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CLEANING UP THE MESS: THE ECONOMIC, ENVIRONMENTAL, AND CULTURAL IMPACT OF U.S. MILITARY BASE CLOSURES ON SURROUNDING COMMUNITIES

*Elizabeth M. Myers**

I. INTRODUCTION

Today, many military bases have become financial burdens on the federal government, as the military's needs and systems have changed drastically since the end of the Cold War.¹ The federal government has discovered it can save a significant amount of money by shutting down unnecessary installations and shifting the work to ongoing bases.² The federal government can also make money by selling the land of former military bases to surrounding communities or private companies.³

For domestic base closings, the Department of Defense ("DoD") uses the Base Realignment and Closure ("BRAC") process.⁴ Since its inception in 1988, the federal government has conducted five rounds of base closures under BRAC, in 1988, 1991, 1993, 1995, and 2005.⁵ An

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¹ See Randall S. Beach, *Coming to a Community Near You: BRAC 2005 and the Transformation of America's Military*, 19-AUG PROB. & PROP. 10, 11 (2005) (describing Secretary of Defense Donald Rumsfeld's vision of converting the military to a "force comprised of lighter, more mobile, and more lethal combat units" necessary to address modern threats); James A. Kushner, *Planning for Downsizing: A Comparison of the Economic Revitalization Initiatives in American Communities Facing Military Base Closure with the German Experience of Relocating the National Capital from Bonn to Berlin*, 33 URB. LAW. 119, 120 (2001).

² Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687.

³ See Beach, *supra* note 1, at 13-14.

⁴ U.S. DEP'T OF DEF., INSTALLATIONS & ENV'T OFFICE, BASE REDEVELOPMENT AND REALIGNMENT MANUAL 10 (2006), available at <http://www.defense.gov/brac/pdf/4165-66-M-BRRM-508.pdf> [hereinafter BRAC MANUAL].

⁵ See, e.g., Thomas William Bruno, *Bringing Sexy Brac: The Case for Allowing Local Governments to Control Environmental Cleanup in the Military Base Closure and Redevelopment Process*, 32 WM. & MARY ENVTL. L. & POL'Y REV. 513, 514 (2008).

amended version of the Defense Base Closure and Realignment Act of 1990 governed the most recent round of closures.⁶ Congress created this statute to provide a fair process for the timely closure and realignment of bases.⁷ Other laws also govern the base closure process, including environmental regulations such as the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and various state environmental statutes.⁸ The many applicable, and sometimes conflicting, laws can create significant confusion and increase the time and money required to complete base closures.

Military base closings, and the numerous laws and regulations that apply to them, have a great impact on neighboring communities. This comment addresses the economic, environmental, and cultural effects of military base closures, both domestic and overseas, and offers some ideas for the future. Section I tells the stories of two former military bases, one in America and one overseas, and an American military base currently in the process of closing. Section II details the economic effects of military base closure under BRAC, while looking at the process itself in more detail. Section III examines the environmental effects, arising from both preparation for closure and use after the transfer. Section IV looks at the cultural effects of base closures. Finally, Section V analyzes what is likely to happen in the future in this area and offers some solutions to the problems under current law.

II. CASE STUDIES

A. *Fort Douglas*

Fort Douglas, located near Salt Lake City, Utah, was an active army base until the 1988 BRAC session.⁹ Established by Abraham Lincoln during the Civil War to guard the Overland Mail Route, the post served a variety of uses over the years.¹⁰ It was a training center and prisoner of war camp during both world wars and served as headquarters for Army Reserve and National Guard units afterwards.¹¹ Fort Douglas was designated a National Historic Landmark in 1970.¹² It has granted and sold excess land numerous times, beginning in

⁶ See, e.g., Beach, *supra* note 1, at 11.

⁷ Dalton v. Specter, 511 U.S. 462, 464 (1994).

⁸ See, e.g., Bruno, *supra* note 5, at 516-19.

⁹ Historic Fort Douglas at the University of Utah Website, A Brief History of Fort Douglas, <http://web.utah.edu/facilities/fd/history/history.html> (last visited Jan. 10, 2010) [hereinafter *University of Utah Website*].

¹⁰ *University of Utah Website*, *supra* note 9; Global Security, Fort Douglas, <http://www.globalsecurity.org/military/facility/fort-douglas.htm> (last visited Jan. 10, 2010) [hereinafter *Global Security Website*].

¹¹ *University of Utah Website*, *supra* note 9.

¹² *Id.*

1874.¹³ Congress has granted parcels of land from the fort to the University of Utah, beginning in 1894, which continually added to the university's size as time went on.¹⁴ Upon approval of the BRAC closure plan, all land in excess of what the Army needed was transferred to the university in exchange for state lands.¹⁵ The Secretary of Defense justified moving some of the Army Reserve activities to Fort McCoy, Wisconsin as enhancing homeland defense capability, saving money, and improving training and overall efficiency.¹⁶ Today, few units of the Army, Navy, and Marine Reserves continue to use a portion of Fort Douglas.¹⁷

Since the majority of military activities ceased by 1967, when Fort Douglas became a subpost of Fort Carson, Colorado, the BRAC transition was fairly simple and quick.¹⁸ By the 1988 BRAC session, the Army retained only a small portion of the land.¹⁹ Fort Douglas is an example of an almost ideal military base closure. The military phased out its activities gradually, and the land was used for both economically and culturally valuable purposes after the closure. Thus, there was very little reason for community hesitation or litigation between private industries. Additionally, the military estimated a savings of \$70.7 million by avoiding facility renovation costs by relocating work from Fort Douglas to nearby bases.²⁰ In sum, the Fort Douglas closure saved the federal government money, improved military efficiency by combining units, and expanded local higher education facilities, all with minimal roadblocks or conflicts.

B. Fort Monroe

In the 2005 round of BRAC, the DoD recommended closing Fort Monroe, an Army base located in Hampton, Virginia.²¹ It recommended moving the majority of the departments currently headquartered at Fort Monroe, including the principal tenant, the U.S. Army Training & Doctrine Command ("TRADOC"), to nearby Fort Eustis.²² It plans to move other offices to Fort Knox, Kentucky.²³ The DoD jus-

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Global Security Website, supra* note 10.

¹⁷ *University of Utah Website, supra* note 9.

¹⁸ See *History of Fort Douglas, Utah*, ONLINEUTAH.COM <http://www.onlineutah.com/fortdouglasshistory.shtml> (last visited Jan. 10, 2010).

¹⁹ See *History of Fort Douglas, Utah, supra* note 18.

²⁰ *Global Security Website, supra* note 10.

²¹ *E.g., BRAC 2005*, FORT MONROE AUTH., <http://www.fmauthority.com/about/brac.php> (last visited July 25, 2010) [hereinafter *FMA BRAC 2005*].

²² *Id.*

²³ *Id.*

tifies the closing as a means to enhance the Army's military value, provide the Army more flexibility to accept new missions, and enhance vital linkages between other headquarters activities.²⁴ Additionally, the DoD estimates a savings of almost \$700 million over 20 years, considering a \$72.4 million cost to close the base.²⁵ The BRAC Commission has approved the recommendations of the DoD Secretary, and Fort Monroe is scheduled for closure in September 2011.²⁶

Despite the lucrative benefits of closing Fort Monroe, practical issues remain. The DoD estimates up to 2,275 jobs could be lost to the closure, assuming no economic recovery.²⁷ It also found Fort Monroe may require munitions constituent cleanup and other environmental remediation, but it did not report the estimated costs in its report because the DoD would have a legal obligation to clean up contamination regardless of whether the base closed or remained open.²⁸ However, the DoD's Defense Environmental Programs 2004 annual report to Congress estimated the cost of cleanup at \$201 million.²⁹ Since then, Army officials have lowered the estimate to \$60-70 million.³⁰

The base was built between 1819 and 1834, and served important functions during the Civil War and World War II due to its prime coastal location.³¹ It is historically significant for numerous reasons. During the Civil War, Fort Monroe remained in Union hands.³² When escaped slaves made their way to the fort, Major General Benjamin Butler decided that they were "contrabands of war" and would not be returned to their owners.³³ After the war, Confederate President Jefferson Davis was held prisoner inside Fort Monroe for two years.³⁴

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Fort Monroe Fact Sheet*, FORT MONROE AUTH., <http://www.fmauthority.com/about/fact-sheet.php> (last visited July 25, 2010).

²⁷ *FMA BRAC 2005*, *supra* note 21. The DoD estimates 1,013 direct and 1,262 indirect jobs will be lost over the 2006-2011 in the Virginia Beach-Norfolk-Newport News metropolitan area.

²⁸ *Id.*

²⁹ *Id.*

³⁰ The Associated Press, *Army: Fort Monroe Cleanup Cost \$60M to \$70M*, THE VIRGINIAN-PILOT, May 7, 2010, available at <http://hamptonroads.com/2010/05/army-fort-monroe-cleanup-cost-60m-70m>.

³¹ *History of Fort Monroe*, FORT MONROE AUTH., <http://www.fmauthority.com/about/history.php> (last visited July 25, 2010) [hereinafter *Fort Monroe History*, FMA] (also stating that fortifications actually existed on the land as early as 1609).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

The Hampton community has expressed concern about the BRAC process, mainly because of the historical significance and unique coastal location of the base, but also because some feared there was more environmental contamination than the DoD estimated.³⁵ In addition, many citizens in Hampton and other surrounding communities feared the government would sell the land to developers and destroy a much-loved area.³⁶ Rumors of high-rise condominiums, casinos, and the destruction of historical buildings caused commotion and distress in the community. These rumors have proven to be unfounded.³⁷

First, the Commonwealth of Virginia conveyed much of Fort Monroe's land to the military in deeds with reversion provisions, meaning the land will be returned to the state when the base ceases military operations.³⁸ As previously discussed, the military remains liable for remediating any environmental contamination on the property. Other military bases have conveyed property in this manner, including the first major Navy base closure of the 2005 BRAC round, Naval Station Pascagoula in Mississippi, which had a similar automatic reversion provision in its original transfer deed.³⁹ Additionally, many of the buildings on Fort Monroe are protected historical landmarks that cannot be sold or destroyed and must be preserved.⁴⁰

It is now up to the Local Redevelopment Authority⁴¹, the Fort Monroe Authority ("FMA")⁴², to determine the best use of the land through its ongoing research, planning, and consultation with interested parties, including the surrounding communities and the Com-

³⁵ *FMA BRAC 2005*, *supra* note 21, at 4.

³⁶ David Macaulay, *Development Authority Director Looks to the Private Sector but Rules Out Widespread Building at Fort Monroe*, DAILYPRESS.COM, (Dec. 6, 2009, 10:18 PM), <http://www.dailypress.com/news/> (search "Development Authority Director Looks to the Private Sector but Rules Out Widespread Building at Fort Monroe"; then follow the link to the second story).

³⁷ *Id.*

³⁸ *FMA BRAC 2005*, *supra* note 21, at 4.

³⁹ *Naval Station Pascagoula Reverts to State of Mississippi*, DEPARTMENT OF NAVY BRAC PMO HEADLINES, <http://www.bracpmo.navy.mil/headlines.aspx> (last visited Jan. 10, 2010).

⁴⁰ *National Register of Historic Places*, FORT MONROE AUTH., <http://www.fmauthority.com/about/national-registar-historic-places.php> (last visited July 25, 2010).

⁴¹ See *infra* pp. 143-44 for a definition and functions of the Local Redevelopment Authority.

⁴² Prior to July 1, 2010, the FMA was referred to as the FMFADA or Fort Monroe Federal Area Development Authority. Numerous websites and documents, including some mentioned in this comment, still refer to the FMA by its prior name.

monwealth of Virginia.⁴³ In November 2009, the FMA decided to pursue a National Park Service presence and has had some discussions with the Park Service resulting from a request by members of Virginia's Congressional delegation.⁴⁴ The FMA is still planning how to use the rest of the land, considering options such as the limited development of office space, museums, homes, and tourism-related facilities, and renting out existing buildings.⁴⁵ The FMA is working with the community and numerous state agencies in order to preserve the historical and aesthetic aspects of the base, while pursuing suitable business opportunities to stimulate the local economy, attempting to keep Fort Monroe on track towards successful conversion.

C. *U.S. Army Garrison Giessen*

In 2005, the federal government announced plans to close 11 bases in southern Germany.⁴⁶ At the time, Germany hosted the largest U.S. overseas contingent outside of Iraq.⁴⁷ These closures were part of the Pentagon's Integrated Global Presence and Basing Strategy, which intended to modify the military in order to better meet current and anticipated future threats.⁴⁸ Two years earlier, the U.S. Army announced plans to close all bases near Giessen, Germany by 2008.⁴⁹

One of those installations, Ray Barracks, located in Friedberg, closed in 2007.⁵⁰ Ray Barracks was home to Elvis Presley from October 1958 to March 1960, when he served a tour in the U.S. Army.⁵¹ As a tribute to his service, Elvis' music played in the background as officers shut off the power supply during the closing ceremony on September 28, 2007.⁵² At the time of its closure, Ray Barracks was home to around 3,800 soldiers.⁵³ It was the headquarters of the 1st Brigade

⁴³ *About Fort Monroe Authority*, FORT MONROE AUTH., <http://www.fmauthority.com/about> (last visited July 25, 2010).

⁴⁴ Macaulay, *supra* note 36, at 6.

⁴⁵ *Id.*

⁴⁶ *US Announces German Base Closures*, BBC NEWS, July 30, 2005, <http://news.bbc.co.uk/2/hi/americas/4729941.stm>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Kevin Dougherty, *Curtain, Flag Drop on Giessen*, STARS AND STRIPES, Sept. 29, 2007, <http://www.stripes.com/article.asp?section=104&article=49137>.

⁵⁰ Matt Millham, *Friedberg a "Ghost Town" as GIs Depart*, STARS AND STRIPES, June 14, 2007, <http://www.military.com/features/0,15240,139148,00.html>.

⁵¹ Sgt. Elizabeth A. Sheridan, *Army Closes Ray Barracks in Germany*, ARMY NEWS SERVICE, Jan. 10, 2008, <http://www.globalsecurity.org/military/library/news/2008/01/mil-080110-arnews01.htm>.

⁵² *Id.*

⁵³ Millham, *supra* note 50.

Combat Team, 1st Armored Division, which was moved to the United States after the closure.⁵⁴

U.S. Army Garrison Giessen, which encompassed Ray Barracks, was shut down at the same time.⁵⁵ American troops first came to Giessen in March 1945 as an occupational force.⁵⁶ In the next few years, the U.S. Army cleaned up and rebuilt the destroyed former German air force base and surrounding area.⁵⁷ Giessen later became an important supply and support location for the U.S. Army and Air Force.⁵⁸ The United States occupation of the Giessen-area bases even provided jobs directly to Germans: some of the prisoners of war held at Giessen Depot were offered jobs and ended up working for the military for more than 45 years.⁵⁹

At the closing ceremony for U.S. Garrison Giessen, U.S. Army Garrison Commander Col. Ray A. Graham said, "The key to the great success of this garrison has come from the relationships among the people who lived and worked here. American children were born here, Americans married Germans and their children were also born here."⁶⁰ The Army used the closing ceremony to thank the host communities, and more than 200 local officials and employees attended.⁶¹

After closure, the United States returned the property to the host country.⁶² Some citizens of the local communities said they would miss the soldiers, who brought additional income to businesses and entertained the locals.⁶³ However, other citizens welcomed the departure of the U.S. soldiers and looked forward to the land's return to the German people.⁶⁴ While the base served important purposes in the past and had many positive effects, the U.S. Army realized it was no longer a necessary installation given current circumstances. This is the logical reasoning for many international base closures.

III. THE ECONOMIC EFFECTS

When a military base is closed, the surrounding communities often face economic hardship, similar to when a major company shuts

⁵⁴ *Id.*

⁵⁵ Petra Roberts, *USAG Giessen Folds up Tent*, U.S. ARMY, Oct. 17, 2007, <http://www.army.mil/-news/2007/10/17/5621-usag-giessen-folds-up-tent/>.

⁵⁶ Dougherty, *supra* note 49.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Roberts, *supra* note 55.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Sheridan, *supra* note 51.

⁶³ Millham, *supra* note 50.

⁶⁴ *Id.*

down or moves to a different town. The effects are direct, as when civilians employed on the base lose their jobs, and indirect, when businesses in the surrounding communities lose sales due to the now smaller population.⁶⁵ These changes can lead to even bigger problems, such as unemployment, a decrease in the level of education available, lower property and sales tax revenues, reduced levels of municipal services, reduced emergency services, and lower property values.⁶⁶ On the other hand, with the proper planning and federal aid, base closures can be opportunities for new businesses and other valuable developments.⁶⁷

The BRAC process can be lengthy and expensive. It begins when the DoD Secretary submits recommendations for base closures based on the current needs of the military, along with a report detailing the costs and savings of the proposed plan.⁶⁸ This information is then submitted to Congress and the Defense Base Closure and Realignment Commission (the "Commission").⁶⁹ The list of base closures is set in stone once the President, Congress, and the Commission have approved it.⁷⁰

Once the list of bases set for closure in a round of BRAC has been approved, the federal government is tasked with conveying the land, cleaning up environmental contamination, and allocating grants and funds for redevelopment of the land.⁷¹ Property that is not subject to reversion, as discussed above, or military use, is conveyed as surplus federal property. Finding the most appropriate way to convey such property is very important because it can revitalize the community's economy, and thus mitigate the negative economic effects of the base closure.⁷² The federal government has numerous options for conveyance of surplus property, including 1) public benefit conveyance, for example, parks, historic monuments, airports, and educational purposes, 2) homeless assistance conveyance, 3) negotiated sale to public bodies, 4) advertised public auction, 5) environmental responsibilities conveyance, in which the transferee agrees to perform all environmental remediation, 6) economic development conveyance, which is for the primary purpose of generating jobs, 7) sale to the depository institution facility that constructed or substantially improved the facility, or 8) conveyances for the conservation of natural resources.⁷³ Some of

⁶⁵ See Kushner, *supra* note 1, at 119-20.

⁶⁶ *Id.* at 120.

⁶⁷ *Id.* at 143-46.

⁶⁸ *Id.* at 122.

⁶⁹ *Id.*

⁷⁰ *Id.* at 123.

⁷¹ *Id.*

⁷² *Id.*

⁷³ BRAC MANUAL, *supra* note 4, at 29-30.

these conveyances require or allow a transfer at no cost, while others require the military service to seek fair market value.⁷⁴

While the federal government's main role in base closings is to transfer the property to the next user, it is also responsible for allocating funds to assist the communities in developing and implementing their reuse plans.⁷⁵ After the DoD determines which, if any, part of the property must be retained for military purposes and if any other federal agency has any use for the property, the Local Redevelopment Authority ("LRA") has a say in what to do with the land.⁷⁶ LRAs, such as the FMA in the Fort Monroe case study above, are the locally or state chartered conversion agencies recognized by the Secretary of Defense.⁷⁷ 1990 BRAC law authorized these agencies to work with the DoD on conversion.⁷⁸ Responsibilities of LRAs include job creation⁷⁹, negotiation with homeless advocacy organizations⁸⁰, and participating in litigation involving the reuse plan.⁸¹

LRAs and the federal government have numerous options when designing their reuse plans. Depending on where they are located and what the military built on the land, many former military bases are ideal for certain business or government agency use. For instance, many former domestic Air Force bases can be converted into commercial airports, often for a much cheaper cost and lower time commitment than starting from scratch.⁸² An LRA in San Bernadino County, California chose this option for land formerly occupied by George Air Force Base.⁸³ The land may also be used for educational purposes, as was done at Fort Douglas⁸⁴, and for historical and conservation purposes, as is planned in part at Fort Monroe.⁸⁵

⁷⁴ *Id.*

⁷⁵ *Id.* at 123-24.

⁷⁶ *Id.* at 26.

⁷⁷ DAVID S. SORENSON, *MILITARY BASE CLOSURE: A REFERENCE HANDBOOK*, 43 (2007).

⁷⁸ *Id.*

⁷⁹ SORENSON, *supra* note 77, at 40.

⁸⁰ *Id.* at 41.

⁸¹ Kushner, *supra* note 1, at 130-31.

⁸² Daniel C. Steppick, *A Military Mess: CERCLA Liability and the Base Closure and Realignment Act*, 59 J. AIR L. & COM. 449, 455 (1994).

⁸³ Kushner, *supra* note 1, at 130-32. This conversion could have been even more profitable for the communities surrounding George Air Force Base had it not been for lengthy and hostile litigation regarding the land transfer. The legal woes and time delays caused many interested businesses to back out, including Japan Air Lines, which was considering building a pilot training center which would have created 500 jobs.

⁸⁴ *See supra* Part II.A.

⁸⁵ *See supra* Part II.B.

Selling property to the public sector is one way the federal government can recoup the money spent in closing the base, such as the cost of environmental remediation.⁸⁶ As discussed next, one of the major economic effects on the military is the requirement to clean up environmental contaminants before transferring base property.

IV. THE ENVIRONMENTAL EFFECTS

A. *Domestic Bases*

In preparing to close a domestic military base, the federal government is required to clean up any environmental contaminants, including remnants of ordnance, fuel and oil spills, chemicals, and other hazardous materials.⁸⁷ The 1993 National Defense Authorization Act requires the federal government to indemnify purchasers of contaminated property formerly part of a military base even after the transfer.⁸⁸ Poorly regulated practices in the past, such as ordnance testing, hazardous materials usage, and fuel oil disposal, are the main causes of this contamination.⁸⁹ The Pentagon has stated that the issue of cleaning up such contamination on military bases is its “largest challenge.”⁹⁰ In addition to cleaning up the land and water before transferring the property, the government must conduct research and issue reports on compliance concerning many issues of land management, including historic preservation, endangered species protections, and wetland restrictions.⁹¹

The BRAC process requires compliance with numerous environmental laws and standards, including the National Environmental Policy Act (“NEPA”).⁹² This statute requires the military to identify and compare its plans to reasonable alternatives and consider the respective environmental impacts.⁹³ The process includes preparing a formal environmental impact analysis, holding a public hearing in or

⁸⁶ Steppick, *supra* note 82, at 454-55.

⁸⁷ Bruno, *supra* note 5, at 514.

⁸⁸ *Richmond American Homes of Colorado v. United States*, 75 Fed.Cl. 376, 387-89 (2007) (citing National Defense Authorization Act of 1993, 10 U.S.C. § 2687).

⁸⁹ Richard A. Wegman & Harold G. Bailey, Jr., *The Challenge of Cleaning up Military Wastes When U.S. Bases Are Closed*, 21 *ECOLOGY L.Q.* 865, 867 (1994).

⁹⁰ *Id.* at 868 (quoting *DOD Envtl. Programs: Hearings Before the Readiness Subcomm., the Envtl. Restoration Panel, and the Dep’t of Energy Defense Nuclear Facilities Panel of the House Comm. on Armed Servs.*, 102d Cong., 1st Sess. 194 (1991) (testimony of Thomas E. Baca, Deputy Assistant Secretary of Defense (Env’t))).

⁹¹ *Richmond Am. Homes of Colo.*, 75 Fed.Cl. 376 at 379. These reports are called Findings of Suitability for Transfer (“FOST”). *Id.*

⁹² BRAC MANUAL, *supra* note 4, at 97.

⁹³ *Id.* at 98.

near the affected communities, and publication of all relevant information regarding the environmental impact and mitigation activities the government will be pursuing.⁹⁴

Another important environmental law the federal government must follow is the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), which applies to property transferred by federal agencies.⁹⁵ CERCLA, in conjunction with the Resource Conservation and Recovery Act (“RCRA”) and state environmental statutes, are the primary laws governing the environmental considerations of domestic military base closures.^{insert footnote} CERCLA established the Superfund, a source of funding for contamination cleanup, and designated the EPA as the federal agency responsible for enforcing the law.⁹⁶

The many environmental requirements, both before and after the base closure, can cause confusion, delay, and high costs. For instance, EPA data estimates the average Superfund site takes fifteen years to progress from the first discovery of contamination until the government has fully implemented remedial measures.⁹⁷ The government has tried to save time by simply containing the environmental contamination, thus allowing the government to convey the property sooner.⁹⁸ The costs of contamination cleanup are also shockingly high: in 1994 the DoD projected the total cost of cleanup at its facilities at \$30 billion, up to six times the initial estimate in 1985.⁹⁹ As the government evaluates more bases for closure, this amount will continue to rise even higher.

The requirements themselves are a big part of the problem. CERCLA does not prescribe substantive standards that the federal government must comply with; instead, it encourages remedial action that permanently and significantly reduces the threat of harm and gives priority to contamination that poses a public health threat.¹⁰⁰ Because CERCLA is so vague, many states have adopted more stringent standards for remediation.¹⁰¹ This can cause further confusion and delays, especially when the decision makers are unsure as to which law prevails. In summary, environmental contamination clean up is a giant problem in the United States, and the government today

⁹⁴ *Id.*

⁹⁵ *Richmond Am. Homes of Colo.*, 75 Fed.Cl. 376 at 380.

⁹⁶ Wegman & Bailey, *supra* note 89, at 882.

⁹⁷ *Id.* at 876.

⁹⁸ *See id.*

⁹⁹ *Id.* at 876-77.

¹⁰⁰ Wegman & Bailey, *supra* note 89, at 883.

¹⁰¹ *See id.* at 883.

cannot accurately forecast how much it will cost to clean up every single military base in the country.

B. Overseas Bases

While the federal environmental cleanup requirements for domestic military bases are subject to specific federal and state laws, the standard in overseas installations is much more lax on its face. U.S. bases and installations overseas are generally not subject to CERCLA and other statutes with which domestic bases must comply.¹⁰² Unless specifically stated in the statute, courts will presume such laws are not applicable in foreign territories.¹⁰³ Typically, presidential executive orders and bilateral agreements with foreign countries govern environmental cleanup of land and water in overseas bases.¹⁰⁴ Of course, this does not produce a uniform standard, as in the United States. The types of policies used overseas grant significant discretion to the policy makers and are often the outcome of negotiations between the involved countries, and therefore, subject to the balance of powers between the countries.¹⁰⁵

The DoD has developed a few doctrines to aid the cleanup of overseas installations: the Management of Environmental Compliance at Overseas Installation, which established the basic process for establishing environmental standards, and the Final Governing Standards ("FGS"), which provides guidance for each country with United States military installations.¹⁰⁶ The federal government created the FGS by considering the environmental laws of each particular host-nation, and it includes minimum environmental protection standards the U.S. government must meet.¹⁰⁷

Contamination in U.S. installations overseas can strain relations with the host country when its citizens are affected. For instance, more than 300,000 gallons of jet fuel from the Rhein-Main Air Force Base in Germany leaked into the primary source of drinking water for the city of Frankfurt.¹⁰⁸ Had the Air Force not spent over \$10 million to correct the problem, the ramifications could have been astounding.¹⁰⁹ Thus, the federal government often spends large

¹⁰² Yusun Woo, *Environmental Problems on the U.S. Military Bases in the Republic of Korea: Who Is responsible for the Cleanup Expenses and Whose Environmental Standards Will Apply?*, 15 SE. ENVTL. L.J. 577, 592 (2007).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 593.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 593-94.

¹⁰⁸ Wegman & Bailey, *supra* note 89, at 873.

¹⁰⁹ *Id.*

amounts of money correcting such problems to preserve international relations. Yet, without strict regulations for such clean up, there is a great incentive for the federal government to do the bare minimum and cut corners to save money.

As in the United States, environmental cleanup abroad is costing more than the government anticipated.¹¹⁰ In 1992 alone, the federal government planned to spend \$1 billion cleaning up overseas bases.¹¹¹ However, later research revealed the cost of cleaning up Germany alone would cost over \$3 billion.¹¹² While the standards may be more flexible, the implications of not satisfactorily removing environmental contaminants in overseas bases are so great that the issue of cleaning up is just as important in overseas military bases as it is in those located in the United States.

V. THE CULTURAL EFFECTS

The cultural effects of base closures primarily concern overseas installations. In many ways, just like in the United States, military bases offer positive cultural benefits because they provide jobs and money to the region. By improving the economy, the communities where bases are located can have more opportunities to enjoy a rich culture. On the other side, military bases can cause a decreased quality of life, especially when the American influence is overwhelming local communities and established ways of life. In these cases, the local communities are often happy to see the bases shut down.

One clear example is Marine Corps Air Station Futenma in Okinawa, Japan.¹¹³ The base was built at the end of World War II, and it continues to be a beneficial location for the United States today.¹¹⁴ However, the base is causing a number of problems for the Japanese living and working nearby: noise forces a nearby elementary school to stop class whenever a plane flies by, residents must drive around the base, causing traffic jams, and sewer and water lines must circumvent the base.¹¹⁵ The problems are threatening the United States' relationship with Japan, and Japanese politicians and citizens are becoming more vocal about their displeasure.¹¹⁶ Even the United States has realized its presence is causing an unreasonable intrusion

¹¹⁰ *Id.* at 878.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Associated Press, *U.S. Base Closure Deepens Dispute with Japan*, FOX NEWS, Dec. 29, 2009, available at <http://www.foxnews.com/story/0,2933,581394,00.html> (last visited Jan. 10, 2010).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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on the quality of life for the residents, and it has agreed it must move the base elsewhere.¹¹⁷

In addition to a decreased quality of life, many foreign countries are concerned with the overbearing influence the United States military has on its culture and politics.¹¹⁸ For instance, the United States backed the dictator Ferdinand Marcos for decades while it maintained military bases in the Philippines.¹¹⁹ Many citizens were very happy to see the bases close down in 1992.¹²⁰ In many instances, base closures in foreign countries receive a much more popular response from the citizens of surrounding communities than base closures in the United States. These foreign countries are happy to lose the overwhelming influence on their culture, despite the loss of jobs and other benefits that come with it.

VI. CONCLUSION

A. *The Results Thus Far*

So far, 97 bases have closed under the first four rounds of BRAC, and 33 more have closed or are in the process of closing under the fifth round.¹²¹ As of September 2004, the DoD had transferred around 72% of 504,000 acres of excess BRAC property to other entities.¹²² Most of the remaining land has not been transferred yet due to environmental cleanup delays.¹²³ As of 2003, the DoD estimates it has saved \$28.9 billion from the first four rounds of BRAC closures alone.¹²⁴ It expects these closures to save \$7 billion annually each year in the future.¹²⁵ The DoD expects the 2005 BRAC closings to save an additional \$3.9 billion annually starting in 2012.¹²⁶

¹¹⁷ *Id.*

¹¹⁸ Kintto Lucas, *A World without Foreign Military Bases, Common Dreams*, <http://www.commondreams.org/headlines07/0308-08.htm> (last visited Jan. 10, 2010).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Beach, *supra* note 1, at 11.

¹²² UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL COMMITTEES, MILITARY BASE CLOSURES UPDATED STATUS OF PRIOR BASE REALIGNMENTS AND CLOSURES 3 (2005), available at <http://www.gao.gov/new.items/d05138.pdf>.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, MILITARY BASE REALIGNMENTS AND CLOSURES: ESTIMATED COSTS HAVE INCREASED WHILE SAVINGS ESTIMATES HAVE DECREASED SINCE FISCAL YEAR 2009, GAO-10-98R, Nov. 13, 2009, available at <http://www.gao.gov/new.items/d1098r.pdf>.

B. The Future

As more bases close, the government and communities will have more examples of what works and what does not. In the future, communities will likely realize there is not much they can do to stop base closures, and instead, they will focus their energy and time on planning for future use of the property. Once they hear about enough successful conversions of closed bases, they will be less likely to see base closure as an inevitable disaster, but instead as a challenging opportunity to make the community even better than it was before. With a well thought out plan that considers the interests of all affected parties, base closure can run more smoothly and produce more satisfying results in the end.

On the same note, the federal government will become more efficient at closing bases as the BRAC process continues. The major problem today is the environmental cleanup requirements. While contaminant cleanup is necessary to protect the public health and the environment itself, the current law causes a process that is confusing, time-consuming, and not cost-efficient. The federal government should work with the states to create one clear, efficient standard and make an easy-to-follow manual to ease confusion and minimize the delays such confusion causes. The federal government should also be more proactive in preventing expensive cleanups during base closure by further regulating military activities to prevent contamination and by requiring operating bases to start cleaning up now.

Additionally, the federal government can modify its contaminant cleanup standards to provide benefits in the early stages of base closure. Enhanced options for early transfer of portions of the property can ease the financial burdens of both the military and the surrounding communities. This can be done through transferring the areas that have passed the required environmental standards and either containing or continuing to clean up the remainder of the land. In addition, reuse authorities are beginning to lease out real estate from the federal government to businesses and individuals before the bases have completely closed down.¹²⁷ This is a great way to generate income in the early stages, while allowing renters to actually start using the land and helping build interest in the area.

Increased government support, especially through funding, is also essential to rebuilding communities and realizing the greatest potential for economic and cultural growth. Knowing the government will actively help with the transition should ease the minds of concerned citizens in the surrounding communities. Communities are often opposed to military base closures because they feel the govern-

¹²⁷ BRAC MANUAL, *supra* note 4, at 75.

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ment is abandoning them, leaving them responsible for the entire burden of rebuilding the economy. Informing the communities of such benefits in advance should lessen resistance to the closures and instead motivate these communities to start planning for the future. Such advance planning is essential to a successful conversion.

Likewise, the government can maintain good international relations by assisting in the transitions overseas. Of course, this is a top concern while the United States is actively operating bases in the host country, but it is essential during and after the closure process as well. While the federal government has less incentive to stimulate the economies overseas than in the U.S., it should initiate scaled down versions of the kinds of programs conducted domestically. While the budgets allocated to overseas surrounding communities will be less, this is still better than nothing at all, and gives the U.S. the benefit of strong international relationships. At a minimum, the U.S. government should notify the surrounding communities of the planned closure as early as possible and inform them of plans for environmental cleanup and transition to the host country.

In conclusion, surrounding communities should look at BRAC as a positive means for saving the federal government money and improving the efficiency of the U.S. military. While it has numerous flaws, including high costs of environmental cleanup and confusion over which steps must be followed, the benefits outweigh these costs. Likewise, the negative effects of base closure on the local communities can be balanced with the opportunities for growth. With the right attitude and proper planning, local communities can work with the federal government to make military base closures under BRAC beneficial for everyone.