

Converting Military Bases and Other Vacant Federal Property to Aid Homeless People

by Maria Foscarinis*

I. Introduction

The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (1994 Act)¹ presents significant opportunities and challenges for groups working with homeless people in base-closure communities across the country. The 1994 Act amended Title V of the Stewart B. McKinney Homeless Assistance Act,² which requires federal agencies to make unused and underused property available as facilities to assist homeless people. The new law removes base-closure properties from the McKinney Act, while at the same time incorporating many of its requirements.³

The 1994 Act requires that the needs of homeless people in base-closure communities be considered and addressed with property, resources, and assistance; it also creates a complex process that may impede applicants seeking to benefit from these requirements.⁴ While national groups such as the National Law Center on Homelessness & Poverty can and will offer their expertise and assistance, local counsel are critical in helping ensure that local provider groups know about and are able to use the new law to benefit homeless people in their communities. In addition, local counsel are needed to ensure that groups are able to acquire nonbase federal property under Title V of the McKinney Act.⁵

II. Background: The McKinney Act and the 1994 Act

In 1987, Congress passed the Stewart B. McKinney Assistance Act, comprehensive legislation intended "to meet the critically urgent needs of the homeless of the Nation."⁶ Title V of the Act requires federal agencies to make certain categories of unused property available at no cost to states, local governments, and private nonprofit organizations to use as facilities to assist homeless people.⁷ Under Title V, only other federal agencies and competing requests that are "so meritorious and compelling as to outweigh the needs of the homeless" have priority over such use.⁸ Property owned directly by federal agencies—including, until enactment of the 1994 Act, closed military bases—falls within Title V.⁹

Since its enactment, Title V has been enforced and modified through federal litigation and congressional amendment. In 1988, a district court in Washington, D.C., issued a permanent injunction enforcing Title V's provisions; since then two orders enforcing the permanent injunction, and one order enforcing and modifying the injunction to conform to statutory amendments, have been entered.¹⁰ In 1990, Congress significantly amended

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¹Base Closure Community Redevelopment and Homeless Assistance Act, Pub. L. No. 103-421, 108 Stat. 4346-55 (1994).

²42 U.S.C. § 11411 (1992).

³Pub. L. No. 103-421, § 2(a), 108 Stat. 4346 (amending 10 U.S.C. § 2687 note).

⁴See, e.g., *id.* §§ 2(a)(7)(F)(i), 2(a)(7)(F)(ii)(I), 2(a)(7)(H)(i), 108 Stat. 4348-49.

⁵This includes property owned directly by agencies of the federal government, including nonbase property owned by the Department of Defense as well as bases not closed pursuant to base-closure laws. It does not include property held by the federal

government as a result of foreclosure proceedings. *Lee v. Kemp*, 731 F. Supp. 1101 (D.D.C. 1989) (Clearinghouse No. 43.709).

⁶Stewart B. McKinney Assistance Act, 42 U.S.C. § 11302.

⁷*Id.* § 11411 (1992).

⁸*Id.*

⁹*Id.* § 11302.

¹⁰*National Coalition for the Homeless v. VA*, No. 88-2503 (D.D.C. Dec. 12, 1988) (permanent injunction) (Clearinghouse No. 43.806). The permanent injunction was subsequently enforced in *National Coalition for the Homeless v. VA*, No. 88-2503 (D.D.C. May 22, 1989), and *National Law Center on Homelessness & Poverty v. VA*, 765 F. Supp. 1 (D.D.C. 1991), *aff'd*, 964 F.2d 1210 (D.C. Cir. 1992), *modified*, 819 F. Supp. 69 (D.D.C. 1993) (Clearinghouse No. 48.182).



Title V, largely codifying the judge's orders.¹¹ Subsequent amendments to Title V affirmed the inclusion of base-closure properties under its provisions but allowed expedited treatment of base-closure properties.¹²

The 1994 Act replaces priority of consideration for entire base properties with a different kind of safeguard.

In 1994, Congress amended the McKinney Act to remove base-closure properties from coverage under Title V.¹³ At the same time, however, Congress amended the Defense Base Closure and Realignment Act to include the needs of homeless people.¹⁴ The 1994 Act requires local reuse authorities (LRAs), entities charged with converting closed bases to nonmilitary uses, to meet the needs of local homeless people with property, resources, and assistance and requires a federal review process to ensure compliance. Outreach to and consultation with representatives of homeless people are also required.¹⁵

The primary effect of these changes is twofold. First, the 1994 Act replaces priority of consideration for entire

base properties with a different kind of safeguard: inclusion in the reuse process and plan, protected by mandatory federal review. Second, the amendment transfers the primary application process for such use from the federal government to LRAs. The result is that much of the actual operation of the program has been moved from the federal to the local level.

With a clear understanding of the process, and assistance in navigating it, local groups can use the 1994 Act provisions to create opportunities for community education as well as concrete benefit. Participation in the reuse process should also offer low-income groups opportunities to forge alliances with other community interests and to avoid potential opposition. Ultimately, the 1994 Act could help to reintegrate homeless people into their communities and to counter the divisiveness now prevailing in many communities across the country.¹⁶

III. Uses of Base Properties to Aid Homeless People

A substantial number of properties converted to date under Title V consist of military properties, including bases.¹⁷ Programs operating on these

¹¹ Stewart B. McKinney Homeless Assistance Act Amendments of 1990, Pub. L. No. 101-645, 104 Stat. 4719.

¹² Pryor Amendments, Pub. L. No. 103-160, § 2905, 107 Stat. 1547 (Nov. 30, 1993)

¹³ Pub. L. No. 103-421, § 2(d), 108 Stat. 4346.

¹⁴ *Id.* §§ 2(a), 2(c).

¹⁵ *Id.*

¹⁶ See NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, TO PROTECT AND DEFEND: CONVERTING MILITARY HOUSING AND OTHER FEDERAL PROPERTY TO HELP HOMELESS AMERICANS 67-73 (1994).

¹⁷ *Id.* at 17-57. These include bases closed pursuant to base-closure laws enacted in 1988 and 1990.

properties are useful models and illustrate the broad range of potential uses of former military base property for homeless people. Applicants under the new process can learn from the barriers faced and overcome by local groups seeking to use the Title V program. In addition, plans now under way in some communities to use bases under the 1994 Act give some indication of both programs and process. The following examples indicate the range of potential uses and barriers.

A. Raritan Army Depot

In Edison, New Jersey, Middlesex Interfaith Partners with the Homeless (MIPH) is operating, under Title V of the McKinney Act, a transitional housing program for homeless families on vacant land leased and originally owned by the Army at Raritan Army Depot. MIPH constructed modular housing units, providing 27 apartments, as well as case management, child care, and housing and job search assistance. The group is currently planning a second-stage site at a property on Camp Kilmer, a nearby base, also obtained under Title V, for families leaving this program.¹⁸

Families staying at the facility were originally drawn from the area's dangerous, drug-infested and expensive welfare hotels, where they had been placed by the local government. Families pay rent, generally out of benefits received under the AFDC program. Supportive Housing funds under Title IV of the McKinney Act, Emergency Assistance payments, foundation grants, and other donations constitute additional funding for operating costs. Financing for the original construction included a mortgage from the New Jersey Housing Finance Agency.¹⁹

The project faced numerous barriers. Initially, MIPH was unable to apply for the property, even though vacant

for years, because it had not been listed under Title V.²⁰ MIPH then had difficulty gaining information from the federal government to complete the application form.²¹ Next, MIPH faced local barriers when the state financing agency required assurances that state and local zoning laws would not prevent the project from operating. This issue was resolved through the submission of a formal opinion letter from counsel stating that the McKinney Act preempted state and local zoning laws that might operate as barriers to expeditious use of the property.²²

B. Nike Missile Site

In New Hempstead, New York, the Rockland Community Action Council (ROCAC) is operating a transitional housing program for homeless families in "stand-alone" housing that is off base in a residential part of town; it was formerly used as housing for National Guard families associated with the Nike missile site. ROCAC is using 12 three-bedroom family housing units to serve about 37 persons, who are given case management services, job search assistance, and transportation as well as housing. Families stay up to two years and pay 30 percent of their income in rent. The county department of social services offers partial funding.²³

ROCAC faced major local opposition to the program. Arguing that the program would be destructive to the community, the town challenged in state court ROCAC's legal authority to apply for the property and operate the program.²⁴ Unrepresented by counsel, ROCAC failed to appear, and the court granted the town's unopposed temporary restraining order. The town then moved for default judgment and for contempt, based on ROCAC's continued operation of its program. ROCAC secured pro bono counsel to oppose the town. Ultimately,

¹⁸*Id.* at 47; see also Middlesex Interfaith Partners with the Homeless Application for Transfer of Real Property at Public Benefit Allowance (Dec. 27, 1988) (hereinafter MIPH Application). The base was not closed pursuant to base-closure laws. NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 16, at 47.

¹⁹MIPH Application, *supra* note 18, at 7-10 (declaration of Robert Nasdor). Documentary Appendix to Memorandum in Support of Plaintiffs' Motion for Further Order Enforcing Permanent Injunction, *National Law Center on Homelessness & Poverty*, 765 F. Supp. 1.

²⁰Complaint ¶ 41, Supplemental Declaration of Maria Foscarinis ¶ 23, and Exhibit M, *National Coalition for the Homeless*, 695 F. Supp. 1226 (ruling on preliminary injunction motion). This initial barrier was remedied following initiation of litigation; in fact, this information from MIPH led to the investigation of federal agencies' noncompliance with Title V that resulted in the national litigation.

²¹See Declaration of Robert Nasdor ¶¶ 4, 5. Documentary Appendix to Memorandum in Support of Plaintiffs' Motion for Further Order Enforcing Permanent Injunction at Exhibit U, *National Law Center on Homelessness & Poverty*, 765 F. Supp. 1.

²²Letter from Maria Foscarinis to Robert Nasdor and Louis C. Marchetta (Oct. 22, 1990).

²³NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 16, at 49. The two-year limit results from HHS's administrative restriction that requires housing programs operating in Title V properties to so limit residents' stays. HHS is responsible for reviewing and approving applications to use property under Title V. See *id.* at 66-67.

²⁴*Village of New Hempstead v. Rockland Community Action Council*, Index No. 7781/91 (N.Y. Sup. Ct. Nov. 6, 1991). See NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 16, at 75-77, for a review of local litigation challenges to use of property under Title V.

under pressure, the Department of Justice successfully brought an affirmative suit in federal district court to enjoin the town from interfering with the implementation of federal law, Title V of the McKinney Act.²⁵

C. Fort Ord

In a good example of creative collaboration, 11 separate nonprofit groups plan to use portions of base-closure property in Monterey, California. Planned programs include day care for homeless children, a food bank, employment services for homeless mentally ill people, and transitional housing programs for HIV-infected homeless people, homeless farmworkers, homeless veterans, and people fleeing domestic violence. Combined, the programs will serve 600 to 1,000 homeless adults and children, out of a total estimated Monterey County homeless population of over 3,000.²⁶

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Many of these programs are using portions of the base previously used by the military for similar purposes. For example, the food bank will operate in former Army warehouses and a snack bar that had been used to store food and contain refrigeration units. The day care program will operate in a building used as a child care center for the base. The programs will coordinate their services so that other programs, both on and off the base, can benefit from them.²⁷

²⁵United States v. New Hempstead, No. 92-2592 (S.D.N.Y. Aug. 27, 1993); see also NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 16, at 76-77; letter from Maria Roscarinis to Gary Paterson (Nov. 20, 1991) (tasking federal landholding agency to intervene); letter from Jeffrey Pash to Arthur Goldberg and Mary Magee (tasking Justice Department to intervene) (Nov. 20, 1991).

²⁶NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 16, at 21-31; Fort Ord Providers' Coalition, Summary of Proposed Requests and Summary of Requests by Property Type (1992).

²⁷NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 16, at 21-31; see also Fort Ord Providers' Coalition, *supra* note 26.

²⁸List prepared by Department of Defense and provided to office of Sen. John Glenn. Telephone interviews by Laurel Weir.

The providers formed a coalition to negotiate with the LRA at Fort Ord. The Monterey County Housing Authority, the only governmental applicant in the group, provided resources to coordinate the coalition. Although the several cities that are represented in the LRA disagree about which properties—within different cities' jurisdictions—will be made available, the process has been relatively smooth. In addition, the LRA did not elect to bring the base under the 1994 Act but remained under Title V.²⁸

D. Lowry Air Force Base

In Denver and neighboring Aurora, Colorado, seven nonprofit groups serving homeless people applied to use Lowry Air Force Base under Title V of the McKinney Act. Property including a total of over 280 housing units on the base was approved by the federal government under Title V for use as transitional housing for homeless persons by the groups. At the time of approval, a city-sponsored reuse entity was already in place.

This planned use faced vocal opposition. Neighborhood groups and residents in the area near the base expressed fears that property values would drop and that the base would turn into a "homeless refuge."²⁹ The city government, which had proposed a much smaller number of units, argued that the number approved was inconsistent with the reuse plan for the base, which included 86 family units and 87 single-room units for homeless people.³⁰ After lengthy conflict and negotiations, an agreement was reached and contracts signed between the LRA and each of the seven nonprofit groups.³¹

To help resolve the conflict over Lowry and at the request of local government officials, Denver was designated as an "innovative city" and received \$5 million in federal funds under HUD's Innovative Cities program.³² As a condition on this funding, HUD required the city and

Policy Director of the National Law Center on Homelessness & Poverty, with provider groups (Fall 1993, Fall 1994).

²⁹Renate Robey, *Housing Plan for Homeless Stars Falls Hundreds at Meeting on Future of Lowry*, DENVER POST, Oct. 28, 1993, at 1B.

³⁰Newsletter of the Lowry Economic Recovery Project, Apr. 1994, at 1; Councilwomen Cathy Reynolds, Edna Mosley, and Polly Flobeck, Presentation to HUD Secretary Cisneros (Mar. 12, 1994).

³¹Telephone conversation between Laurel Weir, National Law Center on Homelessness & Poverty, and Joyce Alms-Ramsford, Colorado Coalition for the Homeless (Jan. 30, 1995).

³²HUD Demonstration Act of 1993, 42 U.S.C. § 1437 note (1994).

state to develop "up to" 393 units of individual and family housing with services on and off base, required the city to set aside \$500,000 in federal block grant funds for this purpose, required the state to allocate \$500,000 to develop off-base housing units; and required that net proceeds from the sale of 110 family housing units on base, budgeted at \$2 million, be used for the housing and services.³³

The Colorado Coalition for the Homeless, working with the assistance of lawyers and a real estate consultant, agreed to give up 56 of the 102 units that had been approved. The remaining 46 units, which are being leased by the LRA to the coalition, will be sold, along with other base property; as part of the agreement. The LRA must allocate a portion of the sale revenue totaling approximately \$2 million to the coalition and the local Catholic Charities to acquire property off base for the use of homeless people.³⁴

E. Philadelphia Naval Base and Shipyard

The Philadelphia Naval Base and Shipyard includes over 1,000 acres of land and over 500 buildings. The majority of this property is slated for industrial development, with a total of just under 2,000 units designated for residential development, including 700 units of single-family housing on and off base and over 1,200 apartments and barracks-style dormitory rooms.³⁵ In anticipation of the likely adoption of the 1994 Act, the city included proposals for meeting the needs of homeless people in its September 1994 draft reuse plan.³⁶ The city elected to bring the base under the 1994 Act and, in December 1994, formally responded to the proposals of the Homeless Program Committee of the Greater Philadelphia Urban Affairs Coalition, the group applying for the base property.³⁷ According to a representative of the coalition, there is some preliminary consensus, but no final agreement has yet been reached.³⁸

The plan currently being negotiated includes three elements: (1) development of a transitional (and perhaps permanent) housing facility together with an employment program in an existing 200-unit dormitory facility; (2) a set-aside of 80 off-base single-family housing units (20 percent of the total) for permanent housing (with a goal of homeownership) for formerly homeless people who are "ready for independent living"; and (3) dedication of the revenues generated from these and the remaining such units (a total of 400) to capitalize a self-sufficiency trust fund to support rental subsidies and other assistance for homeless Philadelphians.³⁹

IV. Some Lessons Learned and Potential Problems

These examples illustrate some important points pertinent to the use of base properties under the 1994 Act.

A. Collaboration

Groups can benefit from working together, thereby increasing their bargaining power. Collaboration can also facilitate the design of complementary programs that will more efficiently and effectively serve homeless people. Local government groups seeking property for programs for homeless people can sometimes be important allies.

B. Outreach and Assistance

The 1994 Act includes provisions to address homeless advocates' lack of information about base closures and the availability of base property for the use of homeless people.⁴⁰ Indeed, it incorporates provisions developed by amendment and court order in the Title V context.⁴¹ Nonetheless, from experience with these provisions, advocates and service providers may still have

³³Grant Agreement Between HUD and State of Colorado, Department of Local Affairs, Division of Housing (Sept. 30, 1994).

³⁴Telephone interview by Laurel Weir with Joyce Alms-Ramsford (Feb. 2, 1995).

³⁵PHILADELPHIA OFFICE OF DEFENSE CONVERSION, COMMUNITY REUSE PLAN FOR THE PHILADELPHIA NAVAL BASE AND SHIPYARD 11 (Sept. 1994) [hereinafter Reuse Plan].

³⁶*Id.* at 60.

³⁷FAIRMOUNT CAPITAL ADVISORS, STATUS REPORT NAVAL REUSE PLAN 1 (Jan. 23, 1995) [hereinafter STATUS REPORT].

³⁸*Id.* at 37.

³⁹REUSE PLAN, *supra* note 35, at 11; STATUS REPORT, *supra* note 37, at 1-2. According to the committee representative, reuse

of the dormitory facility is yet to be agreed upon. The Homeless Program Committee of the Greater Philadelphia Urban Affairs Coalition proposes a mixture of transitional, supportive, and permanent housing to be operated by nonprofit providers or an outside agency appointed by them; the city is concerned about security, possible need for the site for "long-term development," and "appropriateness of the site for housing the homeless." The two sides agreed to sponsor a brainstorming session within the next month to outline the proposed reuse. *Id.* at 2.

⁴⁰Pub. L. No. 103-421, § 2(a)(7)(C)(iii), 108 Stat. 4347.

⁴¹See 42 U.S.C. § 11411(c)(2)(B); *National Law Center on Homelessness & Poverty*, 765 F. Supp. 1; *National Law Center on Homelessness & Poverty*, 819 F. Supp. 69.

difficulty obtaining information published in the *Federal Register* or general circulation newspapers. It would be helpful if redevelopment authorities were required to give notice of the availability of base property to the federal interagency Council on Homelessness and to national advocacy groups.

In addition, the statute requires LRAs to assist representatives of homeless people (as well as other potential applicants) and to consult with such representatives.⁴² This will be helpful in resolving the problems such as those encountered in the Title V programs. Potential applicants and their counsel should be aware of and use this requirement should problems occur.

C. Negotiation for Nonbase Assets

In negotiating with LRAs, provider groups can negotiate for off-base units, funds, or other resources in addition to, or instead of, base units. In the Title V cases, priority of consideration in the use of the property conferred bargaining leverage on applicants to negotiate such agreements. Under the new law, this flexibility is built in.⁴³ Applicants should also be aided by the required federal review and HUD's mandate to consider the "size and nature of the homeless population . . . and the availability of existing services . . . to meet the needs of the homeless" as criteria for granting or denying approval.⁴⁴ This puts significant pressure on LRAs to enter into agreements that meet the needs of homeless community members in a meaningful way.

D. Federal Aid

The federal government may be an ally in negotiating agreements and in protecting the interests of providers. Federal funds may provide additional bargaining leverage, as can federal conditions placed on local governments' receipt of such funds. In the event of local litigation opposing the use of property for homeless people, the Department of Justice may intervene. The Federal Interagency Council on Homelessness and HUD may also be a source of information and assistance to applicants.

E. Zoning

Because bases ultimately will be transferred to local reuse commissions and therefore cease to be federal property, zoning may present a problem. On the other hand, the reuse planning process should present a good opportunity to address this issue. The statute mandates that reuse plans address the needs of the local homeless population; advo-

cates should argue that zoning issues must be dealt with in the planning process to be consistent with the statute.

F. Community Opposition

The new process may offer a better chance for homeless people and providers to become a part of the large community planning, helping lessen divisiveness and defuse opposition. Nonetheless, opposition is a real possibility, and advocates must be prepared to address and overcome it. The pursuit of federal aid through conditions imposed with financial leverage, as well as possible litigation, remains an important strategy.

G. Competition

While some bases are in remote and undesirable locations, others are valuable and sought-after property. If the base is located in a desirable area, the LRA has an incentive to try to sell as much of the property as possible and make available for free as little of it as possible to homeless people. At the same time, developers and others seeking to buy the property have incentives of their own to block providers from acquiring use of it; "not in my backyard" opposition may play a role in such efforts. Advocates may use these incentives to their advantage by negotiating agreements for financial resources, services on off-base property, or some combination of these incentives on property on the base.

H. Financing

It is, of course, critical to obtain funds for new construction as well as for operation of programs. Leasing property for funds remains an option. For property made available on or off base, the nature of the interest the applicant acquires in the property is also an important consideration. In the event the property is leased, the length of the lease will be critical to obtaining financing. Generally, a 30-year lease is necessary for bank financing.

V. Conclusion

The 1994 Act presents an important new opportunity to use public assets to aid poor people. Specifically the conversion of military resources to address urgent domestic needs. Legal counsel are important in the success of local base-conversion activities. And so, at the same time, is national monitoring of local compliance and effective federal oversight. Therefore, national and local groups and advocates need to work together to ensure success.

⁴²Pub. L. No. 103-421, § 2(a)(7)(C)(ii), 108 Stat. 4347.

⁴³*Id.* § 2(a)(7)(F)(ii)(1), 108 Stat. 4348.

⁴⁴*Id.* § 2(a)(7)(B)(i)(1), 108 Stat. 4348.