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MEMORANDUM

TO: ADC BOARD OF DIRECTORS
TIM FORD
TODD HERBERGHS
RANDY FORD

FROM: MR. SCHLOSSBERG
MR. PERSKY, LEGISLATIVE ASSISTANT

DATE: DECEMBER 16, 2011

RE: THE FISCAL YEAR 2012 NATIONAL DEFENSE AUTHORIZATION ACT

Introduction

The House and Senate conferees charged with negotiating the differences between House and Senate versions of the Fiscal Year 2012 National Defense Authorization Act (H.R. 1540 and S. 1867, respectively) reported out their conference report (H. Rept. 112-329) on December 12.

The House and Senate have passed the measure. President Obama has indicated that he will sign the bill into law.

Funding levels and provisions contained within the Fiscal Year 2012 National Defense Authorization Act may be affected by the contents of the Fiscal Year 2012 Military Construction and Veterans Affairs Appropriation Bill. The authorization and appropriation bills work in tandem to determine annual policy and spending levels.

No funding authorization for BRAC Account 2005

The conference report authorizes no funding for Base Realignment and Closure Account 2005. The President requested \$258.78 million for the account. Lawmakers previously agreed to authorize and appropriate the full request in Fiscal Year 2012 via the individual House and Senate authorization and appropriation bills. There was no report language regarding the authorization cut.

The conference report authorized the full request of \$323.54 million for Base Realignment and Closure Account 1990.

Provision highlights

Conferees retained a number of provisions related to defense communities, while rejecting several others.

REPORT LANGUAGE CONCERNING BRAC-OUTSIDE-OF-BRAC AUTHORITY

The conference report did not retain a House provision (sec. 2705) that would have increased the emphasis on the evaluation of costs and benefits in consideration and selection of military installations for closure and realignment.

In rejecting the provision, the conferees stated that they “support the ability of the Department to reduce force structure commensurate with the workload and mission requirements; however, the conferees are concerned with the perception that the Department of Defense may have bypassed the limitations of section 2687 of title 10, United States Code, by completing a reduction in force at a defense activity and then realigning the balance of the workforce. The conferees believe that such a contravention of section 2687 would be inappropriate. Activities that exceed the thresholds of section 2687 at the time of the Secretary’s decision to reorganize a particular activity should be specifically submitted in accordance with the notification process delineated in section 2687.”

ENHANCED NOTIFICATION REQUIREMENTS FOR BRAC-OUTSIDE-OF-BRAC

The report contains a provision (sec. 2864) that would require the notification of Congress before DOD reduces the number of military service members at an installation by more than 1,000.

OVERSEAS BASING ASSESSMENT

The report includes a provision (sec. 347) requiring an assessment of the overseas basing presence of the United States. The assessment should include “an assessment of the advisability of the retention, closure, or realignment of military facilities of the United States overseas, or of the establishment of new military facilities of the United States overseas, in light of potential fiscal constraints on the Department of Defense and emerging national security requirements in coming years.”

SPECIAL CONSIDERATION OF TRANSPORTATION INFRASTRUCTURE

The report contains a provision (sec. 2816) that would give DOD increased authority to provide funding through the Defense Access Roads Program.

Conferees adopted the provision “in recognition that transportation issues have been an issue in recent base realignments and the Department of Defense has been slow to revise the criteria for the Defense Access Road program. Recognition of these transportation issues does not imply that their mitigation is a DOD responsibility. The conferees note that many communities have been exceptional partners in ameliorating the impact of base realignments and believe that this practice should be encouraged.”

The report also includes a provision (sec. 2704) regarding the recommendation of closure and realignment actions that would require consideration of “the ability of the infrastructure (including transportation infrastructure) of both the existing and receiving communities to support forces, missions, and personnel as a result of such closure or realignment.”

According to the provision, if it is determined that an action would have a significant transportation impact, then the Secretary of Defense must undertake additional analysis and develop proposed remediation plans prior to the action.

If you have any questions concerning this information, please call George Schlossberg directly at (202) 828-2418 or email him at george.schlossberg@kutakrock.com, or call Eli Persky directly at (202) 828-2465 or e-mail him at eli.persky@kutakrock.com.

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.

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Fiscal Year 2012 Funding

	Budget Request	Conference Authorization	House Authorization	Senate Authorization	House Appropriation	Senate Appropriation
BRAC 2005	\$258.78 million	\$0	\$258.78 million	\$258.78 million	\$258.78 million	\$258.78 million
BRAC 1990	\$323.54 million	\$323.54 million	\$323.54 million	\$323.54 million	\$373.54 million	\$323.54 million
Military Construction, Army	\$3.24 billion	\$3.01 billion	\$3.31 billion	\$2.97 billion	\$3.04 billion	\$3.07 billion
Military Construction, Navy and Marine Corps	\$2.46 billion	\$2.42 billion	\$2.49 billion	\$2.17 billion	\$2.44 billion	\$2.19 billion
Military Construction, Air Force	\$1.36 billion	\$1.13 billion	\$1.33 billion	\$1.13 billion	\$1.25 billion	\$1.23 billion
Military Construction, Defense-wide	\$3.85 billion	\$3.4 billion	\$3.71 billion	\$3.1 billion	\$3.53 billion	\$3.38 billion
Family Housing Construction, Army	\$186.9 million	\$176.9 million	\$186.9 million	\$176.9 million	\$186.9 million	\$186.9 million
Family Housing Construction, Navy and Marine Corps	\$101 million	\$101 million	\$101 million	\$101 million	\$101 million	\$101 million
Family Housing Construction, Air Force	\$84.8 million	\$84.8 million	\$84.8 million	\$84.8 million	\$84.8 million	\$84.8 million
Guam buildup funding	\$400.48 million	\$83.6 million	\$336.48 million	\$64.4 million	\$336.48 million	\$180.6 million

LEGISLATIVE PROVISIONS ADOPTED

Improved Sikes Act coverage of State-owned facilities used for the national defense (sec. 312)

This section would amend the Sikes Act (16 U.S.C. 670 et seq.) 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.

Streamlined annual report on defense environmental programs (sec. 317)

The report contains a provision that would streamline the Defense Department's Annual Report to Congress on Defense Environmental Programs.

The conferees note that the Office of the Secretary of Defense and the military departments present their environmental account information to the defense committees in varying formats. It is the intention of the conferees that this streamlined report will include the total funds expended by account by the Department of Defense and by each military department. It is also the intention that the Defense Department use consistent nomenclature and metrics when reporting its environmental data to ensure that the defense committees can exercise proper oversight of the environmental program funding.

Study on Air Force test and training range infrastructure (sec. 343)

The report contains a provision that would require the Secretary of the Air Force to conduct a study on the ability of the major air test and training range infrastructure to support the full spectrum of Air Force operations.

Study on training range infrastructure for special operations forces (sec. 344)

The report contains a provision that would require the Commander of U.S. Special Operations Command to conduct a study on existing training ranges used by special operations forces.

Study on United States force posture in the United States Pacific Command area of responsibility (sec. 346)

The report contains a provision that would require an independent assessment of the United States military force posture throughout the Pacific Command area of responsibility.

The conferees note that over recent years, the United States has embarked on a number of initiatives in the Pacific Command area of responsibility that are intended to realign our military force structure to respond to regional interests and, in this regard, U.S. bilateral security arrangements, especially with Japan and the Republic of Korea. Our continued strong alliance and cooperation with these two countries maintain a significant part of the foundation that supports our force posture and military activities in the region. Accordingly, the conferees direct that the assessment required by this provision include a particular focus on the current posture and plans for United States force realignments in Korea, Okinawa, and Guam.

Study on overseas basing presence of United States forces (sec. 347)

The conferees agreed to a study on overseas basing presence of United States Forces.

The Secretary of Defense shall commission an independent assessment of the overseas basing presence of the United States forces.

The report may be conducted by a federally funded research and development center or an independent, non-governmental institute that possesses recognized credentials and expertise in national security and military affairs.

The report should include, but not be limited to, the location and number of United States forces required to be forward based outside the United States in order to meet the National Military Strategy, 2010, the quadrennial defense review, and the engagement strategies and operational plans of the combatant commands.

The report should also include the current condition and capacity of the available military facilities and training ranges of the United States overseas; the cost of maintaining such infrastructure; a determination of the amounts received by the United States in direct payments or otherwise from foreign countries due to military facilities of the United States overseas; a determination of the amount paid by the United States in direct payments to foreign countries for the use of facilities, ranges, and lands.

The report should also include an assessment of the advisability of the retention, closure, or realignment of military facilities of the United States overseas, or of the establishment of new military facilities of the United States overseas, in light of potential fiscal constraints on the Department of Defense and emerging national security requirements in coming years.

A report shall be transmitted to the Secretary of Defense not later than one year after the enactment of this Act. The Secretary shall provide the report to the defense committees not later than 90 days thereafter.

Up to \$2 million shall be made available for the completion of the assessment.

Inclusion of assessment of joint military training and force allocations in Quadrennial Defense Review and National Military Strategy (sec. 348)

The report contains a provision that would require the Secretary of Defense to conduct an assessment of joint military training and the effectiveness of the Joint Staff in carrying out the missions of planning and experimentation formerly accomplished by United States Joint Forces Command.

The provision further requires such an Assessment to be included in the Quadrennial Defense Review and National Military Strategy.

Continuation of authority to assist local educational agencies that benefit dependents of member of the armed forces and Department of Defense civilian employees (sec. 572)

The report contains a provision that would authorize \$30.0 million for continuation of the Department of Defense (DOD) assistance program to local educational agencies that are impacted by the enrollment of dependent children of military members and DOD civilian employees. The provision would also authorize \$10.0 million for assistance to local educational agencies with significant changes in enrollment of school-aged dependents of military members and civilian employees due to base closures, force structure changes, or force relocations.

Assessment of stationing of additional DDG-51 class destroyers at Naval Station Mayport, Florida (sec. 1017)

The report contains a provision requiring an assessment of the stationing of additional DDG-51 class destroyers at Naval Station Mayport, Florida.

Report on integration of unmanned aerial systems into the national airspace system (sec. 1074)

The report contains a provision that would require the Secretary of Defense to submit a report describing and assessing:

- (1) the rate of progress in integrating unmanned aircraft systems into the national airspace system; and
- (2) the potential for one or more pilot program or programs on such integration at certain test ranges to increase that rate of progress.

Number of Navy carrier air wings and carrier air wing headquarter (sec. 1093)

The report contains a provision that would require the Secretary of the Navy to maintain:

- (1) a minimum of 10 carrier air wings; and
- (2) for each such carrier air wing, a dedicated and fully staffed headquarters.

Unmanned aerial systems and national airspace (sec. 1097)

The report contains a provision that would require the Administrator of the Federal Aviation Administration to establish a program to integrate unmanned aircraft systems into the national airspace system at six test ranges.

The provision would further require that, for any project established by the Administrator under this authority, the Administrator ensures that the project is operational not later than 180 days after the date on which the project is established.

Guam realignment (sec. 2207)

The report contains a provision preventing the obligation or expenditure of funds to execute the realignment of Marine Corps personnel from Okinawa to Guam until:

- (1) the Commandant of the Marine Corps, in consultation with the Commander of the United States Pacific Command, provides the congressional defense committees the Commandant's preferred force lay-down for the United States Pacific Command Area of Responsibility;
- (2) the Secretary of Defense submits to the congressional defense committees a master plan for the construction of facilities and infrastructure to execute the Commandant's preferred force lay-down on Guam, including a detailed description of costs and a schedule for such construction
- (3) the Secretary of Defense certifies to the congressional defense committee that tangible progress has been made regarding the relocation Marine Corps Air Station Futenma
- (4) a plan coordinated by all pertinent Federal agencies is provided to the congressional defense committees detailing descriptions of work, costs, and a schedule for completion of construction, improvements, and repairs to the non-military utilities, facilities, and infrastructure on Guam affected by the realignment of forces; and
- (5) the Secretary of Defense submits to the congressional defense committees the report on the assessment of the United States force posture in East Asia and the Pacific region required under section 346 of this Act, or the Secretary of Defense certifies to the congressional defense committees that the deadline for the submission of such report has not been met.

The Secretary of Defense may use funds to carry out additional analysis under the National Environmental Policy Act of 1969 to include:

- (1) a re-evaluation of live-fire training range complex alternatives, based upon the application of probabilistic modeling; and
- (2) the ongoing analysis on the impacts of the realignment and build-up on Guam on coral reefs in Apra Harbor.

The amendment also requires the Secretary of Defense to obtain a specific authorization for the use of appropriated funds in fiscal year 2012 to be used to construct or acquire public infrastructure on Guam.

The conferees note that the Department of Defense has not overcome a number of obstacles, including lengthy environmental studies, legal challenges, and land use issues, thereby delaying its execution of planned military construction projects associated with the realignment that have been authorized and appropriated in previous acts.

The conferees also note that while the congressional defense committees have been briefed on the Marine Corps' preferred force lay-down on Guam, the Secretary of Defense has yet to provide Congress with a master plan for construction of facilities and infrastructure to support the Marine Corps' preferred option.

As was noted in the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (P.L. 111-383), the conferees continue to support a comprehensive approach in the Pacific that supports our strategic interests. Guam is an essential element in the framework of the United States' theater security plan, but the continued lack of a comprehensive master plan and the inability of the Government of Japan to demonstrate tangible progress for the Futenma Replacement Facility provide additional risk in our ability to quickly move forward with the realignment.

The conferees encourage the Secretary of Defense to promptly provide the committees with a master plan, as well as a cost-mitigation strategy, for the realignment of forces to Guam.

Completion of specific base closure and realignment recommendations (sec. 2703)

The report contains a provision that would authorize the Department limited authority to extend the implementation period of not more than seven decisions contained in the 2005 Defense Base Closure and Realignment (BRAC) round beyond the statutory deadline.

The provision further directs the Secretary of Defense to complete all 2005 Defense BRAC actions as expeditiously as possible.

Closing unnecessary defense facilities has historically been difficult because of public concern about the economic effects of closures on communities and the perceived lack of impartiality in the decision-making process. The Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510) (BRAC) created an independent commission to review a list of bases for realignment and closure submitted by the Secretary of Defense.

The Department of Defense has now undergone five BRAC rounds. The 2005 Base Realignment and Closure round was the biggest, most complex, and costliest round of BRAC to date. The final BRAC 2005 Commission forwarded a total of 182 closures or realignments to the Congress, including 177 of the 190 recommendations submitted by the Secretary of Defense and five closures or realignment recommendations from the eight installations it considered on its own initiative. These recommendations resulted in 22 major closures and 33 major realignments.

The Secretary of Defense was required to complete all BRAC actions by September 15, 2011. This deadline was directed in statute in order to guide investments and to provide a degree of certainty to local communities around military bases affected by base closures and realignments.

The budget request for fiscal year 2012 included a legislative proposal from the Department of Defense that would provide legislative relief to the statutory deadline for up to 10 BRAC recommendations. The conferees continued to monitor the recommendations that were in danger of missing the BRAC deadline throughout the year.

By the deadline, September 15, 2011, the Department of Defense notified the conferees that essentially all but two recommendations were completed.

The conferees note that the 2005 BRAC Commission acknowledged in their report that the Umatilla Depot in Oregon might not be closed by the deadline due to chemical demilitarization treaty obligations.

The successful completion of the BRAC decision to consolidate medical commands was dependent on actions by other congressional committees to approve a prospectus for a lease carried out by the General Services Administration. While the lease has been approved, the Department is still in the process of carrying out the move.

The conferees expect that both closures will be carried out in accordance with the BRAC statute regarding land disposal and the movement of personnel.

Special considerations related to transportation infrastructure in consideration and selection of military installations for closure or realignment (sec. 2704)

The report contains a provision that would require the secretary concerned to include transportation assessment of a proposed closure or realignment of civilian personnel that exceed certain thresholds.

Reporting requirements related to the granting of easements (sec. 2812)

The report contains a provision that would remove the discretion of secretaries of the military departments regarding purposes for which easements for rights-of-way may be granted.

Limitations on use or development of property in Clear Zone Areas and clarification of authority to limit encroachments (sec. 2813)

The report contains a provision that would amend section 2684a of title 10, United States Code, by authorizing the Secretary of Defense or the secretary of a military department to enter into an agreement to protect Clear Zone Areas adjacent to airfields at military installations.

The provision further clarifies authorities to limit encroachment on military installations.

Department of Defense conservation and cultural activities (sec. 2814)

The report contains a provision that would modify section 2694(b)(2) of title 10, United States Code, to enhance the ability of the Department of Defense to assist with the implementation of certain land management plans and to clarify that the purpose of wildlife studies authorized under the section includes the sustainability of military operations.

Exchange of property at military installations (sec. 2815)

The report contains a provision that would extend the authority for certain exchanges of real property at military installations.

Defense access road program enhancements to address transportation infrastructure in vicinity of military installations (sec. 2816)

The report contains a provision that would expand the authority of the Department of Defense (DOD) to use military construction appropriations to mitigate significant transportation impacts caused as a result of an expanded defense mission.

The conferees adopt the provision in recognition that transportation issues have been an issue in recent base realignments and the Department of Defense has been slow to revise the criteria for the Defense Access Road program. Recognition of these transportation issues does not imply that their mitigation is a DOD responsibility. The conferees note that many communities have been exceptional partners in ameliorating the impact of base realignments and believe that this practice should be encouraged.

Consideration of energy security in developing energy projects on military installations using renewable energy sources (sec. 2822)

The report contains a provision (sec. 2822) that would require the Secretary of Defense to establish a policy under which a military installation shall give favorable consideration for energy security in the design and development of renewable energy projects on military installations.

The provision would further require the Secretary of Defense to develop guidance for commanders of military installations inside the United States on planning measures to minimize the effects of a disruption of services by a utility that sells natural gas, water, or electric energy to a military installation in the United States.

Certification of medical care coverage for H-2B temporary workforce on military construction projects on Guam (sec. 2841)

The report contains a provision that would prohibit the Secretary of the Navy from awarding any additional construction projects associated with the realignment of military forces on Guam until the Secretary establishes a lead system integrator for health care for the H-2B workers.

Repeal of condition on use of specific utility conveyance authority regarding Guam integrated water and wastewater treatment system (sec. 2842)

The report contains a provision that would modify the permissive utility conveyance authority contained in section 2822 of the Military Construction Authorization Act for Fiscal Year 2011 (division B of Public Law 111-383).

Notification of reductions in number of members of the armed forces assigned to permanent duty at a military installation (sec. 2864)

The report contains a provision that would require a notification before the Secretary of Defense or secretary of a military department reduces the number of military service members at an installation by more than 1,000.

Investment plan for the modernization of public shipyards under jurisdiction of Department of the Navy (sec. 2865)

The report contains a provision that would require the Secretary of the Navy to submit a plan to address the facility and infrastructure requirements at each public shipyard under the jurisdiction of the Department of the Navy.

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

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

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

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.

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

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 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.

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

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.

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, 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 Andersen 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

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.

LEGISLATIVE PROVISIONS NOT ADOPTED

Use of operation and maintenance funding to support community adjustments related to realignment of military installations and relocation of military personnel on Guam

The House bill contained a provision that would authorize the Secretary of Defense to assist the Government of Guam in meeting the costs of providing increase municipal services and facilities associated with the realignment of military forces to Guam.

The Senate bill did not contain a similar provision and the House receded.

Certification of military readiness need for firing range on Guam as condition on establishment of range

The House bill contained a provision that 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.

The Senate bill did not contain a similar provision and the House receded.

Limitation on revising the definition of depot-level Maintenance

The Senate bill contained a provision (sec. 322) that would limit the Secretary of Defense on revising the definition, guidance, regulations, policy, and revisions of depot-level maintenance until receipt of a report prepared by the Defense Business Board.

The House bill contained no similar provision and the Senate receded.

Redesignation of core competencies as core depot maintenance capabilities for Centers of Industrial and Technical Excellence

The House bill contained a provision (sec. 324) that would amend section 2474 of title 10, United States Code, by modifying core competencies to core logistics capabilities.

The Senate bill contained no similar provision and the House receded.

Congressional notification requirement before permanent relocation of any United States military unit stationed outside the United States

The House bill contained a provision (sec. 1226) that would require the Secretary of Defense, prior to relocating any military unit stationed outside the United States, to submit to Congress a written notification and detailed report relating to the planned relocation.

The Senate bill contained no similar provision and the House receded.

Limitation on implementation of consolidation of Air and Space Operations Center of the Air Force

The House bill contained a provision (sec. 2307) limiting the implementation of consolidation of the Air and Space Operations Center of the Air Force.

The Senate bill did not contain a similar provision and the House receded.

The conferees note that the Air Force announced a decision not to pursue a plan to consolidate Air Operations Centers in the United States.

Increased emphasis on evaluation of costs and benefits in consideration and selection of military installations for closure or realignment

The House bill contained a provision (sec. 2705) that would increase the emphasis on the evaluation of costs and benefits in consideration and selection of military installations for closure and realignment.

The Senate bill did not contain a similar provision and the House receded.

The conferees support the ability of the Department to reduce force structure commensurate with the workload and mission requirements; however, the conferees are concerned with the perception that the Department of Defense may have bypassed the limitations of section 2687 of title 10, United States Code, by completing a reduction in force at a defense

activity and then realigning the balance of the workforce. The conferees believe that such a contravention of section 2687 would be inappropriate. Activities that exceed the thresholds of section 2687 at the time of the Secretary's decision to reorganize a particular activity should be specifically submitted in accordance with the notification process delineated in section 2687.

Limitation on BRAC 133 project implementation

The House bill contained a provision (sec. 2707) that would limit the number of parking spaces at the BRAC 133 project location until the Secretary of Defense provides certain documents and certification.

The Senate bill did not contain a similar provision and the House receded.