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Report to the Chairman, Subcommittee on Government Management, Information, and Technology, Committee on Government Reform and Oversight, House of Representatives

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MILITARY BASE CLOSURES

Questions Concerning the Proposed Sale of Housing at Mather Air Force Base

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The Honorable Stephen Horn
Chairman, Subcommittee on Government Management,
Information, and Technology
Committee on Government Reform and Oversight
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we review the proposed negotiated sale of 1,271 surplus family housing units at Mather Air Force Base, California, to the Sacramento Housing and Redevelopment Agency (SHRA). Specifically, you asked whether

- the Air Force's attempts to obtain competition satisfy requirements of section 203(e)(3)(H) of the Federal Property Act to obtain "such competition as is feasible under the circumstances";[1]
- the disposal at Mather meets the test of a public benefit given that SHRA plans to transfer ownership immediately to a private developer;
- the Air Force, contrary to General Services Administration (GSA) policy and applicable laws, disclosed the appraised value of the family housing property to prospective purchasers;
- the Air Force allowed a developer's representatives to participate in negotiations between the Air Force and SHRA; and
- there is evidence that the property has a higher fair market value than the proposed sale price.

On June 22, 1998, we briefed you and Representative Richard W. Pombo on the results of our work. This report summarizes the information we provided at the June 22 briefing.

Background

The decision to close Mather Air Force Base, located near Sacramento, California, was made during the 1988 base realignment and closure (BRAC) round, but the actual closure occurred in September 1993. Since then, the Air Force has been working with Sacramento County and with other local interests to dispose of property it considers surplus to the needs of the federal government. The 1,271 housing units at Mather have been vacant since 1993 and are in varying degrees of disrepair.

[1]The Federal Property Act refers to the Federal Property and Administrative Services Act of 1949, as amended. Section 203(e)(3)(H) is codified at 40 U.S.C. 484(e)(3)(H).

In 1996 we expressed concern about the amount of time that was being taken to dispose of excess BRAC property and specifically cited the Mather housing as an example. We recommended that the Secretary of Defense establish reasonable time frames for concluding negotiated sales of surplus real property and that when practical, the services rent unoccupied surplus housing and other facilities as a means of preserving property pending final disposition. Situations such as that encountered at Mather reinforce the need for actions by the Department of Defense (DOD) and the services along the lines we previously recommended.[2]

Results in Brief

During the long period of time it took to complete the Mather housing sale, the property deteriorated and lost value. Nevertheless, the Air Force acted within existing authority in negotiating the proposed sale, and the sale price matches the latest appraisal approved by the GSA.[3] Following is a summary of our findings:

- The Air Force's decision to pursue a negotiated sale with SHRA rather than compete the sale publicly was made early on and was documented in the Air Force's 1993 official record of decision regarding the disposal of the Mather property. The SHRA, as the authorized representative of Sacramento County,[4] was the only governmental entity authorized to deal with the Air Force and to express an interest in acquiring the Mather housing. Under these circumstances, competition was not possible and, therefore, the Air Force satisfied the requirement of the Federal Property Act to obtain "such competition as is feasible under the circumstances."
- Applicable law and regulation do not define public benefit. In the Mather case, the proposed public benefit was the sale of at least 30 percent of the housing units to low- or moderate-income families and the creation of a stable home ownership community. Available documents indicate that neither the Air Force nor GSA, which was assisting in the sale, questioned this proposed public benefit as a reasonable basis for conducting a negotiated sale. Moreover, SHRA has entered into an agreement with a private developer (who was selected competitively and will obtain ownership of the property) that establishes conditions designed to protect and promote this public benefit. SHRA further agreed to accept and require

[2]Military Bases: Update on the Status of Bases Closed in 1988, 1991, and 1993 (GAO/NSIAD-96-149, Aug. 6, 1996).

[3]GSA is responsible for administering the Federal Property Act, which governs the sale of surplus government property.

[4]Sacramento County had been designated as the local redevelopment authority in conjunction with the closure of Mather under the BRAC process.

the developer to adhere to both an excess profits clause and a windfall profits clause.

- GSA policy, but not law, prohibits the disclosure of the government's appraisal because disclosure makes it more difficult for the government to negotiate a higher price. Records and discussions with the parties involved indicate that the Air Force disclosed the value of the property in the first GSA-approved appraisal. On the other hand, SHRA's appraisal was much lower. This difference caused prolonged negotiations and disagreements over the value of the property.
- A representative of the developer did participate as a partner of SHRA in negotiations with the Air Force. Though not inconsistent with law or regulation, this action is contrary to the policy in GSA's Excess and Surplus Real Property Handbook. On the basis of GSA advice, the Air Force initially objected to the representative's participation in negotiations but ultimately allowed it. SHRA officials said that they considered it appropriate for the representative of the developer to participate because he was representing the joint interests of SHRA and the developer.
- There is no concrete evidence that the property has a higher fair market value than the proposed selling price. The proposed selling price matches the appraised value of the most recent GSA-approved appraisal. While other private developers contend that a previously proposed public sale would have brought a higher price, this sale was not completed, and it is unknown what private developers would bid for the property in its current condition. According to SHRA and its developer, the sale price is reasonable because there is substantial financial risk in developing the property.

Appendix I gives a history of the negotiations between the Air Force and SHRA. Appendix II gives more detailed answers to the questions we addressed. Appendix III gives a complete description of our scope and methodology.

Agency Comments and Our Evaluation

We provided opportunities for DOD, GSA, and SHRA to review and comment on a draft of this report. Written comments were provided by DOD and GSA and are included in appendixes IV and V, respectively. SHRA provided oral comments.

The Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment), in responding for the DOD, concurred with a draft of this report without further comment. The Commissioner of GSA did not indicate either agreement or disagreement with the report but did reiterate GSA's perspective on a variety of issues involving negotiated

versus public sales, public benefit, pass through sales, public release of appraisal information, and impact of prolonged negotiations on sales value. These issues are discussed in our report. Nevertheless, we have included GSA's comments and our evaluation of them in appendix V. SHRA representatives generally agreed with the report but provided some technical clarifications, which have been incorporated where appropriate.

We are sending copies of this report to the Chairmen of the Senate Committees on Appropriations and on Armed Services and of the House Committees on Appropriations and on National Security; the Secretaries of Defense and the Air Force; and the Director of the Office of Management and Budget. We are also providing a copy of this report to Representative Richard W. Pombo. We will make copies available to others on request.

Please contact me at (202) 512-8412 if you or your staff have any questions concerning this report. Major contributors to this report are listed in appendix VI.

Sincerely yours,

David R. Warren, Director
Defense Management Issues

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Abbreviations

AFBCA	Air Force Base Conversion Agency
BRAC	Base Realignment and Closure
DOD	Department of Defense
GSA	General Services Administration
LRA	Local Redevelopment Authority
SHRA	Sacramento Housing and Redevelopment Agency

History of Negotiations Over Mather Housing

Composed of 5,716 acres and 970,000 square feet of buildings and auxiliary facilities, Mather Air Force Base included a 11,300-foot runway and a parallel 6,100-foot runway, 4 aircraft hangars, office and industrial structures, 18 dormitory buildings, an 18-hole golf course, parkland, and 1,271 single-family housing units. Since the base was closed in September 1993, most of this property has already been transferred to civilian ownership or use through sale or lease arrangements. The major exception involved the 1,271 family housing units, which have been the subject of lengthy negotiations.

Federal Property Disposal Requirements

Surplus federal government real estate is not automatically sold to the highest bidder at a public sale. Rather, the Federal Property Act specifies a screening process for exploring the transfer of the property to states or local governments for specified public benefit purposes such as education, public health, recreation, airports, wildlife conservation, and historic monuments. Any property remaining after these transfers may be disposed of through public sales or, in specified instances, through negotiation procedures. In addition, 1993 amendments to the base realignment and closure (BRAC) legislation authorize the transfer of surplus real property at less than full market value to local redevelopment authorities (LRA) under economic development conveyances for economic development and job creation purposes.[1] The Air Force used a number of these authorities to dispose of various parcels or real property on Mather Air Force Base. For example, the airport and schools were transferred to Sacramento County through no-cost, public benefit conveyances. Other parcels, like the family housing units, golf course, and chapels, were sold through either public or negotiated sales. Sacramento County was the LRA responsible for Mather Air Force Base.

Negotiated Sale

Proposals for reusing the Mather properties, the related environmental impact analyses, and public comments on the proposals were documented in the Mather Air Force Base Environmental Impact Statement prepared by the Air Force.[2] For Mather, the approved statement specifically envisioned a negotiated sale of the housing units to the local housing authority.

[1]A local redevelopment authority is an entity established by state or local governments and recognized by the Secretary of Defense. In the context of BRAC, it is the entity responsible for developing or directing implementation of a reuse plan for the closed or realigned military base or installation.

[2]An environmental impact statement is required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. A Record of Decision summarizes the statement and documents the final agency decision.

Sacramento County designated some county agencies to conduct reuse planning of some Mather parcels and to serve as its representative in dealing with the Air Force. For example, the Sacramento Housing and Redevelopment Agency (SHRA) was the only agency authorized to represent Sacramento County in efforts to acquire the Mather family housing units. Because it wanted to provide low cost housing, SHRA asked the Air Force to convey the property to the county through a negotiated sale.

The Air Force agreed to conduct a negotiated sale subject to the Federal Property Act, which requires that the property be sold for its fair market value. This decision, along with disposal decisions for other Mather properties, was documented in the Air Force's March 31, 1993, Record of Decision concerning planned disposal of the property. Subsequently, the Air Force Base Conversion Agency (AFBCA)[3] and SHRA began negotiations that continued through late 1994. The two sides failed to reach agreement primarily because they differed on the fair market value of the property.

Appraisals and Negotiations

Four Mather property appraisals were completed between May 1993 and August 1995. The first was approved by the General Services Administration (GSA). The second, completed in September 1993, was funded by SHRA to support its negotiations with the Air Force. A third appraisal was completed in September 1994 after the Air Force and SHRA continued to disagree over the property's value and the assumptions used in making the appraisals. Disagreements centered on the amount of time that it would take for the housing units to be renovated and sold to the community (known as the absorption period), contractor fees, and average unit sale price. The third appraisal was jointly funded by SHRA and the Air Force. A fourth appraisal, approved by GSA, was completed in August 1995 and became the basis for the ultimate agreement on the sale price.

Between the first and third appraisals, the Air Force reduced its asking price by about 50 percent, while SHRA's offer remained firm. Consequently, AFBCA terminated negotiations with SHRA and in January 1995 asked GSA to dispose of the housing units via a public sale. GSA advertised the property

[3]The Air Force Base Conversion Agency was created by the Air Force to manage the disposal of BRAC-related property. The Agency is responsible for ensuring that purchasers or lessees of BRAC properties comply with contract provisions such as those limiting excess profits and windfall profits. When we completed our fieldwork, the Agency was in the process of developing an automated portfolio management system to help it carry out these responsibilities for many parcels of BRAC property it has sold or leased.

in late February 1995, asking interested parties to submit sealed bids by April 18, 1995.

The day before bids were to be opened, the Federal District Court in San Francisco issued a temporary restraining order halting the public sale. The restraining order was issued because: (1) interested bidders had not had enough time to prepare their bids and (2) providers for the homeless had not been given the opportunity to request the property through a public benefit conveyance. According to GSA officials, at least seven bidders were interested in the property—two bids had been received by mail and on April 18, 1995, at least five additional bids were brought to GSA by either bidders or couriers. GSA returned the two bids unopened and did not accept the other five.

Before the temporary restraining order was resolved, the Air Force decided to cancel the public sale and reopen negotiations with SHRA. Due to this cancellation, the litigation was dismissed and the restraining order was declared moot in August 1995. After the fourth appraisal was made in August 1995, the Deputy Assistant Secretary (Installations) of the Air Force took over negotiations with SHRA.[4] Agreement was soon reached on price, but other details took longer to negotiate. The Air Force and SHRA finally reached agreement on the sale terms in August 1997. SHRA signed the agreement and gave the Air Force until August 30, 1998, to obtain approval for the sale. Following the completion of our work, we were notified by the Air Force that it had signed an acceptance of sale on July 10, 1998, and that it would transfer title of the family housing units to Sacramento County on September 14, 1998.

Because of the continued deterioration of the housing units, SHRA and its development partner now question the economic viability of rehabilitating the units. They point out that, as directed by the Sacramento County Board of Supervisors, they had always intended to demolish the 414 duplexes and replace them with single-family homes. They now believe that many of the remaining single-family units might also have to be demolished and replaced. This decision will be made on a unit-by-unit basis, depending on whether renovation or demolition and reconstruction is more economical.

[4]The Deputy Assistant Secretary said he assumed responsibility for negotiations because of the poor relationship that had developed between AFBCA and SHRA.

Detailed Answers to Questions on the Proposed Negotiated Sale of Mather Family Housing

Question 1: Did the Air Force's attempts to obtain competition satisfy requirements of section 203(e)(3)(H) of the Federal Property Act to obtain such competition as is feasible under the circumstances?

The Federal Property Act generally requires that federal agencies dispose of surplus real property by formally advertising for bids and selling to the responsible bidder that offers the best price to the government. The act identifies exceptions, however, where agencies can dispose of real property through negotiations. One such exception is the disposal to states, territories, possessions, or their political subdivisions for a public benefit purpose. Although the act still requires the disposal agency to obtain "such competition as is feasible under the circumstances," SHRA was the only authorized political entity with which negotiations could be held and the only one to express an interest in the Mather property. Under these circumstances, competition was not possible and the statute's mandate was met.

When the Air Force canceled negotiations with SHRA in early 1995, it did attempt to hold a public sale. According to GSA officials who were helping the Air Force with the disposal process, the decision to move to a competitive sale was probably a good one. Negotiations had broken down, and it did not appear that the Air Force and SHRA could reach an agreement. Their only criticism was that the Air Force should have made the decision sooner rather than after 16 months of negotiations. It is GSA policy to dispose of excess property as expeditiously as possible, and its general practice is to hold a public sale within 1 or 2 months if it is unable to negotiate an acceptable agreement. Holding surplus property longer than that, in GSA's opinion, is not in the best interest of the government and only serves to increase holding costs and problems such as those found at Mather. GSA officials also questioned the wisdom of the Air Force's decision to reopen negotiations with SHRA given its previous experience.

Choosing between a public or a negotiated sale involves a trade-off between different public policy objectives. Public sales are generally faster and may foster competition that can maximize the government's return on the property. Negotiated sales usually take longer to complete, may be noncompetitive, and may not maximize the government's return. Yet they help maximize the interests of communities affected by base closures by responding to the communities' desired plans for the property.

Question 2: Does the disposal at Mather meet the test of a public benefit that is uniquely available in a negotiated disposal to a public body, given that SHRA plans to immediately transfer ownership to a private developer?

Negotiated sales to public entities are considered "only when the disposal agency has made a determination that a public benefit will result from the negotiated sale which would not be realized from a competitive sale disposal."[1] Negotiated disposal procedures also allow a public entity to purchase surplus property free from competition with private enterprise. Applicable law and regulation do not define public benefit. Further, although the term public benefit is cited in the Federal Property Act's implementing regulation and Department of Defense guidance, neither of them define the term.

In justifying a negotiated sale, SHRA's letter to the Air Force in November 1992 identified the public benefit objectives of providing home ownership opportunities for lower-income families and creating a stable home ownership community. Under SHRA's proposal, 30 percent (382) of the housing units would be sold to low-income, first-time home buyers. Low-income households are defined as those earning no more than 80 percent of the area's median income. In Sacramento, at the time SHRA outlined the expected public benefit, 80 percent of the medium income was $31,750 for a family of four. One-third of the low-income houses, or 10 percent of all the units, would be sold to families earning no more than 70 percent of the median income, or $27,790 for a family of four.

SHRA said that its goal of creating a stable home ownership community can best be achieved if the homes are occupied by their owners. SHRA fears that extreme deterioration of the Mather housing units might result if they were sold to individual developers and subsequently rented. Under this scenario, according to SHRA officials, the housing area could quickly deteriorate and require financial assistance to combat problems such as vandalism, illegal drug use, and other crimes. To guard against this, SHRA plans to require its development partner to promote owner occupancy of the units.

While GSA officials do not have a definition of what constitutes a public benefit, they did state that when a public benefit is determined and property is transferred to a state or local government, ownership usually remains with the governmental entity until the public benefit is realized. In

[1] 41 C.F.R. 101-47.304-9(c).

Mather, SHRA intends to transfer ownership of the housing units to a private developer (for the same price paid to the Air Force) as soon as it receives title from the Air Force. This type of pass-through arrangement is contrary to GSA policy primarily because it passes ownership to entities not eligible to acquire the property through a negotiated sale. The concern is that a government entity could negotiate an unreasonably low price for a property and transfer it to a private entity that subsequently reaps exorbitant or windfall profits. This concern is somewhat allayed in this instance because SHRA plans to take action, by agreement and otherwise, to prevent the developer from obtaining excess or windfall profits for a 6-year period, bind the developer to continue the public purposes until all units are sold, and retain control over contractor activities.

Despite registering concern about the pass-through arrangement, Air Force officials said they accepted it for three reasons. First, SHRA had to acquire and develop the Mather housing units without cost to the county because Sacramento County would not finance the purchase and development cost on its own. Thus, SHRA had to forge a partnership with someone who would provide financing but still be bound by the county's public benefit goals. If the Air Force were to negotiate an agreement with SHRA, accepting this partnership was a prerequisite. Second, SHRA selected the contractor competitively, thus giving the Air Force some assurance that the contractor and the county were independent of one another. Finally, SHRA agreed to accept and enforce on the developer both an excess profits clause and a windfall profits clause. According to the Air Force, the excess profits clause requires SHRA and the developer to return to the Air Force all profits in excess of allowable costs during the first 3 years. The windfall profits clause covers the following 3 years and requires the return to the government of 60 percent of any windfall profits.

Because of the documented lack of low- and moderate-income housing in Sacramento County, neither the Air Force nor GSA questioned the proposed public benefit as a reasonable basis for conducting a negotiated sale. Both agreed that the Air Force complied with the regulatory requirement when it accepted SHRA's proposal. According to GSA officials, this acceptance implies that the Air Force had decided that a negotiated sale was necessary to achieve the public benefit.

Developers who intended to bid on the property during the proposed public sale had a different perspective. On the basis of the expected selling price of the housing units (between $65,000 and $86,000 per unit), the three developers we interviewed said that most of the Mather housing

would be targeted to low- and moderate-income families and that it would be easy for any developer to meet the 30-percent goal. These developers said they were willing to bid more for the property than SHRA was offering at the time of the public sale and would adhere to any low- or moderate-income goals the county might have. Whether they would have done so can never be known with certainty. There are no official records of the bids because when the temporary restraining order was issued, GSA returned the unopened bids it had received and did not accept others. Furthermore, the government's invitation for bids would not require the successful bidder to comply with SHRA's public benefit goals because public sales, according to GSA officials, do not place limitations or restrictions on the use of property. SHRA also pointed out that it had included certain public benefit goals in the partnership agreement that it could not have imposed on a private developer. One of these goals is a provision for a good faith effort to contract with minority firms. Another is an obligation to keep SHRA informed of applications for home purchase from public housing and Section 8 housing tenants and to market to those tenants.[2]

Question 3: Did the Air Force, contrary to GSA policy and applicable laws, disclose the appraised value of the family housing property to prospective purchasers?

GSA's Excess and Surplus Real Property Handbook (June 29, 1994) states that the government's appraisal information should not be disclosed. Disclosure, however, is not contrary to law. According to GSA officials, keeping the appraised value confidential is a common-sense negotiating technique that helps the government maintain its negotiating position. Because the appraised fair market value is the minimum the government can accept during negotiations, disclosing the information limits the government's ability to negotiate the highest possible price for the property.

The first of the four appraisals (completed in May 1993) was the basis for AFBCA's initial negotiations with SHRA. SHRA officials told us that SHRA did not have access to this appraisal. Documents show, however, that soon after negotiations began, AFBCA officials made statements that allowed SHRA to compute the appraisal's estimated fair market value for the housing units. GSA officials who were helping AFBCA in the negotiations

[2]The Section 8 housing program is a federal rent subsidy program operated by the Department of Housing and Urban Development in Washington, DC.

confirmed that AFBCA officials indirectly disclosed the appraised fair market value during the first negotiation session with SHRA.

Later, when negotiations began to stall, AFBCA officials disclosed the property's appraised fair market value in a letter to SHRA. The two sides also discussed the assumptions and methodologies used in the initial appraisal, including the planned selling prices of the housing units, absorption rates, and financing costs. This was done so that both parties could better understand the differences between their negotiating positions and to help reach agreement on the selling price.

The fourth and last appraisal (completed in August 1995) was carried out because regulations require that real estate negotiations be based on appraisals not more than 9 months old. When negotiations reopened in July 1995, the original GSA-approved appraisal was 2 years old. Officials in the Office of the Deputy Assistant Secretary of the Air Force for Installations (which had taken over negotiations with SHRA) and at SHRA stated that SHRA did not have access to this appraisal. Likewise, we found no evidence in the files that indicated the Air Force disclosed the appraised fair market value of the property to SHRA or other parties outside the Air Force.[3]

Question 4: Did the Air Force allow a developer's representative to participate in negotiations between the Air Force and SHRA?

GSA's Excess and Surplus Real Property Handbook states that no representative of developers, contractors, or congressional staff should be allowed to participate in negotiations of property sales, not even as an observer. According to the GSA officials we contacted, a negotiated sale is supposed to be made to a public entity for a public purpose. Having a representative of a private developer present during negotiations changes the nature of the negotiations and blurs the distinction between a public sale and a negotiated sale. Usually, too much emphasis is placed on the potential profit associated with the sale.

Air Force officials involved in the negotiations clearly did not adhere to this policy. A lawyer hired by Mather Housing Company, LLC, a California limited liability company that was SHRA's private development partner, participated in most of the negotiating sessions for the Mather housing units. GSA officials advised AFBCA against this practice early in the

[3]The second and third appraisals were completely or partly funded by SHRA. These appraisals and their supporting documentation were readily shared and discussed throughout the negotiations.

negotiations. In May 1993, AFBCA also wrote to the lawyer informing him that he should not participate in negotiations, that his participation was inappropriate, and that any hint that AFBCA was negotiating with a private party might subject the AFBCA to justified criticism. However, from documentation in AFBCA files and statements made by Air Force and GSA officials, the developer's representative continued to participate in negotiating sessions after the letter was sent.

SHRA officials acknowledged that the agency had no formal agreement with the lawyer in question. Nevertheless, documentation indicates that SHRA thought it was appropriate for him to participate in negotiations because he was representing the interests of the partnership between SHRA and Mather Housing Company, LLC. These officials explained that SHRA went through a competitive process to select Mather Housing Company, LLC, as its partner and that the partnership is formalized by an agreement that lays out its objectives, mutual promises, representations, and terms. A key aspect of this agreement is that SHRA would transfer ownership of the housing units to Mather Housing Company, LLC, subject to conditions designed to protect and promote the public benefit for which the property was acquired.

The Air Force official that handled negotiations for the Deputy Assistant Secretary of the Air Force (Installations) said that when negotiations resumed with SHRA in 1995, it was clear that the lawyer was representing the private developer. The official stressed, however, that because of the special relationship between SHRA and the developer, the lawyer's presence was needed to reach a final agreement. Without his presence, the meetings would have been repeatedly adjourned while SHRA representatives conferred with the lawyer outside the meeting room. The developer's lawyer, the official added, was only providing advice, and negotiations were clearly between the Air Force and SHRA.

Question 5: Is there evidence that suggests the property has a higher fair market value than the proposed sale price?

It appears that the Air Force has obtained fair market value for the property. According to section 203(e)(3)(H) of the Federal Property Act and implementing regulations, the Air Force cannot sell the housing units through a negotiated sale for less than their fair market value as determined by an approved appraisal. As discussed previously, two GSA-approved appraisals were carried out in May 1993 and in August 1995.

The Air Force agreed to sell the housing units to SHRA for the appraised value in the second appraisal.

However, according to documentation in AFBCA files, the property had a higher appraised value at the start of negotiations. The estimated fair market value in the first approved appraisal was about $21 million higher than the second. In explaining this difference, GSA officials told us that GSA does not certify that the appraised value of the property is accurate. Rather, its review and approval ensures that an appraisal adheres to prescribed appraisal standards and methodologies. In this case, GSA officials said that both appraisals adhered to GSA's standards and methodologies and had sufficient documentation to support their assertions and assumptions.

GSA officials explained that estimating the value of a large parcel of property such as the Mather housing units takes 60 to 90 days; and, according to an AFBCA official, it requires professional judgment. As already indicated, differences in assumptions can result in significant differences in fair market value estimates. For example, appraisal analyses show the major difference between the two appraisals is the estimate of the amount of time needed to renovate the housing units and absorb them into the community. The first appraisal was based on an absorption period of 4.5 years while the second assumed 8 years. The longer absorption period significantly increases project costs, which in turn reduces the estimated fair market value of the property. Other assumptions that can affect the estimated fair market value concern the average retail value and rehabilitation costs of the units, costs to replace or improve infrastructure (i.e., roads, sidewalks, electrical distribution lines, water and gas lines, and sewers), discount rates, marketing and sales costs, and profits.

We also spoke with three developers in the Sacramento and San Francisco area who had prepared bids in anticipation of an April 1995 public sale of the housing units. They told us they were prepared to pay between $9 million and almost $20 million for the property at that time. These developers said that despite the deterioration and vandalism that has occurred, the property is as valuable today as it was a few years ago, primarily because the Sacramento housing market is stronger now than it was in 1995. If the housing units were to be offered again for public sale, these developers claimed they could purchase the property (for between $9 million and $20 million), make the necessary infrastructure improvements, renovate the shells of the housing units, and still make a

reasonable profit. They did concede, however, that their claims would require a more detailed assessment of the property's current condition.

On the other hand, the second and third appraisals (not commissioned by GSA) estimated the property's value at about $3 million to $4 million, much closer to the agreed sale price. SHRA and Mather Housing Company, LLC, believe these are more accurate estimates of the property's value. They also believe the sale price is reasonable because there is substantial financial risk in developing the property, especially considering the deterioration and vandalism that has occurred, the unknowns associated with renovating the infrastructure, and the asbestos and lead paint contamination in the housing units. Nevertheless, to prevent SHRA and/or Mather Housing Company, LLC, from reaping significant profits from this project, both are subject to the excess and windfall profits clauses discussed earlier in this appendix.

Scope and Methodology

To respond to the Subcommittee's questions, we met with all the parties involved in the negotiated sale of the Mather housing units, selected developers who had expressed an interest in a public sale of the units, and government officials responsible for administering policies and regulations governing the disposal of federal property. These included

- the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations), the Office of the Deputy Assistant Secretary of the Air Force (Installations), and the AFBCA, Arlington, Virginia;
- the GSA, Region 9, San Francisco, California;
- SHRA, Sacramento, California;
- Lewis Homes Management Corporation, Sacramento, California (representing Mather Housing Company, LLC);
- Law Offices of Gregory D. Thatch, Sacramento, California;
- Burlingame Realty, Foster City, California;
- Excelsior Export Company, San Francisco, California;
- H. Herbert Jackson, Attorney, Sacramento, California; and
- RAMCO Enterprises Corporation, Sacramento, California.

At meetings with representatives from each of these organizations, we discussed issues related to the sale of the Mather housing units and, when applicable, requested documentation that supported the statements and assertions made during the meetings. We also reviewed laws, regulations, and policies pertaining to negotiated and public sales of excess government property. At AFBCA, we obtained documentation on the decision-making process in the disposal of Mather Air Force Base properties. This included documentation on the various negotiations with SHRA, property appraisals, and analyses of the appraisals.

To examine the public benefits associated with the proposed sale and whether they supported the decision to negotiate only with SHRA, we reviewed the Mather Air Force Base Environmental Impact Statement and the Air Force Record of Decision for disposal of Mather properties. We also reviewed documentation prepared by SHRA to justify a negotiated sale of the housing units and discussed with SHRA how it plans to ensure that the public benefit would be realized once it resells the property to a private developer. We requested and obtained documentation supporting this plan.

To examine the Air Force's attempts to obtain competition and determine whether those attempts satisfy requirements of section 203(e)(3)(H) of the Federal Property Act, we identified the governmental entities that were

authorized to negotiate with the Air Force for the Mather housing units. We discussed with AFBCA the extent to which it relied on Sacramento County's plan for using or redeveloping the Mather properties—particularly the housing units. We also discussed with AFBCA, GSA, and others the circumstances surrounding AFBCA's decision to conduct a public sale and its rationale for terminating that sale to reopen negotiations with SHRA.

To determine whether the Air Force improperly disclosed the appraisal to prospective purchasers of the Mather family housing property, we questioned AFBCA officials and GSA officials about their efforts to maintain the confidentiality of the appraisals, reviewed correspondence pertaining to negotiations between AFBCA and SHRA, and questioned GSA officials about the procedures they used to protect the bids submitted for the public sale.

To determine whether a developer's representative participated in negotiations between the Air Force and SHRA, we reviewed correspondence in AFBCA files and questioned Air Force, GSA, SHRA, and Mather Housing Company officials and a private attorney. In particular, we inquired about the role played by the private attorney representing Mather Housing Company, LLC.

To determine whether there is evidence that the property has a higher value than the current sale price, we reviewed the four appraisals made between May 1993 and August 1995 and comparative analyses of these appraisals made by a GSA official, the Navy's Facilities Engineering Command, and the appraisers. We reviewed the comparative analyses to identify the assumptions and factors that contributed to the differences in appraised value. We also discussed with AFBCA officials their decision not to insist on the value estimated in the initial appraisal in their negotiations with SHRA.

We also obtained from GSA the names of private developers who either submitted a sealed bid for the property or appeared in person to submit bids when the property was advertised for public sale. We attempted to contact the five developers/entities that were interested in the property and were able to meet with three of them. We discussed their views on the value and marketability of the housing units at the time of the public sale in April 1995 and again in April 1998, the effect that deterioration and vandalism have had on renovation cost, the expected costs of purchasing vacant property with infrastructure in place in the Sacramento area, and the costs and efforts needed to mitigate problems caused by the presence

of asbestos and lead-based paint. We were not able to verify the claims the private developers made about property values.

Finally, we discussed with GSA officials their review and approval of appraisals and the extent to which this review and approval verifies the accuracy of the appraised fair market value.

We performed our work from April to June 1998 in accordance with generally accepted government auditing standards.

Comments From the Department of Defense

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

21 August 1998

SAF/MI
1660 Air Force Pentagon
Washington, DC 20330-1660

Mr. David R. Warren
Director, Defense Management Issues
National Security and International
Affairs Division
US General Accounting Office
Washington, DC 20548

Dear Mr. Warren

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, "Military Base Closures: Questions Concerning Proposed Sale of Housing at Mather Air Force Base," dated August 10, 1998 (GAO Code 709340), OSD Case 1667.

The DoD has reviewed the draft report and concurs without further comment.

The Department appreciates the opportunity to comment on the draft report.

Sincerely

Assistant Secretary
(Manpower, Reserve Affairs,
Installations and Environment)

Comments From the General Services Administration

Note: GAO comments supplementing those in the report appear at the end of this appendix.

U.S. GENERAL SERVICES ADMINISTRATION
Public Buildings Service

September 17, 1998

Mr. David R. Warren, Director
Defense Management Issues
National Security and
International Affairs Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Warren:

Thank you for your August 10, 1998, letter requesting General Service Administration's (GSA) comments on the General Accounting Office's (GAO) draft report on the negotiated sale of surplus family housing property at the former Mather Air Force Base, Sacramento, CA (GAO code 709340).

We have carefully studied the draft report and, in accordance with your request, our comments are enclosed. If you have any questions, please call Brian Polly, Assistant Commissioner, Property Disposal at (202) 501-0084.

Sincerely,

Paul Christolini

Robert A. Peck
Commissioner

Enclosure

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ATTACHMENT

GSA Comments on Draft GAO Report (B-280226): Proposed Negotiated Sale of Housing Units at Mather Air Force Base, Sacramento, CA

See comment 1.

1. Competition: Appendix II, Question 1

Negotiations between Sacramento Housing and Redevelopment Agency (SHRA) and the Air Force reached an impasse in early 1995. The Air Force instructed GSA to take the property to a sealed bid public sale which resulted in the submission of several bids. But the Air Force then canceled the public sale and reopened negotiations with SHRA. The public sale bids were returned unopened to the bidders.

Competition is not required in a negotiated sale with a public body for public benefit purposes. However, competition in the form of existing but unopened sealed bids was available. This public sale bid demonstrates that there were bidders available willing to bid in a competitive environment for the property's reuse.

See comment 2.

2. Public Benefit Use: Appendix II, Question 2

Negotiated sales to public bodies should only be considered when the disposal agency determines that a public benefit results which is not attainable through a competitive sale (41 CFR 101-47.304-9(c)). SHRA's public benefit use, as we understand it, is to provide low and moderate income housing. The question remains-could this same public benefit have been achieved through a public sale?

See comment 3.

3. Pass Through Sale: Appendix II, Question 2 Paragraph 4, 5

Both the House Government Reform and Oversight Committee and the General Services Administration (GSA) Handbook: Chapter 4-31 discourage pass through sales. SHRA plans on selling the property to a developer for the price it negotiated with the Air Force. This disposal should have been accomplished in a public, competitive offering.

See comment 4.

4. Release of Appraisal: Appendix II, Question 3

GSA's policy is to obtain the "highest possible price" for property sold if executed by negotiated sale. When the Air Force Base Conversion Agency (AFBCA) officials made statements allowing SHRA to compute the appraised value, the Air Force compromised the Government's ability to achieve the highest possible price. (GSA Handbook 4-32a). Both the Committee on Government Reform and Oversight and our long standing policy specifically address the release of appraisal information.

See comment 5.

5. Inclusion of Developer in Negotiations: Appendix II, Question 4

GSA's Handbook: Chapter 4-32c states that "To preclude even a perception of undue external influence, vigorous, arm's length negotiations should be conducted only with public body principals or their duly authorized representatives. No representatives of developers, contractors, or congressional staffs should be allowed to sit in, even as observers." SHRA was represented by their developer in negotiating sessions with the Air Force which was a violation of this policy.

See comment 6.

6. Protection and Maintenance: Appendix II, Paragraph 4

41 CFR 101-47.401-1(a) requires that the holding agency, in managing excess real property and surplus real property, including related personal property, "shall provide only those minimum services necessary to preserve the Government's interest therein, realizable value of the property considered." This regulation requires holding agencies to maintain property to the "extent necessary to offset serious deterioration." The extended nature of Air Force negotiations with SHRA for more than 2 years and the apparent lack of maintenance resulted in significant deterioration to the site. This neglect damaged the Government's potential return. We further understand that SHRA now plans to demolish the existing housing and build new housing.

The following are GAO's comments on GSA's letter dated September 17, 1998.

GAO Comments

1. As our report points out, there were several bidders who had either submitted or were ready to submit a bid when the Mather property was offered for public sale. Consequently, it does appear that a sufficient competitive environment existed to support a public sale. We also point out, however, that the Air Force ultimately decided to return to a negotiated sale with SHRA, which was within its prerogative under authorities delegated by GSA. While this action might have resulted in a lower selling price than that which could have been received through a public sale, it represents an effort by the Air Force to respond to the community's plans for the property.

2. Our report notes that there were questions about whether the project's public benefits might also have been achieved through a public sale. The report further notes, however, that Sacramento County has a shortage of low- and moderate-income housing, and neither the Air Force nor GSA questioned the proposed public benefit as a reasonable basis for negotiating solely with SHRA. It also points out that, according to GSA officials, public sales do not include limitations or restrictions on the use of property. Therefore, a successful bidder would not be bound by SHRA's public benefit goals.

3. Our report discusses the concerns with pass-through sales and notes that they are contrary to GSA policy. Without condoning this action, we explain the Air Force's rationale for accepting the arrangement and note that the Air Force imposed excess profits and windfall profits clauses to mitigate any undue advantage accruing to SHRA's private sector partner.

4. Our report notes that Air Force officials indirectly disclosed the initial appraised fair market value of the Mather property during negotiations with SHRA. While this is contrary to GSA policy, we are not sure it had a significant impact on the Air Force's negotiating position. In this instance, SHRA had its own appraisal of the property, which showed a much lower fair market value. SHRA's reluctance to accept a higher value became the basis for prolonged negotiations with the Air Force.

5. Our report notes that permitting a representative of the developer to sit in on negotiations between SHRA and the Air Force was contrary to guidance in GSA's Excess and Surplus Real Property Handbook. We point

out, however, that the Air Force and SHRA considered it appropriate in this instance because the individual represented the interests of the partnership between SHRA and the developer.

6. We agree and our report notes that the extended negotiations and the lack of maintenance resulted in significant deterioration of the Mather housing property and its subsequent loss of value. We have also previously cited the need for DOD to take steps to avoid such situations in disposing of base closure properties.

Major Contributors to This Report

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