

July 11, 1996

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ITEM 342 - COUNCIL MEETING OF TUESDAY, JULY 16, 1996
NAVAL TRAINING CENTER DRAFT REUSE CONCEPT PLAN
(CONTINUED FROM JULY 1, 1996 MEETING)

Various opinions were expressed during public testimony on July 1, 1996 with respect to the amount of land at the Naval Training Center ("NTC") which should be designated as a Public Safety Academy versus the amount of land which should be set aside for expansion of Lindbergh Field. After the close of public testimony, the matter was continued for two weeks to evaluate additional information and for further discussion and action. It was apparent from testimony at the hearing that some uncertainty still exists regarding legal entitlements or legal obstacles which may exist in the base closure process that are germane to the competing applications for use of Camp Nimitz. This report attempts to clarify that issue.

A. Overview of the Base Closure Process

The federal base closure and reuse process for NTC is governed by relatively new federal law which includes: the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Pub. L. No. 101-510, as amended by the Base Closure Community Assistance Act of 1993 (Subtitle A of Title XXIX of Pub. L. No. 103-160) and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. No. 103-421).

These new federal laws relating to closure of military bases charge the Local Reuse Authority ("LRA") with developing a recommended land use and property disposal plan (the "Reuse Plan"). The Reuse Plan must be consistent with established federal conveyance authorities. Those conveyance authorities include: the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Surplus Property Act of 1944 (49 U.S.C. 47151-47153), the Act of May 19, 1948 (16 U.S.C. 667b) and other authorizing statutes, as implemented in the Federal Property Management Regulations (41 CFR Part 101-47), 32 CFR Part 91, and elsewhere.

Exhibit A is an illustrative time line published by the Department of Defense ("DoD") from the DoD Base Reuse Implementation Manual which highlights the various key Federal Actions along side the various key community actions of the LRA which must occur in tandem to close and convert NTC to civilian use.

1. DoD and Federal Screening Precedes the Determination of Surplus.

After real property is declared by Congress to be excess to the needs of the federal government, the law requires that the property first be offered to DoD and non-DoD organizations within the federal government.

For the closing of NTC, the federal screening process resulted in acreage being set aside for a Navy housing project, a pistol range on Camp Nimitz for the Border Patrol, and a 10 acre (plus appropriate buffer) site being reserved to the U.S. Fish and Wildlife Service for a least tern nesting site.

2. In the Reuse Plan the LRA Must Recommend the Highest and Best Uses for the Surplus Property and also Recommend the Various Methods for the Disposal Agency to Convey the Property in Accordance with Existing Federal Authorities.

Surplus Property can be conveyed by the DoD Disposal Agency (for NTC this is Southwest Division) by any one of the following methods:

a. Public Purpose Conveyances are typically sponsored by a federal agency and are available for such public uses as airports, education, health, historic monuments, ports, parks and recreation, and wildlife conservation. Approved recipients may receive these conveyances at a substantial discount or at no cost following DoD consultation with the appropriate sponsoring federal agency. Exhibit B is a chart illustrating the various authorities available for Public Purpose Conveyances.

b. Homeless Assistance Conveyances can be made at no cost, either to the LRA or directly to the participating representatives of the homeless.

c. Negotiated Sales to public bodies or other qualified entities at a price no less than fair market value. Terms of negotiated sales are subject to review by Congress.

d. Advertised Public Sales may be made to the party that submits the highest bid, provided it is not less than the fair market value.

e. Economic Development Conveyances can be negotiated between the Military Department and the LRA to sell surplus property at or below the estimated present fair market value with flexible payment terms and conditions in order to create jobs and stimulate economic revitalization of the community.

B. Public Benefit Applicants Must Obtain Sponsorship Support from a Sponsoring Federal Agency and Must also Independently Satisfy the Requirements of the Sponsoring Federal Agency.

As illustrated in the attached time line of implementation activities, when DoD reviews

the Reuse Plan they are required to consult with and consider the recommendations from sponsoring federal agencies with regard to any proposed public purpose conveyances.

The San Diego Unified Port District has consulted with and obtained a sponsorship commitment from the Federal Aviation Administration ("FAA") with respect to their proposed public benefit conveyance of Camp Nimitz for airport purposes.

The Public Safety Academy is also proposed to be a public benefit conveyance, sponsored by the Department of Education. Although the applicants for the Public Safety Academy have consulted with the Department of Education, they have not yet applied for or obtained a commitment of sponsorship from the Department of Education. See, Exhibit C.

34 CFR Part 12 is a Federal Regulation which governs the Disposal and Utilization of Surplus Federal Real Property for Educational Purposes. Among other requirements, section 12.6 of the regulation specifies that an application to the Department of Education must "(b) contain a certification from the applicant that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations."

For well over a year, there has been concern that the Public Safety Academy proposal may not be consistent with tidelands trust land use restrictions. See, Exhibit D, July 18, 1995 memorandum from City Attorney. Until and unless that particular land use restriction is extinguished or removed, it may be difficult or impossible to obtain a sponsorship commitment from the Department of Education for the Public Safety Academy. Without that sponsorship commitment, even if the land is designated for Public Safety Academy use in the Reuse Plan, Southwest Division will not have the legal authority to convey the property in accordance with the Reuse Plan. Without the legal authority for conveyance, DoD will be left with two choices: they could reject the recommendation of the LRA and convey the property in accordance with an alternative qualifying application such as the Port's application, or, they could send the plan back to the LRA for further work and/or reconsideration until the issue is legally resolved.

C. Sufficient Time Still Exists to Consult with and Obtain a Sponsorship Commitment from the Department of Education if any Portion of Camp Nimitz is designated in the Draft Reuse Concept Plan for Public Safety Academy Use.

Although the Draft Reuse Concept Plan before you for consideration will be submitted to the Department of Defense and the Department of Housing and Urban Development for preliminary evaluation in September of 1996, final action on the Reuse Plan will not be taken by the City Council until sometime in 1997 after the Joint EIR/EIS has been completed.

Therefore, if the desire of the LRA is to designate any portion of Camp Nimitz for Public Safety Academy use, it is highly recommended that an immediate companion plan of action should also be directed to: 1) obtain a qualified commitment from the Department of Education to sponsor an education conveyance for the Public Safety Academy; and 2) the Department of Education and the Navy should be urged to support the LRA's effort to obtain relief from the tideland's restriction so that the Public Safety Academy can qualify for an educational conveyance. As set forth in the attached memoranda, that relief may be obtained

administratively through a negotiated exchange of trust lands with the State Lands Commission, or, via special state legislation to extinguish the trust.

The City Attorney stands ready to assist and serve the LRA to ensure that the Reuse Plan which is deemed to be in the best interest of the community is also effectively implemented.

Respectfully submitted,

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City Attorney

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Attachments
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