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7. MILITARY LANDS: Air Force responsible for lands cleanup, court rules

Arthur O'Donnell, *Land Letter* editor

Asbestos removal at the site of the former Lowry Air Force Base in Colorado is the responsibility of the federal government, a U.S. claims judge ruled Feb. 22. While damages were not specified in the order, homebuilders that conducted removal work -- after the government refused to do so -- say they spent over \$9 million in order to complete housing developments [*Richmond American Homes, et al., v. U.S.*; No. 05-280C].

The base, located between Denver and Aurora, was shut and privatized as part of the second round of the Department of Defense's Base Realignment and Closure (BRAC) program in 1991. The Air Force sold over 700 acres to an intergovernmental agency, the Lowry Economic Redevelopment Authority for \$32.5 million. LRA, in turn, began to improve the lots for sale to several private developers. Plaintiffs in the case included Richmond American Homes, Metropolitan Development, Standard Pacific of Colorado and Touchstone Homes, although title to many of the lots in question -- called the Northwest Neighborhood -- were subsequently resold to individual homeowners.

According to the court, the Northwest Neighborhood included "not just land, but also buildings and infrastructure, much of which had to be demolished and removed before the land could be sold to developers."

In the course of this work, asbestos was found to contaminate soil in 23 separate parcels. State officials temporarily halted construction in 2003 until the sites were cleaned up. Although the developers petitioned the Air Force to conduct the work or pay for it, their claims were denied.

In his ruling, Judge Lawrence Baskir determined that the Air Force was "more than likely the original source" of the contamination, probably from barracks and other buildings that had previously been demolished before the dangers of asbestos were known and the materials regulated. The judge also said that the military entity charged with conveying the property had not warned of asbestos in the soil; in fact, he said, none of the parties had even tested for it.

Still, he found that terms of the law underlying BRAC clearly put responsibility for cleanup on the Air Force, even though government attorneys tried to argue that the developers were partly responsible for uncovering or spreading asbestos during the construction work. He rejected allegations that the developers imported the asbestos to the site because there was "a dearth of reliable information supporting speculation" that they had done so.

The judge also rejected military claims that its liability should be limited, citing correspondence between Defense Department officials and Sen. John McCain (R-Ariz.), a co-author of the BRAC legislation, expressing concern about the extent of costs that might be encountered should provisions of the law -- which were enacted -- put all cleanup responsibility on the military.

While the plaintiffs asked for financial damages as part of summary judgment, Judge Baskir dismissed that claim and directed the parties to file on the issue by March 23.

[Click here](#) to view the claims court decision.