUD also recommends including a description of how the plan will fit with any plans the community already has in place to tie it all together.

Finally, HUD received several applications that included a document entitled "Final Report and Recommendation" instead of a plan. We would like to remind you to include a final plan, approved by the local redevelopment authority (LRA), in your application. Where the LRA is a political jurisdiction, such as a city, that means the plan needs to be approved by the city council. Also, numerous alternative scenarios do not represent a final plan. While the plan is a general land use plan, it should specify the proposed future uses in as much specificity as is possible. For example, instead of showing "municipal use" or "give the property to the City and County" the plan should say "parkland" or "proposed County courthouse." Remember that when you do your balance determination, you will need to compare the need for the non-homeless uses with the need for the homeless uses. Specificity in the plan will help you in that effort.

Documentation of LRA Responsibilities. The homeless assistance submission must include documentation that the LRA responsibilities described in 24 CFR 586.20 have been completed, and consists of items listed in 24 CFR 586.30, including a list of the political jurisdictions that comprise the LRA.

LRA Composition. The LRA must conduct outreach to representatives of the homeless and consider the needs of the homeless in *the communities in the vicinity of the installation*. The definition of “communities in the vicinity of the installation” is “The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation.” Unless the application is specific as to what political jurisdictions comprise the LRA, it can be difficult for HUD to tell from the information provided in the application exactly which jurisdictions comprise the LRA. Sometimes it is even difficult to tell when the jurisdictions *are* listed, such as in cases where the listed jurisdictions differ from the jurisdictions whose homeless were included in the description of homeless needs. LRAs should be mindful of consistency between the list of political jurisdictions, the geographic area that defines their homeless need, and the geographic area to which the LRA did outreach. Where there is inconsistency, HUD will look at who is represented on the LRA’s board to help resolve the inconsistency. We recommend that you include in your application a list of the LRA board members and the communities they represent or the expertise they lend to the board. We also caution you that including members of organizations or persons who neither live in nor operate a business in the communities in the vicinity of the installation has drawn threats of litigation from representatives of the homeless. Finally, avoid conflicts of interest in the board. Organizations that are disappointed by not being selected to receive property may claim undue influence was exerted by board members employed by an organization that did receive base property.

Documentation of Outreach. Many applications are lacking the required documentation of homeless outreach to homeless service providers. A list of homeless service providers, organizations and contact information is a great way to start, but also include a copy of any letters/emails/telephone logs notifying providers that the property is available, that Notices of Interest (NOIs) in the property have been solicited, and that the providers have been invited to the BRAC Workshop. Also explain who attended the workshop. If no one attended and no one submitted NOIs, include a narrative explaining any reasons for the lack of interest in base property of which you are aware.

Consultation with Homeless Assistance Providers. The Defense Base Closure and Realignment Act of 1990, as amended (the BRAC Act), (Public Law 101-510) at 2905(b)(7)(H) provides one of the statutory review criteria HUD must use when determining whether your plan was developed in consultation with representatives of the homeless. Consultation is more than just contacting homeless providers to solicit NOIs. Consultation is an exchange of information and ideas. Include a narrative description of how the exchange of ideas affected the final plan.

Homeless Information. Another frequent error found in applications is the lack of information about the homeless in the community. HUD cannot determine that the needs of the homeless were properly considered if the LRA for a *city* submits homeless data for the entire *county*. LRAs must analyze the size and nature of the homeless population in the community in the vicinity of the closing installation.

Homeless Assistance NOIs. NOIs for homeless use, whether accepted or not by the LRA, are an important part of the homeless assistance submission. They must be included, along with a narrative explaining how and why the LRA reached the decision it did on each NOI. Please address the economic impact of any homeless assistance on the community, as required in 24 CFR 586.35, including the feasibility of the proposal, given the demands of the NOI on

available social services, fire, police, utilities, etc. Also include how well the NOI fits into any other plans the community may have, e.g., the HUD local Consolidated Plan.

Several NOIs have sought no-cost homeless assistance conveyances for organizations that intend to use the property for mixed income development, mixed use projects, or affordable housing in addition to homeless housing. An example would be a nonprofit housing developer that sought a building to turn into 150 housing units, 15 of which would be reserved for homeless persons. Only that portion of the property that will be used for homeless assistance is eligible for a homeless assistance conveyance of Federal property. The developer in the example would need to pay for 90 percent of the building, the portion that would not serve the homeless. Similarly, some service providers, such as medical clinics, that serve both homeless and non-homeless persons seek a homeless assistance conveyance instead of a public benefit conveyance. HUD will not support a homeless assistance conveyance unless the organization agrees to limit its service to only homeless persons. Organizations that are eligible for public benefit conveyances should pursue those conveyances instead of homeless assistance conveyances.

Some LRAs propose to use a homeless assistance conveyance to transfer property to a representative of the homeless in order for them to turn around and sell the property to use the sale proceeds to fund homeless assistance activities off the base. You should be aware that DoD has concluded that such a plan to sell the property and use the proceeds to assist the homeless does not constitute use of the property to assist the homeless.

Property Disposal Decisions. Some LRAs have indicated that they could not accommodate NOIs for homeless assistance due to the military's requirement to dispose of the property via public auction, negotiated sale, or through the Military Construction Exchange Authority. Property disposal decisions are made by the military department after the LRA develops and HUD acts on the application. The planned use should inform the choice of disposal authority, not the reverse. HUD will not concur with an LRA's rejection of an NOI based on incompatibility with the disposal authority the LRA anticipates the military department will use.

Highest and Best Use. Some LRAs have rejected NOIs saying that homeless assistance is not the highest and best use of the property. Remember, highest and best use includes consideration of public purpose. "Highest and best use" means the most likely use to which a property can be put, which will produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose (BRRM D1.1.14). If your community needs homeless assistance to balance your plan, HUD will not support rejecting an NOI on the basis of highest and best use alone.

Legally Binding Agreements. NOIs selected for homeless assistance must be finalized in Legally Binding Agreements (LBAs). Although LBAs need not be executed when submitted to HUD, they must include all the documents legally required to complete the transactions necessary to realize the homeless use described in the plan. Some LRAs have submitted applications that accommodate homeless assistance with no LBAs or draft LBAs in order to meet the deadline date for submittal. Applications with draft LBAs are considered incomplete. Please request a deadline extension if needed in order to submit a complete application.

Also, LBAs may not be conditioned upon subsequent approval by another Federal agency. Additionally, LBAs that make the amount of assistance contingent upon a future sale of base property are generally too speculative to be counted by HUD as a legally binding agreement to provide homeless assistance. In this case, if your community needs homeless assistance in order for your plan to be balanced, HUD will not find your plan to be in compliance with the law. To cure this problem the LBA must include a specific, guaranteed source of assistance for the homeless. One way would be to specify base property that will be transferred to the homeless provider if the contingencies are not met by a certain date. The key for LBAs is that they must be specific and enforceable, binding both parties to the agreed upon homeless assistance.

Summary of Public Comments. The four-part citizen participation requirements are found at 24 CFR 586.20(c)(6) and .30(c). The LRA must: 1) make the draft application available for public review and comment periodically while the application is being developed; 2) conduct at least one public hearing on the application before submitting it to HUD and DoD; 3) include a summary of public comments received during development of the plan; and 4) include an overview of the citizen participation process the LRA followed. A frequent mistake is to omit the overview of the citizen participation process. Another common mistake is to discuss all the meetings that were held without addressing the public hearing requirement. The LRA should ensure that they hold a hearing that complies with local law and ordinance regarding the formalities of a public hearing and discuss the hearing in their application. Generally, a public hearing requires advance public notice and recorded testimony.

Balance Determination. There also seems to be some misunderstanding regarding the balance determination. Determining balance requires analysis of the economic condition of the community; the loss to the community caused by the closing of the military installation; and the community's need for economic redevelopment, economic development, and other development. The LRA must balance those needs, **not** the relative number of potential users, against the needs of the homeless in the community, as expressed by the NOIs it received. Some applications fail to provide sufficient detail on the economic condition of the community, the number of jobs lost as a result of the installation closing, or whether the proposed use would create any jobs. Other applications do not balance the need for "other development" such as a park or a school, in that they do not provide data to establish the need for a park or a school and do not justify that use over a homeless assistance project.

Still other LRAs have misunderstood that the balance determination is based on the needs of the homeless, as expressed in the NOIs received, which misunderstanding has affected both their analysis of the balance and their reasons for rejection of NOIs. Some jurisdictions assume all homeless needs are the same and will reject an NOI because the jurisdiction has recently started providing homeless assistance of another type. For example, a community might receive two NOIs, one for permanent housing and one for emergency shelter, and it rejects them both because the community has just opened a new homeless transitional housing project. Let's assume that the local Consolidated Plan indicates permanent housing is a high priority and it also shows that the community has a surplus of emergency shelter. It is perfectly appropriate for the LRA to reject the NOI for emergency shelter because the community has a surplus of emergency shelter. The LRA could also ask the group that submitted the emergency shelter NOI if they would consider doing transitional or permanent housing instead. However, as to the organization that submitted the proposal for permanent housing, since the community need for permanent housing is established in

the local Consolidated Plan, the new transitional housing does not meet the same need that has been expressed in the NOI and, as such, the LRA will not be able to rely on that as their reason for rejecting the NOI. The application to HUD will need to explain in detail why the provider was rejected and why the economic and other development needs of the community outweigh the need for permanent housing for the homeless. In determining the balance, the LRA could show HUD how much of the need for permanent housing has been filled since the Consolidated Plan was approved and how critical the other identified need (e.g., a new business) is.

General BRAC Process Guidance. The BRAC Act and its implementing regulations are available online at: <http://www.hud.gov/offices/cpd/homeless/programs/brac> and establish a specific order for the BRAC process. The process is as follows: LRAs develop the reuse plan and homeless assistance submission; HUD reviews the plan and makes a determination as to whether the plan meets the requirements of the Act; DoD treats the plan, “including the aspects of the plan providing for disposal to state or local governments, representatives of the homeless, and other interested parties” as part of the proposed federal action in the environmental assessment, and DoD gives substantial deference to the redevelopment plan in its record of decision (id at 2905(b)(7)(K)ii). In BRAC litigation so far, the courts have required strict compliance with the procedural requirements of the law, including the order of completion of those requirements.

The Department hopes you find this information helpful. If we can provide any further service, please feel free to contact Ms. Linda R. Charest, Base Realignment and Closure Coordinator, on my staff. Ms. Charest’s telephone number is (202) 402-2595 or, alternatively, via email at: Linda.R.Charest@HUD.gov.

Sincerely,



Mark Johnston
Deputy Assistant Secretary
for Special Needs

cc:

Mr. Patrick O’Brien, DoD (OEA)
HUD FO BRAC Reps