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MEMORANDUM

TO: ADC BOARD OF DIRECTORS  
TIM FORD  
TODD HERBERGHS  
TRISH JONES

FROM: MR. SCHLOSSBERG  
MR. PERSKY, LEGISLATIVE ASSISTANT

DATE: JULY 14, 2011

RE: BUDGET UPDATE: STATUS AND CONTENTS OF DEFENSE  
AUTHORIZATION BILL AND MILCON APPROPRIATIONS BILL

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***Introduction***

Congress has made significant progress in the fiscal year 2012 budget process for military construction spending.

The House has passed both the National Defense Authorization Act (NDAA) for Fiscal Year 2012 and the Military Construction, Veterans Affairs and Related Appropriations Act for Fiscal Year 2012.

The Senate Armed Services Committee passed its version of the NDAA on June 16 and the Senate Appropriations Committee passed its version of the appropriations bill on June 30. It is unknown when the full Senate will take up the National Defense Authorization Act. As of July 14, the Military Construction Appropriations Bill is on the Senate Floor.

***Congress Taking Greater Interest in BRAC***

Congress is tentatively stepping back into the world of BRAC. Lawmakers appear increasingly troubled by the unilateral authority of the Secretary of Defense to affect defense missions (e.g., Norfolk's Joint Forces Command). In response, Congress is tightening the screws on the Secretary's realignment and closure authority.

Changes initiated by Congress may also serve to set the stage for a future BRAC round.

This memorandum serves as a guide to the relevant provisions and report language included by Congress in the fiscal year 2012 budget process.

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<sup>1</sup> A “Provision” is an enumerated section within a bill that would become law; “Report Language” is text within a committee report that further states or clarifies the will of Congress; An “Item of Special Interest” is a type of report language included for special emphasis

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**Fiscal Year 2012 Funding Chart**

	<b>FY12 President's Request</b>	<b>FY12 Authorized- House<sup>2</sup></b>	<b>FY12 Authorized- Senate Armed Services Committee<sup>3</sup></b>	<b>FY12 Appropriated- House<sup>4</sup></b>	<b>FY12 Appropriated- Senate Armed Services Committee<sup>5</sup></b>	<b>FY11 Enacted</b>
<b>Military Construction</b>	\$12.5b	\$12.5b	\$11.4b	\$11.5b <sup>6</sup>	\$11.1b	\$12.3b
<b>MilCon- Army</b>	\$3.2b	\$3.3b	\$3.1b	\$3b	\$3.1b	\$3.5b
<b>MilCon- Navy and Marine Corps</b>	\$2.5b	\$2.5b	\$2.2b	\$2.4b	\$2.2b	\$3.2b
<b>MilCon- Air Force</b>	\$1.4b	\$1.3b	\$1.2b	\$1.2b	\$1.2b	\$1b
<b>MilCon- Defense-Wide</b>	\$3.9b	\$3.7b	\$3.4b	\$3.5b	\$3.4b	\$2.7b
<b>MilCon- Army National Guard</b>	\$774m	\$824m	\$774m	\$774m	\$774m	\$874m
<b>MilCon- Air National Guard</b>	\$116m	\$134m	\$116m	\$116m	\$116m	\$195m
<b>MilCon- Army Reserve</b>	\$281m	\$281m	\$281m	\$281m	\$281m	\$318m
<b>MilCon- Navy Reserve</b>	\$26m	\$26m	\$26m	\$26m	\$26m	\$62m
<b>MilCon- Air Force Reserve</b>	\$34m	\$44m	\$34m	\$34m	\$34m	\$8m
<b>Family Housing</b>	\$1.7b	\$1.7b	\$1.7b	\$1.7b	\$1.7b	\$1.8b
<b>BRAC 2005</b>	\$259m	\$259m	\$259m	\$209m	\$259m	\$2.4b
<b>BRAC 1990</b>	\$324m	\$324m	\$324m	\$374m	\$324m	\$360m

<sup>2</sup> The House passed its version of the NDAA on May 26

<sup>3</sup> SASC marked up its version of the NDAA on June 16

<sup>4</sup> The House passed its version of the Military Construction appropriations bill on June 14

<sup>5</sup> SAC marked up its version of the Military Construction appropriations bill on June 30; As of July 14, the measure is on the Senate floor

<sup>6</sup> The House and Senate Appropriations Committees prepare their Military Construction accounts in a different manner from the Administration and the authorizers. Appropriators place the NATO Security fund and the Chemical Demilitarization fund in separate accounts (totaling approximately \$350 million).

## **Policy Provisions and Report Language**

### ***Policy Provision and Report Language in the House Authorization Bill***

#### **PROVISIONS**

##### **Improved Sikes Act Coverage of State-Owned Facilities Used for the National Defense (section 313)**

This section would amend the Sikes Act to broaden its scope beyond land under the Defense Department's jurisdiction to include land owned and operated by states and territories for National Guard training.

##### **Modification of Department of Defense Authority To Accept Voluntary Contributions of Funds (section 331)<sup>7</sup>**

This section would modify section 358(g) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383) to permit the Secretary of Defense to accept voluntary contributions in amounts that shall remain available until expended for the purpose of offsetting the cost of mitigation measures. This section also would permit the Secretary of Defense to accept voluntary contributions to conduct studies of potential mitigation measures.

##### **Unmanned Aerial Systems and National Airspace (section 1098)<sup>8</sup>**

This section would require a program to integrate unmanned aircraft systems into the national airspace system at six test ranges.

##### **Authority to Extend Deadline for Completion of Limited Number of Base Closure and Realignment Recommendations (section 2704)**

This section would extend the deadline for up to seven properties from BRAC 2005, with a primary focus on medical centers.

##### **Increased Emphasis on Evaluation of Costs and Benefits in Consideration and Selection of Military Installations for Closure or Realignment (section 2705)**

This section would require the Secretary of Defense to include a cost-benefit analysis of proposed closures and realignments that exceed certain thresholds. The section would also

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<sup>7</sup> The Senate authorization bill includes a related provision (Authority to Accept Contributions of Funds to Study Options for Mitigating Adverse Effects of Proposed Obstructions on Military Installations)

<sup>8</sup> The Senate authorization bill includes a related provision (Report on Integration of Unmanned Aerial Systems into the National Airspace System)

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prevent the Secretary from reducing staff prior to realignment or closure in order to avoid triggering thresholds.

Special Considerations Related to Transportation Infrastructure in Consideration and Selection of Military Installations for Closure or Realignment (section 2706)<sup>9</sup>

This section would require that the effects on local businesses, neighborhoods, and local governments be included in the analysis of the impacts on transportation infrastructure related to consideration and selection of military installations for closure or realignment.

Limitation on BRAC 133 Project Implementation (section 2707)<sup>10</sup>

This section would limit the Secretary of Defense from using more than 1,000 parking spaces at the Mark Center in Alexandria, Virginia until certain traffic mitigation policies are in place.

Removal of Discretion of Secretaries of the Military Departments Regarding Purposes for Which Easements for Rights-of-Way May Be Granted (section 2812)

This section would amend section 2668 of title 10, United States Code, and prohibit the use of a real estate easement as a method to bypass other real estate authorities. The committee is aware that certain leasing proposals for energy projects have used authority provided by section 2668 of title 10, United States Code, as an expedited method to obtain a real estate lease. The committee believes that the authorities provided by section 2667 of title 10, United States Code, provide the appropriate framework that allows the secretary concerned to manage Government properties and to evaluate leasing proposals.

Limitations on Use or Development of Property in Clear Zone Areas (section 2813)<sup>11</sup>

This section would modify section 2684(a) of title 10, United States Code, to permit the use of the readiness and environmental protection initiative authority to protect clear zone areas from use of encroachment that is incompatible with the mission of the installation.

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<sup>9</sup> The House appropriations bill includes related report language (Base Realignment and Closure 2005 [Transportation Infrastructure Improvements]); the Senate appropriations bill includes related report language (Defense Access Roads)

<sup>10</sup> The House appropriations bill includes related report language (Base Realignment and Closure 2005) and a related provision (Limiting the Use of Parking Spaces at BRAC 133)

<sup>11</sup> The Senate authorization bill includes a related provision (Clarification of Authority to Limit Encroachments)

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Defense Access Road Program Enhancements to Address Transportation Infrastructure in Vicinity of Military Installations (section 2814)<sup>12</sup>

This section would expand the authority of the Department to use military construction funding to mitigate transportation impacts caused by an expanded defense mission. This section would also require the Secretary to convene the Economic Adjustment Committee to consider sources of funding associated with the Defense Access Roads program. Finally, this section would provide a separate budget line item for the program, as opposed to depending on funding from the services.

Use of Operation and Maintenance Funding to Support Community Adjustments Related to Realignment of Military Installations and Relocation of Military Personnel on Guam (section 2841)<sup>13</sup>

This section would authorize the Secretary of Defense to assist the Government of Guam in meeting the costs of providing increased municipal services and facilities associated with the realignment of military forces to Guam. This authorization would be provided if the Secretary determines that an unfair and excessive financial burden will be incurred by the Government of Guam to provide the services and facilities in the absence of the Secretary's assistance. This authority would expire on September 30, 2018.

Medical Care Coverage for H-2B Temporary Workforce on Military Construction Projects on Guam (section 2842)

This section would prohibit the Secretary of the Navy from awarding any additional construction projects associated with the realignment of military forces to Guam until the Secretary establishes a lead system integrator for health care for the H-2B workers.

Certification of Military Readiness Need for Firing Range on Guam as Condition on Establishment of Range (section 2843)

This section would prohibit the establishment of a firing range on Guam until the Secretary of Defense certifies that the firing range is required to meet a national security need.

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<sup>12</sup> The Senate authorization bill includes related report language (Military Commuter Centers); the House appropriations bill includes related report language (Base Realignment and Closure 2005 [Transportation Infrastructure Improvements] and a related provision (Defense Access Road Program Enhancements); the Senate appropriations bill includes related report language (Defense Access Roads)

<sup>13</sup> The Senate authorization bill includes a related provision (Guam Realignment) and related report language (Report on the Feasibility of Moving Marine Corps Aviation on Okinawa from Marine Corps Air Station Futenma to Kadena Air Base); the House appropriations bill includes two pieces of related report language: 1) Guam and 2) Missile Defense within U.S. Pacific Command Area of Responsibility; the Senate appropriations bill includes two related pieces of report language: 1) U.S. Pacific Command Transformation and 2) Japan/Okinawa/Guam



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Repeal of Condition on Use of Specific Utility Conveyance Authority Regarding Guam Integrated Water and Wastewater Treatment System (section 2844)

This section would modify section 2822 of the Military Construction Authorization Act for Fiscal Year 2011 (division B of Public Law 111-383) and modify the permissive utility conveyance to the Guam Waterworks Authority. Specifically, this section would eliminate the requirement to allocate representation on the Guam Consolidated Commission on Utilities for the Department of the Navy.

Limitation on Reduction in Number of Members of the Armed Forces Assigned to Permanent Duty at a Military Installation to Effectuate Realignment of Installation (section 2862)

This section would limit the Secretary of Defense or the Secretary of the military department concerned from reducing more than 1,000 military service members at a military installation until a notice is provided by the Secretary as to the rationale for such reduction and a period of 90 days expires.

**ITEMS OF SPECIAL INTEREST**

Army Housing Shortfall at Growth Installations

The committee understands the Army has identified a shortfall of housing at several Army installations as a result of base realignment and closure and other force structure changes. While local communities are working to respond to the increased demand for off-post housing, the committee is concerned that the lingering effects of the financial crisis have made it difficult for civilian developers to obtain construction financing to fulfill the Army's off-post housing requirements. The committee encourages the Army to examine existing authorities which permit the leasing of off-post housing.

Additionally, the committee directs the Secretary of the Army to provide to the committee, no later than September 30, 2011, a report which identifies installations where a housing deficit exists. The report also should detail the efforts being taken by the Army to address unmet housing requirements, including the use of existing authorities.

Cooperative Agreements to Facilitate Defense Posture Review Initiatives

The Defense Posture Review Initiative includes the realignment of military forces in Japan, along with the realignment of Marines from Okinawa, Japan, to Guam. This effort is one of the most extensive realignments of military forces in recent memory.

The committee recognizes the impacts on Guam associated with the strategic realignment of military forces from Okinawa, Japan, to Guam and recognizes that non-governmental organizations, including institutes of higher learning, have provided analysis and research into a

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variety of environmental and socioeconomic impacts for other projects on Guam and in the Western Pacific region. The committee acknowledges that the Department of Defense has entered into cooperative agreements with institutions of higher learning to provide baseline studies and analyses will be needed to facilitate additional assessments on the location of a proposed firing range and transient nuclear aircraft carrier berthing on Guam over the coming months and years.

The committee recommends that the Department of Defense (DOD) enter into a cooperative agreement to help facilitate further Environmental Impact processes associated with the Defense Posture Review Initiative in the Asia-Pacific region. As such, the committee urges the Department of Defense take all necessary steps pursuant and consistent with DOD directive 3210.6-R, "Department of Defense Grant and Agreement Regulations" and establish a cooperative agreement with appropriate non-governmental organizations, including qualified institutions of learning, to facilitate better studies and analyses to support the Defense Policy Review Initiatives.

Collateral Support for Infrastructure and Real Property Programs

The committee is aware that Department of Defense relies extensively on consultants and contractors to support various Department infrastructure initiatives and real estate transactions involving programs such as housing, lodging, and utility privatization programs; real property exchanges; enhanced use leasing; and various other public-private partnerships involving real property. In particular, as the complexity of such initiatives and transactions has increased over the past several years, so too has the Department's use of consultants, contractors, and other experts to help ensure that prudent real property decisions are made to provide the best capabilities and economic outcomes to the Department.

The committee recognizes and supports the Department's efforts to obtain certain economies and achieve other objectives through the various infrastructure and real property initiatives and programs. However, regardless of whether Government employees or consultants and contractors are used to negotiate and implement deals to support the various public-private partnerships and alternatively financed projects, the Government's interests must be well represented from start to finish. As such, the committee is concerned about the preparedness of the Department's employees for negotiating and implementing such deals, the use and cost of consultant and contractor support participation in these arrangements, and the Department's monitoring and oversight of such consultant and contractor involvement. Moreover, the acquisition, management, and disposal of real property and related programs may involve inherently governmental functions, raising questions about whether they should be performed by qualified government employees.

Therefore, the committee directs the Comptroller General of the United States to review the Department's use of consultants and contractors to support infrastructure and real property programs, including negotiations for alternatively financed projects, and submit a report to the

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congressional defense committees by March 30, 2012. At a minimum, the review should assess the following:

(1) To what extent and at what cost has the Department used consultants and contractors to assist in negotiating and implementing the various infrastructure and real property programs?

(2) How does the Department determine the level of involvement of consultants and contractors in support of negotiations for various real estate deals and alternatively financed projects, or in the management of the Department's real property programs?

(3) To what extent does the Department's oversight and monitoring of consultant and contractor support in these areas ensure that the level of support is appropriate, expected results are realized, and costs are minimized?

(4) How has the Department ensured that Government employees are sufficiently trained to successfully negotiate and implement the various infrastructure and real property programs as well as oversee related support provided by consultants and contractors?

The Comptroller General may add such additional questions as he deems relevant.

Elementary and Secondary Schools on Military Installations<sup>14</sup>

The committee is aware that the Department of Defense has undertaken an assessment of the conditions and capacity of elementary and secondary schools located on military installations that serve children of members of the Armed Forces and Department of Defense civilian employees. Furthermore, the committee is aware of preliminary reports that many of these schools face capacity or structural deficiencies. The committee is concerned by these reports and the adverse impact that the substandard capacity and structural conditions may have on the quality of life for military families.

The committee notes that one of the results of this assessment is a \$439 million capital investment into the Department of Defense Education Activity for Department of Defense-owned schools in fiscal year 2011. These appropriations will be applied to address some of the structural and quantity deficiencies that exist in the education enterprise. The committee also notes that there is another category of elementary and secondary schools located on military installations; these schools are operated by a Local Education Authority but owned by the Federal Government. For this category of schools, the committee notes that \$250 million in fiscal year 2011 defense appropriations were applied toward the recapitalization of existing, structurally deficient elementary and secondary schools.

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<sup>14</sup> The House appropriations bill includes two pieces of related report language : 1) Charter Schools and 2) Department of Defense Schools Recapitalization

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The committee encourages the prompt disbursement of funds made available in fiscal year 2011 to construct, renovate, repair, or expand educational facilities on military installations in order to address identified capacity or structural deficiencies. For those funds to support a Local Education Authority-operated school but owned by the Federal Government, the committee urges the Department to disburse these funds in a manner that gives priority to schools with the most serious deficiencies as determined by the Secretary of Defense.

Energy and Water Utilities Privatization

The committee believes that the Department of Defense should more aggressively and effectively implement utilities privatization as part of their asset management strategy to allow each military service to focus on core defense missions and functions. The committee further believes that the use of utilities privatization can improve energy and water efficiencies and improve installation infrastructure in a cost effective manner for the long-term benefit of our military members and their families. Therefore, the committee directs the Secretary of Defense to submit a report by February 1, 2012, to the congressional defense committees that includes the following:

- (1) An update of the report elements included in section 2823(f) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163); and
- (2) An assessment of whether it would be beneficial to leverage utilities privatization as part of agency initiatives to increase use of renewable energy and conserve water.

Homeowners Assistance Program<sup>15</sup>

The Department of Defense's Homeowners Assistance Program (HAP) has provided financial assistance to military personnel and Department of Defense civilians who suffer financial loss on the sale of their home when a base realignment or closure action causes a decline in the local real estate market. The American Recovery and Reinvestment Act of 2009 (Public Law 111–16) expanded the program to assist additional categories of people, including those who are wounded, injured, or become ill while deployed, the surviving spouses of military personnel and civilians who are killed in the line of duty, and service members who purchased property before July 1, 2006, and were required to permanently relocate between February 1, 2006, and September 30, 2010.

The committee is aware that the Department of Defense is assessing the magnitude of a potential shortfall in existing resources and is currently projecting a \$400.0 million deficit in the expanded Homeowners Assistance Program. This deficit could begin to impact eligible beneficiaries by the end of the current fiscal year and has the potential to impact more than 3,000 beneficiaries. The

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<sup>15</sup> The House appropriations bill includes a related provision (Transfer Authority to the Homeowners Assistance Fund); the Senate appropriations bill includes related report language (Homeowners Assistance Fund) and a related provision (Transfer Authority to the Homeowners Assistance Fund)

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Department of Defense briefed the committee on its intent to address this deficit issue in its fiscal year 2013 budget submission. Further more, even if the program were fully funded, the committee is concerned that while the average time to process a complete application is 60 days, the committee understands that a number of applicants have seen delays of up to 1 year. Finally, the committee is concerned that the eligibility dates that were provided in the American Recovery and Reinvestment Act of 2009 (Public Law 111–16) have excluded certain localities whose real estate markets declined after July 1, 2006, and service members who receive permanent change of station orders within those localities, after September 30, 2010.

The committee is concerned that the compilation of these issues will have a cascading impact on thousands of beneficiaries who linger in potential foreclosure and bankruptcy because of the inability of the Department of Defense to adequately forecast required investments or to promptly process a completed application. Therefore, the committee directs the Secretary of Defense to provide a brief to the congressional defense committees by September 30, 2011, that includes the following:

- (1) An assessment of the overall military construction program with a goal to eliminate unnecessary programmatic investments and apply savings toward the potential deficit in the Homeowners Assistance Program; and
- (2) An assessment on methods to improve the efficiency of processing applications as well as to include hiring, on a temporary basis, additional staff to assist with the current backlog of claims that has resulted due to the increased volume of applications made under the expanded criteria provided by the Homeowners Assistance Program as expanded by the American Recovery and Reinvestment Act of 2009; and
- (3) An assessment of large military installations, whose local real estate market declined after July 1, 2006, and options that could be pursued at these large military installations, to include the associated cost impact, that would ameliorate the impact of the declining real estate market.

*Policy Provisions and Report Language in the Senate Authorization Bill*

**PROVISIONS**

Authority to Accept Contributions of Funds to Study Options for Mitigating Adverse Effects of Proposed Obstructions on Military Installations (section 344)<sup>16</sup>

The committee recommends a provision, as requested by the Department of Defense, that would make a technical amendment to section 358(g) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383) to clarify that contributions received under that provision from developers remain available until expended. The purpose of such voluntary contributions is to offset the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts on military operations, readiness, and the cost of studying options for impact mitigation for projects that may pose an obstruction to military installations.

Report on Integration of Unmanned Aerial Systems into the National Airspace System (section 1078)<sup>17</sup>

The committee recommends a provision that would require the Secretary of Defense, in consultation with the Administrator of the Federal Aviation Administration and on behalf of the Unmanned Aerial Systems (UAS) Executive Committee, submit to the appropriate committees of Congress a report setting forth: (1) A description and assessment of the rate of progress in integrating unmanned aircraft systems into the national airspace system; and (2) An assessment of the potential for one or more pilot program or programs on such integration at certain test ranges to increase that rate of progress. Included in the term “test ranges” for the purposes of this provision would be test facilities, training facilities, or other facilities

Guam Realignment (section 2208)<sup>18</sup>

The committee recommends a provision that would require the Commandant of the Marine Corps to provide the congressional defense committees with his preferred force lay-down

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<sup>16</sup> The House authorization bill includes a related provision (Modification of Department of Defense Authority To Accept Voluntary Contributions of Funds)

<sup>17</sup> The House authorization bill includes a related provision (Unmanned Aerial Systems and National Airspace)

<sup>18</sup> The House Authorization bill includes four related provisions: 1) Use of Operation and Maintenance Funding to Support Community Adjustments Related to Realignment of Military Installations and Relocation of Military Personnel on Guam, 2) Medical Care Coverage for H–2B Temporary Workforce on Military Construction Projects on Guam, 3) Certification of Military Readiness Need for Firing Range on Guam as Condition on Establishment of Range, and 4) Repeal of Condition on Use of Specific Utility Conveyance Authority Regarding Guam Integrated Water and Wastewater Treatment System and related report language (Cooperative Agreements to Facilitate Defense Posture Review Initiatives); the House appropriations bill includes two pieces of related report language: 1) Guam and 2) Missile Defense within U.S. Pacific Command Area of Responsibility; the Senate appropriations bill includes two related pieces of report language: 1) U.S. Pacific Command Transformation and 2) Japan/Okinawa/Guam

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to implement the realignment of Marine Corps forces from Okinawa to Guam. The provision would also require the Secretary of Defense to provide a master plan to implement this lay-down.

Exchange of Property at Military Installations (section 2811)

The committee recommends a provision that would allow for certain exchanges of real property at military installations. This section would cut out preference for communities in property exchange deals at military installations.

***Bill Text***

SEC. 2811. EXCHANGE OF PROPERTY AT MILITARY INSTALLATIONS.

(a) EXCHANGE AUTHORITY.—Section 2869 of title 10, United States Code, is amended—

(1) in the section heading, by striking “Conveyance of property at military installations to limit encroachment” and inserting “Exchange of property at military installations”; and

(2) in subsection (a)—

(A) in the subsection heading, by striking “CONVEYANCE AUTHORIZED; CONSIDERATION” and inserting “EXCHANGE AUTHORIZED”; and

(B) in paragraph (1), by striking “to any person who agrees, in exchange for the real property, to carry out a land acquisition” and inserting “to any eligible entity who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the entity in and to a parcel of real property, including any improvements thereon under their control, or to carry out a land acquisition”.

(b) EXTENSION OF AUTHORITY.—Such section is further amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 169 of such title is amended by striking the item relating to section 2869 and inserting the following new item:

“2869. Exchange of property at military installations.”.

***USC to be Amended***

§ 2869. Conveyance of property at military installations to limit encroachment

(a) Conveyance Authorized; Consideration.—

(1) The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property, to carry out a land acquisition, including the

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acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations.

(2) Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned that—

(A) is located on a military installation that is closed or realigned under a base closure law; or

(B) is located on a military installation not covered by subparagraph (A) and is determined to be excess to the needs of the Department of Defense.

(b) Conditions on Conveyance Authority.— The fair market value of the land to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the land is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

(c) Limitation on Use of Conveyance Authority at Installations Closed Under Base Closure Laws.— The authority under subsection (a)(2)(A) to convey property located on a military installation may only be used to the extent the conveyance is consistent with an approved redevelopment plan for such installation.

(d) Advance Notice of Use of Authority.—

(1) Notice of the proposed use of the conveyance authority provided by subsection (a) shall be provided in such manner as the Secretary of Defense may prescribe, including publication in the Federal Register and otherwise. When real property located at a military installation is proposed for conveyance by means of a public sale, the Secretary concerned may notify prospective purchasers that consideration for the property may be provided in the manner authorized by such subsection.

(2) The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

(A) the Secretary submits to Congress notice of the conveyance, including—

(i) a description of the real property to be conveyed by the Secretary under the agreement;

(ii) a description of the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(iii) the amount of any payment to be made under subsection (b) or under section 2684a (d) of this title to equalize the fair market values of the property to be conveyed and the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(B) the waiting period applicable to that notice under paragraph (3) expires.



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(3) If the notice submitted under paragraph (2) deals with the conveyance of real property located on a military installation that is closed or realigned under a base closure law or the conveyance of real property under an agreement entered into under section 2684a of this title, the Secretary concerned may enter into the agreement under subsection (a) for the conveyance of the property after a period of 21 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title. In the case of other real property to be conveyed under subsection (a), the Secretary concerned may enter into the agreement only after a period of 60 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 45 days has elapsed from the date on which the electronic copy is provided.

(e) Deposit and Use of Funds.— The Secretary concerned shall deposit funds received under subsection (b) in the appropriation “Foreign Currency Fluctuations, Construction, Defense”. The funds deposited shall be available, in such amounts as provided in appropriation Acts, for the purpose of paying increased costs of overseas military construction and family housing construction or improvement associated with unfavorable fluctuations in currency exchange rates. The use of such funds for this purpose does not relieve the Secretary concerned from the duty to provide advance notice to Congress under section 2853 (c) of this title whenever the Secretary approves an increase in the cost of an overseas project under such section.

(f) Sunset.— The authority to enter into an agreement under this section shall expire on September 30, 2013.

(g) Description of Property.— The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary concerned.

(h) Additional Terms and Conditions.— The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

Clarification of Authority to Limit Encroachments (section 2812)<sup>19</sup>

The committee recommends a provision that would amend the Readiness and Environmental Protection Initiative (REPI) program. The REPI program is designed to limit the development or use of property in the vicinity of military installations to protect the military mission while also preserving the environment. The amendment would clarify that certain agreements entered into can provide for enforcement of environmental covenants and easements to protect DOD interests and would allow payments by the United States to be made in a lump

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<sup>19</sup> The House authorization bill includes a related provision (Limitations on Use or Development of Property in Clear Zone Areas)

sum and to be placed in an interest bearing account with the interest being available to be applied for the same purposes as the principal. Also, the amendment would authorize DOD to enter into agreements without a “reverter” clause so long as certain conditions are met.

## **ITEMS OF SPECIAL INTEREST**

### Guard and Reserve Budget Requests

The committee recognizes that in the past, Congress has chosen to increase National Guard and Reserve military construction budgets above the amounts requested by the President. For example, in fiscal years 2008–2010, the last 3 fiscal years funded with congressional additions, the Air Force National Guard and Reserve appropriations more than doubled over the budget request. In fiscal year 2011, Congress added over \$300.0 million to the President’s request for all of the reserve components; and in 2010, Congress added approximately \$600.0 million, 60 percent above the President’s request.

We are concerned that the Department has, in previous years, under-budgeted National Guard and Reserve military construction accounts. Therefore, the committee directs each of the services to review the future-years defense program for National Guard and Reserve military construction to determine if currently projected funding levels, if enacted into law, will result in infrastructure funding deficiencies for these components.

### Military Commuter Centers<sup>20</sup>

Force structure changes, base realignment and closure, community growth and off-base housing projects have resulted in increased traffic congestion on local transportation systems and on the authority to take pro-active actions, many bases and facilities inhabited by Department of Defense (DOD) personnel lack a central office or designated official responsible for providing individuals with the information and resources to carpool, vanpool, or utilize mass transit. Utilization of commuter options would decrease local traffic congestion and decrease energy consumption, thereby working towards energy efficiency goals of the military services.

The committee therefore encourages the Deputy Under Secretary of Defense for Installations and Environment, in conjunction with the Director of the Office of Economic Adjustment, to take appropriate steps to promote the utilization of carpools, van pools and mass transit options at military installations and facilities with a substantial DOD civilian or military presence and workforce. Such steps should include, in appropriate cases, the designation of a central office or designated official responsible for providing information and resources needed to encourage the use of such transportation options.

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<sup>20</sup> The House appropriations bill includes related report language (Base Realignment and Closure 2005 [Transportation Infrastructure Improvements]) and a related provision (Defense Access Road Program Enhancements); the Senate appropriations bill includes related report language (Defense Access Roads)

Report on the Feasibility of Moving Marine Corps Aviation on Okinawa from Marine Corps Air Station Futenma to Kadena Air Base

The committee believes that the proposed plan for the relocation of Marine Corps Air Station (MCAS) Futenma, located on the island of Okinawa, has become untenable and must be resolved sooner and more economically than the current plan will allow.

The construction of a new Marine Corps air station on Okinawa at Camp Schwab to replace MCAS Futenma was agreed to by the United States and Japan as part of the Defense Policy Review Initiative as detailed in the 2005 U.S.-Japan Alliance Transformation and Realignment for the Future and the U.S.-Japan Roadmap for Realignment Implementation agreement (“Roadmap agreement”) of 2006, and reaffirmed in an agreement between the two allies in May 2010. The committee notes that of the 19 major initiatives that came out of these U.S.-Japan transformation and realignment agreements, the vast majority are being implemented as planned. The implementation of the agreement to build a Futenma Replacement Facility (FRF), however, stands in stark contrast to these other successful initiatives.

Although detailed cost and time estimates for construction of a FRF are unavailable, it appears that, even under the most reasonable circumstances, the FRF, as envisioned by the Roadmap agreement, would likely take at least 7 to 10 years to complete at a cost to the Government of Japan of approximately \$5.0–10.0 billion dollars. As envisioned by the Roadmap agreement and the associated Agreed Implementation Plan, the FRF involves land-filling a massive area of Henoko Bay immediately adjacent to Camp Schwab, an existing Marine Corps base in the Henoko area of Okinawa. While it appears that such an enormous undertaking is technically achievable, the reality is that the cost and time required to complete it, combined with the substantial local political and public opposition to the plan, make it clear that the project will likely never be finished; and, even if it is, it will cost more and take longer than even the most conservative estimates have projected to date. In the meantime, Marine Corps aviation on Okinawa would continue to operate from MCAS Futenma in a congested area of Okinawa that presents aviation safety and noise concerns for local residents.

Complicating the matter is the fact that the Roadmap agreement ties the movement of about 8,000 Marines from Okinawa to Guam to “tangible progress” toward the completion of the FRF. Moreover, the committee understands that the Commandant of the Marine Corps has proposed to the Secretary of the Navy a lay-down of Marines on Guam that differs from the lay-down planned under the Roadmap agreement implementation plan and it is unclear how a change in the Marine Corps lay-down on Guam would impact the buildup planned for Guam.

The committee believes that the challenges of building large new U.S. military facilities on both Okinawa and Guam, in a time of severe fiscal constraints and in the face of mounting political and public opposition, are too substantial to overcome in a realistic timeframe. A reasonable alternative to the FRF that warrants further examination is the movement of Marine Corps aviation assets currently at MCAS Futenma to Kadena Air Base (AB) in central Okinawa,

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and the possible dispersal of some or all of the Air Force missions now at Kadena AB to other existing U.S. air bases in the region.

The committee directs the Secretary of Defense to study the feasibility of relocating Air Force assets at Kadena AB and moving Marine Corps aviation assets currently at Futenma on to Kadena rather than building an expensive replacement facility at Camp Schwab, with the goals of maintaining mission integrity, minimizing cost to the United States and Japan, returning land occupied by MCAS Futenma to Okinawa expeditiously, and reducing noise impacts on the people living in the areas around Kadena.

The study, which should seek to strengthen or maintain the defensive capabilities of the U.S.-Japanese alliance, shall include, at a minimum:

1. An examination of the requirements to move the Marine Corps aviation assets currently at MCAS Futenma to Kadena AB.
2. An examination of where U.S. Air Force assets currently at Kadena AB could be moved, including other existing air bases in Japan or other locations in the Pacific, such as Anderson Air Force Base in Guam.
3. An analysis of the costs associated with moving Marine Corps aviation from MCAS Futenma to Kadena AB.
4. Estimates for the length of time it would take to accomplish the necessary steps to move Marine Corps aviation to Kadena AB and to then close MCAS Futenma.
5. An examination of what would be required to move the Marine Corps aviation mission to Kadena AB without increasing noise levels in and around the Kadena AB area, and what would be required to reduce noise levels at Kadena AB, if Marine Corps aviation at MCAS Futenma moved to Kadena AB.
6. The views of United States Pacific Command and United States Transportation Command on this study and, specifically, their views on the impact of such moves on operational plans in the region.

The Secretary shall report the results of this study to the Committees on Armed Services of the Senate and the House of Representatives by December 1, 2011.

The committee reaffirms its appreciation for the important contributions of the U.S.-Japanese alliance to peace and security in the Asia-Pacific region. The committee urges the Secretary of Defense to consult with the Japanese Minister of Defense in the preparation of this report.

Report on Using Flying Operation Costs in the Air Force's Strategic Basing Process<sup>21</sup>

The committee commends the Air Force for its commitment to developing and maintaining a transparent, repeatable, and effective strategic basing process. The committee is aware that the Air Force has developed a process that consists, in part, of establishing basing criteria, developing a preliminary list of candidate bases based upon those criteria, and selecting final bases following a detailed evaluation of a smaller group of installations.

The committee notes that the basing criterion typically includes an evaluation of the relative cost of basing aircraft at each candidate base, which typically represents 5 percent or less of the total score for candidate bases. For instance, the F-35A basing criteria provided a maximum of 5 points out of 100 points for those candidate bases with the lowest evaluated costs.

In addition, the evaluation of the relative cost of each candidate base during the strategic basing process has typically consisted of an evaluation of (1) local military construction costs, as determined by the July 2009 Office of Secretary of Defense pricing guide, and (2) costs related to the basic allowance for housing for personnel associated with the basing decision.

The committee notes that the cost criteria do not appear to include the relative operational costs that may vary from each candidate base. Given the high cost of operating aircraft and the fact that these flying operation costs are recurring, the committee believes these costs warrant examination in the strategic basing process.

These flying operation costs include, at a minimum, the costs associated with the additional flying time resulting from a candidate base's relative distance to (1) operational training areas for fighters and training aircraft, (2) operational refueling tracks for tankers, and (3) critical logistic centers for strategic and tactical airlift aircraft.

The committee therefore directs, no later than 180 days after the enactment of this Act, the Secretary of the Air Force to review and report on the role that the efficiency of flying operation costs should play in the strategic basing process and any steps that it plans to take to capture these costs in evaluating candidate bases in that process.

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<sup>21</sup> The Senate appropriations bill includes related report language (Evaluation of Operational Costs in Air Force Strategic Basing Process)

## *Policy Provisions and Report Language in the House Appropriations Bill*

### PROVISIONS

#### Defense Access Road Program Enhancements (section 103)<sup>22</sup>

Funds made available in this title for construction may be used for advances to the Federal Highway Administration, Department of Transportation, for the construction of access roads as authorized by section 210 of title 23, United States Code, when projects authorized therein are certified as important to the national defense by the Secretary of Defense.

#### Transfer Authority to the Homeowners Assistance Fund (section 120)<sup>23</sup>

In addition to any other transfer authority available to the Department of Defense, amounts may be transferred from the accounts established by sections 2906(a)(1) and 2906A(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), to the fund established by subsection (d) of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to pay for expenses associated with the Homeowners Assistance Program incurred under subsection (a)(1)(A) of such section 1013. Any amounts transferred shall be merged with and be available for the same purposes and for the same time period as the fund to which transferred.

#### Limiting the Use of Parking Spaces at BRAC 133 (section 127)<sup>24</sup>

None of the funds made available by this Act may be used by the Secretary of Defense to take beneficial occupancy of more than 1,000 parking spaces provided by the combination spaces provided by the BRAC 133 project and the lease of spaces in the immediate vicinity of the BRAC 133 project.

### REPORT LANGUAGE

#### Base Realignment and Closure

The committee recognizes the unique strain placed upon state and local military communities, municipalities, and jurisdictions through the Base Realignment and Closure

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<sup>22</sup> The House authorization bill includes two related provisions: 1) Special Considerations Related to Transportation Infrastructure in Consideration and Selection of Military Installations for Closure or Realignment and 2) Defense Access Road Program Enhancements to Address Transportation Infrastructure in Vicinity of Military Installations; the Senate authorization bill includes related report language (Military Commuter Centers); the Senate appropriations bill includes related report language (Defense Access Roads)

<sup>23</sup> The House authorization bill includes related report language (Homeowners Assistance Program); the Senate appropriations bill includes related report language (Homeowners Assistance Fund) and a related provision (Transfer authority to the Homeowners Assistance Fund)

<sup>24</sup> The House authorization bill includes a related provision (Limitation on BRAC 133 Project Implementation)

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(BRAC) process. The committee also recognizes that under U.S. Census rules established in response to the Vietnam War, military personnel stationed overseas were not counted in the 2010 Census as residents of the states and communities in which they were stationed. Consequently, because many federal and state programs use funding formulas tied to the decennial census, this rule could deprive military communities, where servicemembers and their families live a majority of the time, of federal funding they are justly entitled to receive. The committee encourages the Department of Defense to work closely with local municipalities and jurisdictions to help minimize the impact of both policies on their ability to provide appropriate infrastructure and resources to best meet the needs of U.S. military servicemembers and their families.

Base Realignment and Closure 2005

The committee is disappointed that the Department of the Army has refused to implement the recommendations offered by the Inspector General in its report entitled, “Assessment of BRAC 133 Final Environmental Assessment of July 2008 and Transportation Management Plan of July 2010.” The Inspector General’s findings that the proposed traffic mitigation measures in the BRAC 133 Environmental Assessment may not be sufficient to support the finding of no significant impact are troubling. Further, the IG’s conclusion that the Army’s goal of reducing single occupancy vehicle trips to the Mark Center site by 40 percent may not be achievable and may impose further adverse impacts on the roadway network are distressing. The committee therefore directs the Army to perform a traffic impact analysis and to document its findings in a supplemental environmental assessment within 90 days of enactment of this Act.

Base Realignment and Closure 2005 (Transportation Infrastructure Improvements)

The committee directs the Secretary of Defense to determine the magnitude of impacts, with particular emphasis on mission accomplishment, as a result of ongoing and future Base Realignment and Closure actions on transportation infrastructure at and in the vicinity of each affected military installation and consider expanded use of and additional funding sources for the Defense Access Roads program to mitigate such impacts through multi-modal transportation improvements and report to the committee on the findings by January 30, 2012.

Charter Schools<sup>25</sup>

Department of Defense installations throughout the United States are struggling with the issue of dependent education for K–12 students. Frequent moves by military families highlight the differences and inequities among various state public school systems. An increasing number of families are opting for private or home schooling to compensate for lack of public education quality and to maintain continuity in their child’s progress. The 2008 Quadrennial Review of Military Compensation (Volume II: Deferred and Noncash Compensation) (QRMC) from the

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<sup>25</sup> The House authorization bill includes related report language (Elementary and Secondary Schools on Military Installations)

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U.S. Department of Defense, an assessment of the competitiveness of benefits, notes in a section on education for dependents that parents should be allowed to start charter schools at military installations and initiate them in the “same way that civilians can under state law.” “Offering a charter school option in areas with less desirable local schools would give parents stationed in those locations another choice in addition to the private school or home schooling options,” the report states. The committee fully supports the QRMC and urges the Services to develop and publicize procedures for establishing Charter Schools at installations that are not supported adequately by the local public school system.

The committee directs the Comptroller General of the United States to conduct a study of charter schools located on domestic and international military installations. This report shall include a detailed description of charter schools currently in operation on military installations, identify the potential challenges of developing and implementing charter schools on additional military installations, and examine how oversubscribed enrollment would affect the continuity of education for dependents of members of the Armed Forces. The Comptroller General shall present the report to the Committees on Appropriations of both Houses of Congress no later than December 31, 2011.

Department of Defense Schools Recapitalization

The committee commends the Department of Defense for its commitment to funding the recapitalization of more than half of its dependent schools by fiscal year 2015. The committee expects that this funding will contribute greatly to the quality of life of military families. A comprehensive assessment of DOD dependent schools and construction requirements directed by the committee in House Report 110–775 indicated that 149 of 189 schools had facilities with an overall condition rating of either Q3 (poor) or Q4 (failing) and required significant recapitalization efforts to eliminate space shortfalls and temporary facilities. The committee recommends \$483,302,000, the same as the budget request, for school construction activities and strongly encourages the Department to sustain and, if possible within the constraints of funding and executability, to accelerate this important initiative.

Facilities Sustainment, Restoration and Modernization

The Department is directed to continue describing on form 1390 the backlog of FSRM requirements at installations with future construction projects. For troop housing requests, form 1391 should describe any FSRM conducted in the past two years. Likewise, future requirements for unaccompanied housing at the corresponding installation should be included. Additionally, the forms should include English equivalent measurements for projects presented in metric measurement. Rules for funding repairs of facilities under the Operation and Maintenance accounts are described below:

(1) components of the facility may be repaired by replacement. Such replacement can be up to current standards or codes;



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- (2) interior arrangements and restorations may be included as repair;
- (3) additions, new facilities, and functional conversions must be performed as military construction projects. Such projects may be done concurrently with repair projects as long as the final conjunctively funded project is a complete and usable facility; and
- (4) the appropriate service Secretary shall notify the appropriate committees 21 days prior to carrying out any repair project with an estimated cost in excess of \$7,500,000. The committee strongly encourages the Services and Defense agencies to indicate the plant replacement value of the facility to be repaired on each such notification.

Guam<sup>26</sup>

The committee remains supportive of the realignment of Marine Corps forces from Okinawa to Guam. At the same time, the committee has serious concerns about the Department of Defense's (DOD) ability to adequately fund and complete construction on time and within budget.

The committee believes that the Defense Environment Impact Study (DEIS) has very limited value with respect to providing a realistic depiction of how the Guam buildup would proceed. The DEIS does not formally consider any alternatives that would extend construction and/or the relocation of personnel and assets past 2014; rather, the DEIS concedes that "Although the desired completion date for Marine forces relocation is by 2014, the construction would likely continue to 2016." Even this timeline is likely to prove too optimistic; while the DEIS assumes that "2014 is the last year that any new construction would begin", the Navy's Future Years Defense Plan (FYDP) clearly shows significant military construction (including unspecified quality of life and base operations facilities) associated with the Marine forces relocation programmed for fiscal year 2015, likely pushing the completion date for construction to 2017 and beyond. This fundamental disconnect on the target completion date between the U.S.-Japan agreement, the DEIS, and the FYDP leaves doubt regarding the most realistic and feasible timeline for the Guam buildup.

The EPA has raised a number of serious concerns regarding the quality of the DEIS, especially in relation to the cumulative impacts of the complex and interrelated actions needed not only to complete the relocation of Marine forces, but to provide transient berthing for an

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<sup>26</sup> The House Authorization bill includes four provisions regarding Guam: 1) Use of Operation and Maintenance Funding to Support Community Adjustments Related to Realignment of Military Installations and Relocation of Military Personnel on Guam 2) Medical Care Coverage for H-2B Temporary Workforce on Military Construction Projects on Guam, 3) Certification of Military Readiness Need for Firing Range on Guam as Condition on Establishment of Range and 4) Repeal of Condition on Use of Specific Utility Conveyance Authority Regarding Guam Integrated Water and Wastewater Treatment System and related report language (Cooperative Agreements to Facilitate Defense Posture Review Initiatives); the Senate authorization bill includes a related provision (Guam Realignment) and related report language (Report on the Feasibility of Moving Marine Corps Aviation on Okinawa from Marine Corps Air Station Futenma to Kadena Air Base); the Senate appropriations bill includes two related pieces of report language: 1) U.S. Pacific Command Transformation and 2) Japan/Okinawa/Guam

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aircraft carrier and accommodate the expected influx of a large number of construction workers and associated personnel to execute the buildup.

The buildup of Guam is not a “military problem”; its main feature, the relocation of Marine Corps forces from Okinawa, results from a bilateral agreement negotiated between the U.S. and Japan governments, and therefore DOD should not be isolated as the sole source of funding for the necessary improvements to physical and human capital in Guam. The committee notes with concern that the Administration has sent mixed signals on this issue.

The committee believes that while DOD should have the greatest share of leadership for identifying and addressing island-wide impacts, non-DOD agencies must also be provided directly with the budgetary resources necessary to assist the people of Guam with “outside the fence line” problems. To date, however, much of the non-DOD work appears to be mired in the “planning” or “under consideration” phase. The committee agrees with DOD, as expressed through the DEIS, that the rate of military construction execution for the Guam buildup should be seen as a tool to mitigate or avoid harmful and potentially irreparable consequences.

Incremental Funding<sup>27</sup>

The committee repeatedly has stated that while projects should be fully funded or separated into stand-alone phases where practicable, incremental funding should remain an option when it makes fiscal and programmatic sense. In some cases, the phased approach can drive up costs by requiring inefficient designs and separate bids that leave subsequent phases vulnerable to construction price inflation. However, the committee will continue to exercise its prerogative to recommend incremental funding when circumstances dictate. The committee therefore recommends incremental funding for the following five projects included in the Administration’s request: Aviation Complex, Fort Wainwright, Alaska; Mountainview Operations Facility, Buckley Air Force Base, Colorado; Ambulatory Care Center, Joint Base Andrews, Maryland; Hospital Replacement, Fort Bliss, Texas; and Guam Strike Fuel Systems Maintenance Hangar, Joint Region Marianas, Guam.

Missile Defense within U.S. Pacific Command Area of Responsibility

Obstacles ranging from passive to active hostility are challenges to the efforts by U.S. Pacific Command (PACOM) to maintain security across the large Asia-Pacific region. Potential and existing threats from North Korea and China make the command’s focus on maintaining security throughout the region a top priority. Security in the region also includes missile defense of our allies. Currently there is a missile defense presence of patriot missile batteries based in South Korea and early warning information is shared with our allies. With Command’s responsibility for such a vast region and the planned increase of Marines Corps personnel on Guam, the committee directs the Department of Defense to submit a report within 60 days after

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<sup>27</sup> The Senate appropriations bill includes related report language (Incremental Funding)

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enactment of this Act to the Committees on Appropriations of both Houses of Congress on what additional missile defense assets would be required to support continued security of the region from existing threats.

Test and Training Range Engineering Labs

The committee believes funds for the construction of test and training range engineering labs, where possible, should be moved forward in the budgeting process in order to realize cost benefits to fulfill program obligations in a timely, cost-efficient manner. This approach should be used where the current project requirements have exceeded existing facility capability and the lack of proper laboratory space will lead to an inability to meet the Department of Defense's sponsored requirements.

***Policy Provisions and Report Language in the Senate Appropriations Bill***

**PROVISIONS**

Requirement to Notify Congress Regarding Family Housing Privatization Agreements Which Contain Clauses Providing Consideration for Realignment (section 120)

The committee includes a provision that requires the service secretaries to notify the congressional defense committees of all family housing privatization solicitations and agreements which contain any clause providing consideration for base realignment and closure, force reductions and extended deployments.

Transfer Authority to the Homeowners Assistance Fund (section 121)

The committee includes a provision that provides transfer authority to the Homeowners Assistance Fund.

In addition to any other transfer authority available to the Department of Defense, amounts may be transferred from the accounts established by sections 2906(a)(1) and 2906A(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), to the fund established by section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to pay for expenses associated with the Homeowners Assistance Program incurred under 42 U.S.C. 3374(a)(1)(A). Any amounts transferred shall be merged with and be available for the same purposes and for the same time period as the fund to which transferred.

**ITEMS OF SPECIAL INTEREST**

Global Challenges

The stationing of U.S. military forces overseas has long been viewed as a key component in strengthening international alliances in support of U.S. foreign policy objectives deterring aggression against U.S. allies, and providing a forward presence of U.S. troops that can be quickly deployed to respond to conflicts.

However, the strategic benefit of forward deployment comes with a steep price tag, and at a time of severe budgetary pressures, it is essential that all overseas basing decisions be carefully evaluated and subjected to stringent cost versus benefit analyses.

The committee has carefully scrutinized the Defense Department's [DOD] overseas basing plans and the associated request for military construction funding for fiscal year 2012 in support of those plans. While supportive of the Department's strategic objectives, the committee has concerns over various aspects of the fiscal year 2012 military construction request in support of DOD's global defense posture, due largely to questions surrounding the assumptions on which

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some of the projects are based, the lack of comprehensive master plans for major military construction initiatives, and the paucity of verifiable cost and scope data for military construction projects associated with major basing or realignment initiatives.

Following are discussions and committee recommendations regarding several key DOD overseas basing initiatives.

Global Challenges (Defense Access Roads)<sup>28</sup>

As a result of the massive buildup of various military installations throughout the Nation due to BRAC 2005 realignments, force structure increases, and force transformation initiatives, the issue of traffic congestion in and around growth installations, particularly in densely populated urban areas, has become a major problem for both DOD and local communities.

The only funding mechanism for DOD to build or improve public roads outside of military installations is the Defense Access Road [DAR] program. Unfortunately, the DAR program is constrained by stringent eligibility requirements, such as the doubling of existing traffic, which make it virtually impossible for highly congested urban areas to qualify.

Two recent studies—the Government Accountability Office [GAO] report “Defense Infrastructure: High-level Federal Interagency Coordination is Warranted to Address Transportation Needs beyond the Scope of the Defense Access Roads Program” (GAO–11–165) and the committee-directed study by the National Academies of Sciences Transportation Research Board, “Federal Funding of Transportation Improvements in BRAC Cases”—identified serious shortcomings in the existing DAR criteria that limit the DAR program’s ability to meet the traffic mitigation needs of communities surrounding growth installations, especially urban communities.

For example, DAR certification, which is required before a road project can be considered for military construction funding, is a cumbersome process and does not guarantee funding. Each road project is funded individually and must compete with all other worthy and needed military construction projects. Often, installation commanders are unaware of the DAR program or its requirements. Additionally, DOD leadership and installation commanders frequently do not coordinate or effectively communicate the impacts of major basing decisions on traffic patterns with local community planning entities. For major metropolitan areas, the most serious problem with the DAR program is that the eligibility criteria, including the

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<sup>28</sup> The House authorization bill includes two related provision: 1) Special Considerations Related to Transportation Infrastructure in Consideration and Selection of Military Installations for Closure or Realignment and 2) Defense Access Road Program Enhancements to Address Transportation Infrastructure in Vicinity of Military Installations; the Senate authorization bill includes related report language (Military Commuter Centers); the House appropriations bill includes related report language (Base Realignment and Closure 2005 [Transportation Infrastructure Improvements])

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requirement that existing road traffic must double, are impossible to demonstrate when traffic is already at a maximum volume.

Both GAO and the Transportation Research Board provided recommendations to address these issues. The committee directs the Department to utilize the findings of both reports and develop a plan to improve the DAR program, with specific focus on modifying the DAR criteria. The committee also encourages the Department to develop a plan to eliminate the backlog of road projects needed to mitigate traffic impacts on local communities that have experienced significant growth as a result of the most recent round of base closures. In addition, the committee urges the Department to incorporate public road and transportation infrastructure requirements into future basing decisions.

Global Challenges (Japan/Okinawa/Guam)<sup>29</sup>

In mainland Japan, Okinawa and Guam, DOD and the Government of Japan are moving forward with a complex troop realignment initiative that includes repositioning and consolidating United States forces among a number of bases within Okinawa and Japan, and relocating approximately 8,600 Marines and 9,000 dependents from Okinawa to Guam. The Marine relocation is one piece of a larger DOD effort to build up the United States military presence on Guam. Other elements of the plan include Air Force intelligence, surveillance and reconnaissance assets; a new Navy pier and hospital, and, potentially, an Army missile defense component.

The committee is concerned that although DOD has requested more than \$1,000,000,000 in funding since fiscal year 2010 for military construction projects to implement elements of the Marine Corps buildup in Guam, the Department has yet to produce a comprehensive master plan, realistic cost estimate, or construction timeline encompassing all elements of the plan. Moreover, several land use issues—including the availability of land on Guam and the Northern Mariana Islands for essential training range support for the Marines—remains unresolved. And the proposed United States military construction program does not begin to address the requisite civilian infrastructure improvements on Guam—including transportation, water, sewer and electrical upgrades—that will be needed to accommodate the projected population increase.

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<sup>29</sup> The House Authorization bill includes four related provisions: 1) Use of Operation and Maintenance Funding to Support Community Adjustments Related to Realignment of Military Installations and Relocation of Military Personnel on Guam, 2) Medical Care Coverage for H-2B Temporary Workforce on Military Construction Projects on Guam, 3) Certification of Military Readiness Need for Firing Range on Guam as Condition on Establishment of Range, and 4) Repeal of Condition on Use of Specific Utility Conveyance Authority Regarding Guam Integrated Water and Wastewater Treatment System and related report language (Cooperative Agreements to Facilitate Defense Posture Review Initiatives); the Senate authorization bill includes a related provision (Guam Realignment) and related report language (Report on the Feasibility of Moving Marine Corps Aviation on Okinawa from Marine Corps Air Station Futenma to Kadena Air Base); the House appropriations bill includes two pieces of related report language: 1) Guam and 2) Missile Defense within U.S. Pacific Command Area of Responsibility

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The committee is also concerned about the defense of the planned United States military assets and facilities on Guam. Although the original Guam plan included a potential Army air and missile defense system, there is no construction funding for the project in the Army's Future Years Defense Plan and no indication that DOD intends to proceed with this crucial project. Absent a robust defense system, United States military facilities on Guam will be vulnerable to potentially devastating attack by enemy forces.

GAO reported that it had identified approximately \$29,100,000,000—primarily construction costs—that is anticipated to be shared by the United States and Japan to implement initiatives in mainland Japan, Okinawa, and Guam. According to the GAO report, DOD officials stated that total cost estimates for its initiatives were not available because of the significant uncertainty surrounding initiative implementation schedules. Furthermore, while it is difficult to determine what, if any, impact the March 11, 2011, earthquake and tsunami in Japan will have on current agreements and initiative financing and construction plans, DOD officials have said that there is potential for increases in the cost of materials and labor in Asia.

In assessing the overall DOD force posture realignment in the Pacific region, GAO pointed out that congressional defense committees “have been presented with individual posture decisions and funding requests that are associated with specific construction programs or initiatives, but those requests lack comprehensive cost estimates and the financial context that such estimates would provide—including long-term costs to complete and annual operation and maintenance costs.”

“Without that context,” GAO warned, “DOD is presenting Congress with near-term funding requests that will result in significant long-term financial requirements whose extent is unknown.”

Due to the lack of verifiable cost estimates for the Guam buildup, the failure of DOD to submit to the congressional defense committees a comprehensive master plan for the initiative, and continuing uncertainty over the ability of the Government of Japan to fulfill its commitment to relocate United States troops on Okinawa, the committee has deferred funding for fiscal year 2012 military construction projects associated with the relocation of United States Marines to Guam.

No funding was requested in the fiscal year 2012 budget for military construction related to tour normalization in Korea, but the committee will expect detailed cost information and a completed business case analysis, approved by the Secretary of Defense, for the strategic objectives that to this point have driven the decision to implement tour normalization, before approving any funding requests in future years. This business case analysis should clearly articulate the strategic objectives, identify and evaluate alternative courses of action to achieve those objectives, and recommend the most cost-effective alternative.

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To ensure that DOD and Congress have comprehensive posture cost information that can be used to fully evaluate investment requirements and the affordability of posture initiatives, GAO recommended in its report that DOD take seven specific actions, including developing a business case analysis for the strategic objectives related to tour normalization, limiting investments and funding risks at Camp Humphreys, and developing annual posture cost estimates for initiatives in the Pacific region that can be used in future posture planning. Although DOD generally agreed with GAO's recommendations, it did not specify what corrective actions it would take or identify timeframes for completion. The committee strongly supports the recommendations contained in GAO-11-316, and therefore directs the Secretary of Defense to provide the following information within the specified timelines:

—Prepare initiative status reports as described in Senate Report 111-226, and include them in the annual DOD Global Defense Posture report as specified by the committee in Senate Report 111-226.

—Provide to the congressional defense committees and to the Comptroller General a detailed implementation report describing the results of the Department's efforts and specific timeframes for further actions needed to implement the recommendations contained in the GAO report 11-316. The corrective action implementation report shall include, but is not limited to, the following:

—a completed business case analysis for the strategic objectives that to this point have driven the decision to implement tour normalization;

—the selected alternative that has been approved by the Secretary of Defense to achieve the stated strategic objectives;

—a full accounting of the funds applied and requested to construct new facilities and infrastructure at Camp Humphreys, Korea, with specific identification of all funds associated with implementing tour normalization;

—steps DOD has taken to limit investments and other financial risks associated with construction programs at Camp Humphreys—funded either by direct appropriations or alternative financing methods that are affected by decisions related to tour normalization; and

—a comprehensive cost estimate for DOD posture in the U.S. Pacific Command, including costs associated with operating and maintaining existing posture as well as costs associated with posture initiatives.

This report shall be provided to the congressional defense committees no later than March 15, 2012.

The committee further directs the Comptroller General to assess the implementation report of the Secretary of Defense, and report the results of the GAO assessment to the congressional defense committees within 120 days of receipt of the report of the Secretary.

The committee also directs the Comptroller General to conduct a detailed assessment of posture initiatives in Japan, Okinawa, and Guam, focused on the planning, costs, long-term financial commitments, the status of the Futenma Replacement Facility and the transfer of



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Marine Corps forces to Guam, and the impact of the natural disasters that struck Japan in March 2011. GAO's assessment should include, but is not limited to, the extent to which DOD has:

- developed specific plans for new facilities, infrastructure and housing units in mainland Japan, Okinawa, and Guam under existing or planned agreements with Japan, and the extent to which these requirements depend on establishing the Futenma Replacement Facility;

- developed options or alternatives to the Futenma Replacement Facility and evaluated the potential impact on infrastructure, housing conditions, requirements, and estimated posture costs;

- evaluated how changes in the specific Marine Corps units and forces that will remain in Okinawa or relocate to Guam affect infrastructure and housing costs on Okinawa and Guam;

- developed an approach to identify and address any cost, funding, schedule, or construction capability shortfalls resulting from the natural disasters that struck Japan in March 2011; and

- identified specific training deficiencies that form the justification for a new training range in the Northern Mariana Islands, and completed an analysis of alternatives to address these shortfalls.

This assessment shall be provided to the congressional defense committees no later than May 25, 2012.

Global Challenges (U.S. Pacific Command Transformation)

The Defense Department has embarked upon a massive restructuring of U.S. military forces in the Pacific Command [PACOM]. This effort represents the largest transformation of U.S. military presence in the Pacific region since World War II. Moreover, it carries with it an as-yet undetermined infrastructure price tag estimated to be in the tens of billions of dollars.

The plan comprises two overarching realignments—one realigning the stationing of United States troops and instituting a new “tour normalization” program in the Republic of Korea, and the second redistributing United States forces in Japan and Okinawa and moving thousands of United States Marines and their families from Okinawa to Guam.

The committee is concerned about the practical implications of implementing such a sweeping and potentially costly restructuring of United States military forces at a time of severe budget restraints and, in the case of the Japan/Okinawa realignment, in the face of popular opposition to essential components of the plan from the citizens of Okinawa.

A May 2011 report to the committee by the Government Accountability Office [GAO], “Defense Management: Comprehensive Cost Information and Analysis of Alternatives Needed to Assess Military Posture in Asia” (GAO 11–316), found that DOD is transforming the facilities and infrastructure that support its posture in Asia without the benefit of comprehensive

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cost information or an analysis of alternatives that are essential to conducting affordability analyses.

GAO identified potential costs for the PACOM transformation initiatives ranging as high as \$46,700,000,000 through 2020, and \$63,900,000,000 through 2050, but the report cautioned that the estimates are “volatile and not comprehensive.” In a time of soaring budget deficits that have resulted in the imposition of crippling budget cuts on non-defense programs, the committee questions the wisdom of embarking on long range, multi-billion dollar global defense initiatives based on military construction cost estimates that are found to be “volatile and not comprehensive.”

Incremental Funding<sup>30</sup>

In general, the committee supports full funding for military construction projects. However, it continues to be the practice of the committee to provide incremental funding for certain large projects, despite administration policy to the contrary, to enable the services to more efficiently allocate military construction dollars among projects that can be executed in the year of appropriation. For fiscal year 2012, the committee recommends incremental funding for the following projects: Aviation Task Force Complex, Fort Wainwright, Alaska; Buckley Air Force Base, Colorado; Guam Strike Fuel Systems Maintenance Hangar, Anderson Air Force Base, Guam; Ambulatory Care Center, Joint Base Andrews, Maryland; STRATCOM Replacement Facility, Offutt Air Force Base, Nebraska; Ambulatory Care Center, Joint Base San Antonio, Texas; Hospital Replacement, Fort Bliss, Texas; Data Center, Camp Williams, Utah.

**OTHER REPORT LANGUAGE**

Evaluation of Operational Costs in Air Force Strategic Basing Process<sup>31</sup>

The committee commends the Air Force for its commitment to developing and maintaining a transparent, repeatable, and effective strategic basing process. The committee is concerned that the cost criteria for the Air Force strategic basing process do not include evaluation of the relative operational costs that may vary from each candidate base. Given the high cost of operating aircraft, the recurring nature of these costs, and the significant improvements in modeling and simulation to evaluate alternative bed-down scenarios, the committee believes these costs warrant examination in the strategic basing process. These operational costs include the cost associated with the flight time resulting from a candidate base’s relative distance to military operating areas for tactical fighter aircraft, training ranges for trainer aircraft, logistic centers for airlift aircraft, and operational refueling tracks for tankers. Therefore, the committee directs the Secretary of the Air Force to capture and evaluate these operational costs when evaluating candidate bases in the strategic basing process.

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<sup>30</sup> The House appropriations bill includes related report language (Incremental Funding)

<sup>31</sup> The Senate authorization bill includes related report language (Report on Using Flying Operation Costs in the Air Force’s Strategic Basing Process)

Homeowners Assistance Fund<sup>32</sup>

The committee understands that the depth and duration of the nationwide housing slump has created a prolonged and greater than expected demand on the expanded Housing Assistance Program. This is compounded by the fact that the Department has found that the anticipated cost per claim on average is much higher than projected. The Department assumed an average 20 percent decline in home value in estimating the requirement for the expanded HAP, but has found that the actual decline in home values is as high as 50 percent in some markets. According to the Department, the current estimated shortfall in funding to compensate service members who suffer losses in the housing market and qualify for HAP relief is \$305,600,000.

Military personnel do not have the luxury to move at their own convenience. Regardless of the economic climate, military families must relocate upon the receipt of orders. This committee recognized the implications of that fact in a declining economy in expanding HAP in 2009. At a time of war and economic uncertainty, the added stress of possible foreclosure or bankruptcy due to the mortgage crisis is a burden our Nation's military families should not have to bear. This is especially true for the families of wounded warriors and the surviving spouses of fallen warriors, which is why these two groups have priority consideration for compensation under the program. The committee notes that the Department has the authority to transfer funds from the base closure and realignment accounts into the Homeowners Assistance Program and urges the Department to reprogram available funds from sources such as bid savings to meet the unfunded requirements of the Homeowners Assistance Program.

Water Infrastructure (Army)

The committee is concerned about the level of investment in Army water infrastructure projects. Army bases, especially those in areas with growing populations and sensitive environments, would benefit economically and environmentally from sustained investment in upgraded water infrastructure. While the committee is encouraged by Army advances in water conservation represented by the Net Zero Water pilot program, gains from this program can only be sustained by consistent investment in upgraded water infrastructure. As the Army looks at its ability to reduce pollution and limit effluent, the Army needs to look at prioritizing drinking water and waste water improvements within the military construction program.

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<sup>32</sup> The House authorization bill includes related report language (Homeowners Assistance Program); the House appropriations bill includes a related provision (Transfer Authority to the Homeowners Assistance Fund)

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A handwritten signature in black ink, appearing to read "Eli Persky". The signature is written in a cursive style with a long, sweeping underline that extends to the right.