
Air Force Base Conversion Agency
***BRAC 95 Base Conversion Process
Workshop***

**Disposal Decisions and
Decision Implementation**



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Disposal Decisions and Decision Implementation [Block 10]

OBJECTIVE

- Provide attendees with the basics of the process for completing the redevelopment planning phase and the subsequent decision implementation phase

OUTCOME

- Attendees will be aware of the decision implementation process including:
 - > Complying with NEPA for disposal actions
 - > Issuing disposal decisions
 - > Preparing Findings of Suitability to Transfer (FOSTs)
 - > Implications of environmental condition of property on final transfer
 - > Impacts of natural/cultural resources and related environmental factors on final transfer

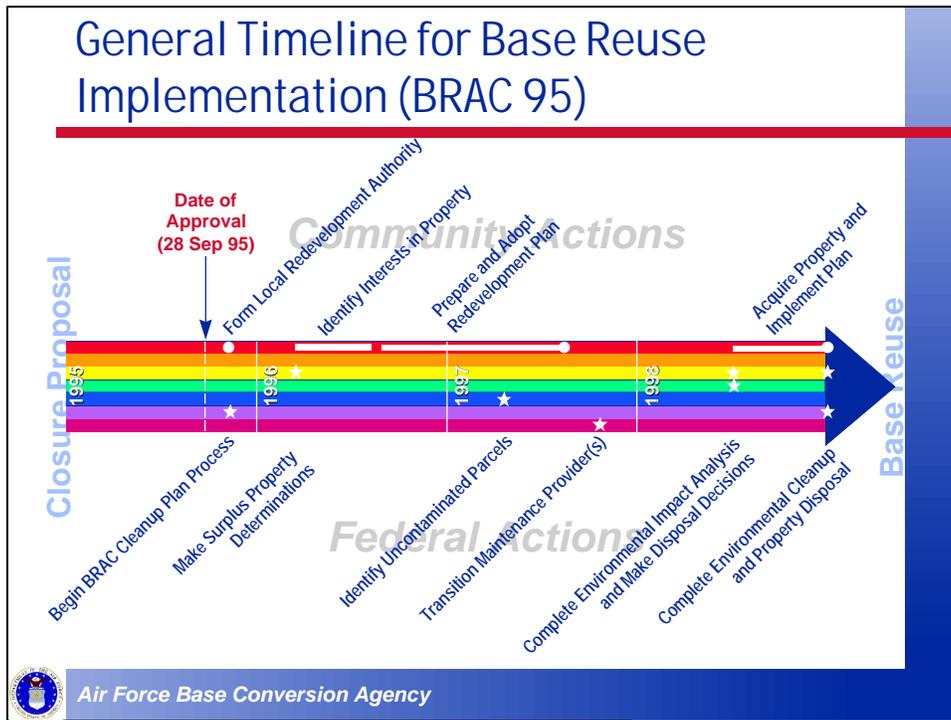


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Quiz—Disposal Decisions and Decision Implementation

1. Who can apply for a public benefit or public-purpose conveyance?
2. What two pathways for NEPA compliance are most commonly used at BRAC installations?
3. What are the principal documents needed to complete any deed transfer?
4. Who has the ultimate authority to decide how BRAC property will be conveyed?
5. What are the main reasons why BRAC installations are generally not conveyed as a single parcel of property?
6. True or False. Only one disposal decision document will be issued at each BRAC installation.
7. True or False. All interim leases are immediately converted into leases in furtherance of conveyance at the issuance of the disposal decision document.
8. What is the difference between a CERCLA ROD and a NEPA ROD?
9. Which of the following can delay or have a negative impact on property transfers:
 - a) Wetlands?
 - b) Lead-based paint?
 - c) Threatened or endangered species?
 - d) Angry citizens' groups?
 - e) Archaeological sites?
 - f) The EPA?
 - g) Asbestos?
 - h) Contaminated groundwater?

General Timeline for Base Reuse Implementation (BRAC 95)



Community Actions	Federal Actions
Form Local Redevelopment Authority	Begin BRAC Cleanup Plan Process
Identify Interests in Property	Make Surplus Property Determinations
Prepare and Adopt Redevelopment Plan	Identify Uncontaminated Parcels
Acquire Property and Implement Plan	Transition Maintenance Provider(s)
	Complete Environmental Impact Analysis and Make Disposal Decisions
	Complete Environmental Cleanup and Property Disposal

Documents Needed for Deed Transfers



- **EIS and Record of Decision or EA/FONSI and NEPA decision document**
- **Environmental Baseline Survey and Finding of Suitability to Transfer**
- **Deed Instrument (with CERCLA covenant and notifications, as applicable)**



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Final property transfers to non-Federal entities can only be accomplished if key processes and their accompanying documents are completed

NEPA Documentation

- EIS and ROD or EA/FONSI/Decision Document
- Should be based on Redevelopment Plan, whenever possible, and must also consider a variety of other documents, including land-use plans, EBS, natural and cultural resources surveys and determinations

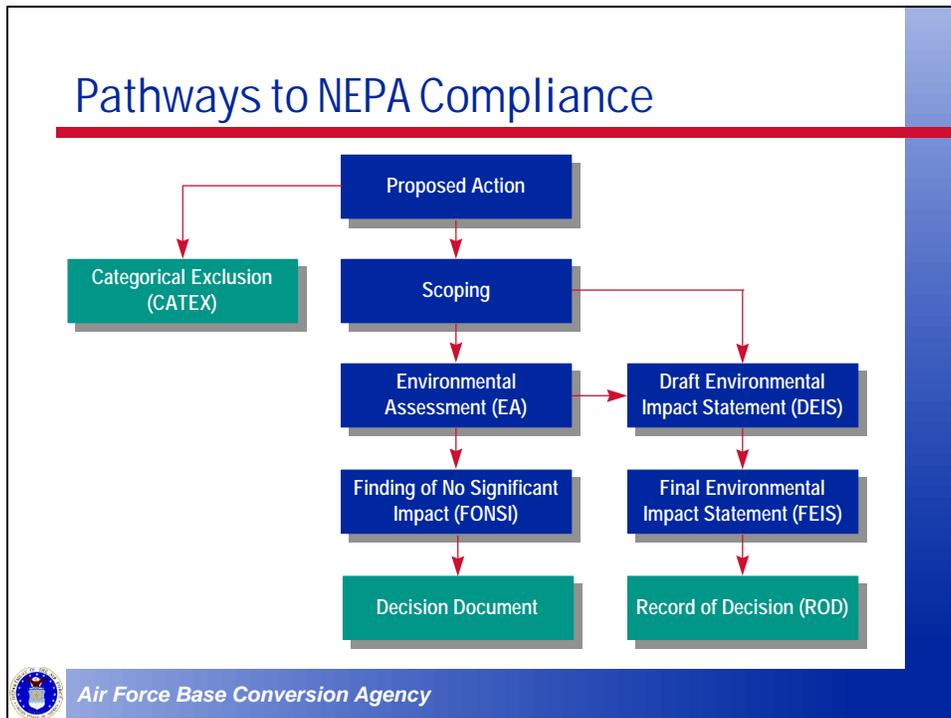
Environmental Baseline Survey/Finding of Suitability to Transfer

- EBS is based on available environmental information, including environmental cleanup studies and data, environmental cleanup decisions (e.g., CERCLA ROD), environmental compliance reports, underground storage tank records
- CERFA or base-wide EBS may require updating or additional information
- EBS must support conclusion that parcel meets definition of environmental condition of property categories 1-4
- Parcels that include property falling into categories 5-7 are not eligible for deed transfer to non-Federal entities
- FOST must be supported by FOST EBS (can be parcel-specific)
- FOST must follow 6-Step FOST process outlined in Fast Track to FOST guidance

Deed Instrument

- Must contain applicable CERCLA covenant (may require letter from EPA stating that all necessary remedial actions have been taken)
- Can include land-use restrictions (based on environmental cleanup decisions) and other conveyance method-specific restrictions and reverter clauses
- Can include mitigation measures that must be adopted by recipient

Pathways to NEPA Compliance



Actions requiring NEPA compliance in base conversion process:

- Lease actions (interim and other)
- Disposal actions

Scoping:

- Begins with publication of formal Notice of Intent to conduct EIAP in *Federal Register*
- Determines if action requires only an Environmental Assessment (many leases and some disposal actions)
- Determines if action will require a full EIS (required for many disposal actions)

Environmental Assessment:

- Results in either a Finding of No Significant Impact (FONSI) (most leases), or
- Determination that a full EIS is necessary

Environmental Impact Statement:

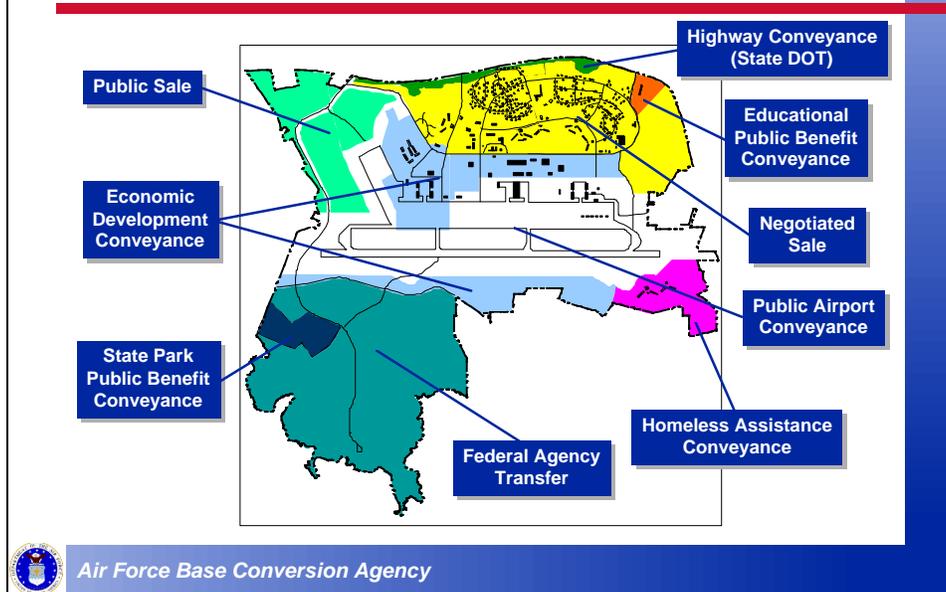
- Draft EIS completed after Scoping, data gathering and impacts analysis
 - DoD policy to use the adopted redevelopment plan as the proposed action
 - Requires 45-day public comment period and public hearing
 - Provided to EPA, Congressional delegations, and other interested parties
 - Other Federal agencies may join as cooperating agencies
- Final EIS includes comments, and is distributed and made available to public
 - Must be completed 12 months after DoD receives redevelopment plan

Record of Decision:

- Cannot be issued by the Secretary of the Air Force until 30 days after final EIS is published; no action can be taken until after ROD is issued
- Identifies decisions made as a result of EIS analysis
- Forms basis for property conveyances
- Other agencies may be required to issue separate ROD(s)

Reference: DoD Guidance on Accelerating the NEPA Analysis Process for Base Disposal Decisions

Parcels and Conveyance Methods Identified in NEPA Decision Document



The disposal decision document identifies the Air Force's disposal decision(s), after consideration of the information and analysis contained in a final EIAP document (e.g., a Final EIS or an EA/FONSI). Following formal decision document issue, the selected actions are executed during the parcel-specific decision implementation phase.

The D-ROD is issued pursuant to the requirements of NEPA (42 U.S.C. 4332) and fulfills the requirement of 40 CFR 1505.2 for a record of decision that documents the choice of action following an EIS. Note: the D-ROD should not be confused with a cleanup remedy ROD issued in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR Part 300) and the CERCLA, as amended (42 U.S.C. 9601 et seq.), which documents the selection of a remedial action as required by CERCLA 121(b).

The form and content of the D-ROD, or other NEPA decision document, should generally follow those of the Air Force model. Relevant elements of a D-ROD include: identification of Federal cooperating agencies and any D-RODs issued by other Federal agencies; a description of opportunities for and results of public involvement; the results of property screening; a list and description of the alternatives considered in the FEIS and their associated environmental impacts; identification of the environmentally preferable alternative(s); a description of and rationale for the Air Force's selected disposal actions; and finally, a summary of the environmental impacts of the selected alternative and measures to avoid or mitigate such impacts.

Under certain circumstances, it may not be possible to make disposal decisions for the entire installation at the same time. In such cases, the Air Force will issue a partial D-ROD for those parcels for which decisions can be made, to enable productive reuse of those parcels. When decisions are possible for the remaining parcels, the Air Force will issue a supplemental D-ROD describing its disposal decisions for those parcels. In some cases, the Air Force may also elect to issue a supplemental D-ROD to modify or otherwise revise the decisions made in its original D-ROD (e.g., to reconfigure the boundaries of certain parcels). However, if the modified decision departs substantially from the alternatives considered in the FEIS, the Air Force may be required under 40 CFR 1502.9(c) to conduct a supplemental EIAP.

CERCLA § 120 (h) (3)

“... each deed entered into for the transfer of such property by the United States to any other person or entity shall contain ... a covenant warranting that—

(i) all remedial action necessary to protect human health and the environment ... has been taken before the date of transfer, and

(ii) any additional remedial action found to be necessary ... shall be conducted by the United States.”



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CERCLA § 120(h)(3) (42 U.S.C. § 9620(h)(3)):

(3) Contents of certain deeds

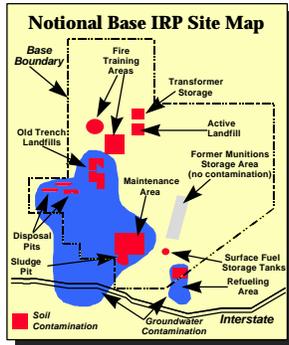
After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

- (A) to the extent such information is available on the basis of a complete search of agency files—
 - (i) a notice of the type and quantity of such hazardous substances,
 - (ii) notice of the time at which such storage, release, or disposal took place, and
 - (iii) a description of the remedial action taken, if any;
- (B) a covenant warranting that—
 - (i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and
 - (ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and
- (C) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

For purposes of subparagraph (B)(i), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (B) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (B) that has not been taken on the date of the lease.

Environmental Baseline Survey (EBS)



■ Survey Activities Include:

- Records Search and Review, including Chain-of-title documents
- Aerial Photography Analysis
- Interviews
- Visual Inspections
- Contamination Source Identification
- Ongoing Response Actions
- Adjacent Facility Records Search and Review
- Visual/Physical Inspection of Adjacent Property

■ EBS Report Documents Findings



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Environmental Baseline Surveys

- Refers to both a process (survey components are shown above) and a report (EBS Report)
- Establish the environmental baseline at the time of property transactions
- Establish the baseline against which future environmental liability claims will be measured
- Required by DoD CERFA, FOST and FOSL policies
- Used to support uncontaminated property identification under CERFA, and all lease and deed transactions
- “CERFA EBS,” or “base-wide EBS” consists of at least those activities identified above; subsequent (also termed “site-specific” or “parcel-specific”) EBSs may require additional activities such as environmental sampling, where appropriate
- Earliest workable draft documents should be provided to regulators
- EBSs may require supplemental survey activities as necessary
- The EBS is based on existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the installation to determine or discover the presence or likely presence of a release or threatened release
- An EBS is also useful at the end of a lease (to help prepare lease close-out environmental condition reports, e.g., whether environmental conditions have changed during the term of the lease)

See Also: *Appendix B, BRAC Cleanup Plan Guidebook, Department of Defense*

Environmental Condition of Property Categories (Area Types)

1. No Storage, Release, Disposal, or Migration of Hazardous Substances or Petroleum Products
2. Only Storage (No Release, Disposal, or Migration)
3. Storage, Release, Disposal, or Migration, but No Removal/Remedial Actions Required
4. Required Removal/Remedial Actions Have Been Taken
5. Removal/Remedial Actions Under Way
6. Response Actions Not Yet Implemented
7. Further Evaluation Required



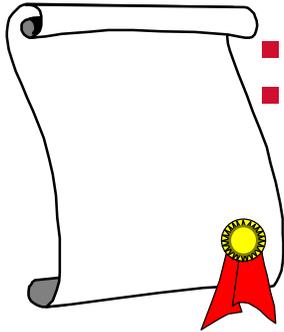
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Seven Environmental Condition of Property Categories (“Area Types”)

These categories are tools that help classify BRAC properties in support of FOSTs and FOSLs. These definitions occur in the Fast Track to FOST, A Guide to Determining if Property is Environmentally Suitable for Transfer, Interim Final, February 1995.

1. Areas where no storage, release, or disposal of hazardous substances or petroleum products has occurred
2. Areas where only storage (less than one year) of hazardous substances has occurred, but no release, disposal has occurred
Areas where only storage (one year or more) of hazardous substances has occurred, but no release, disposal has occurred
3. Areas where storage or release of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response
4. Areas where storage or release of hazardous substances has occurred, and all removal or remedial actions necessary to protect human health and the environment have been taken
5. Areas where storage or release of hazardous substances has occurred, and removal or remedial actions are under way, but all required remedial actions have not yet been taken
6. Areas where storage or release of hazardous substances has occurred, but required actions have not yet been implemented.
7. Areas that are not evaluated or require additional evaluation

Findings of Suitability to Transfer



- **Determination that property is environmentally suitable for transfer by deed under CERCLA §120(h)**
- **Based on an EBS**
- **DoD policy and objectives:**
 - > **Ensure protection of human health and environment**
 - > **Ensure transfer does not interfere with environmental response actions**
 - > **Ensure compliance with applicable environmental requirements**
 - > **Provide opportunity for public and regulatory participation**
 - > **Ensure sufficient review**



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In June 1994, DoD issued guidance on the environmental review process to reach a finding of suitability to transfer (FOST)

DoD's FOST guidance provides a framework for documenting the conclusion that real property made available through the BRAC process is environmentally suitable for transfer by deed under Section 120 of CERCLA. It sets forth specific requirements for notifying regulatory agencies and the public during the environmental review process. In addition, for property on which any hazardous substances have been stored for one year or more or are known to have been released or disposed of, Section 120(h) of CERCLA requires that notice of such storage, including the types and quantities of hazardous substances, be given both in deeds and in contracts for sale. Section 120(h) of CERCLA also requires that deeds contain certain covenants with respect to actions necessary to protect human health and the environment.

The time required to complete a FOST (that is, one that is approved and signed by the appropriate DoD Component) will vary, depending on the complexity of the environmental condition of the property to be transferred. Close coordination between the DoD Component and the regulatory agencies is essential to obtain consensus on the notification requirements and covenants for the FOST. If the property to be transferred had been identified by the DoD Component as uncontaminated under CERFA, and the appropriate regulatory agencies had concurred with the identification, much of the environmental review process for that property will have been done. However, all notifications of the regulatory agencies and the public describing the particular transfer continue to be a crucial part of the FOST process, and should not be neglected.

Source: Fast Track to FOST, A Guide to Determining if Property is Environmentally Suitable for Transfer, Interim Final, February 1995

FOST Requirements

STANDARD CLASSIFICATION OF ENVIRONMENTAL CONDITION OF PROPERTY AREA TYPES	AREA TYPE SUBCATEGORY DESCRIPTIONS	CERFA ELIGIBILITY CATEGORIES	CERCLA 120(h)(1) NOTIFICATION REQUIREMENTS	CERCLA 120(h)(3)/120(h)(4) COVENANT REQUIREMENTS	PERTINENT DoD FOST GUIDANCE
AREA TYPE 1 Area where no storage, release or disposal of hazardous substances has occurred	No storage, release or disposal of hazardous substances occurred	CERFA eligible	Notification not required	Covenant and access clauses required	DoD Guidance on the Environmental Review Process to Reach a FOST for Property Where No Release or Disposal has Occurred
AREA TYPE 2 Area where only storage of hazardous substances has occurred, but no release or disposal has occurred	Only storage (less than 1 year), but no release occurred				
AREA TYPE 3 Area where a release of hazardous substances has occurred, but at concentrations that do not require a remedial response	Only storage (for 1 year or more), but no release occurred	Not CERFA eligible	Notification required		DoD Guidance on the Environmental Review Process to Reach a FOST for Property Where Release or Disposal has Occurred
	Release occurred (below reportable quantities)				
AREA TYPE 4 Area where all remedial actions necessary, with respect to any hazardous substances remaining on the property, have been taken	Release occurred (above reportable quantities)				
AREA TYPE 5 Area of known contamination with removal or remedial action under way		Not eligible for transfer by deed			
AREA TYPE 6 Area of known contamination where required response actions have not yet been implemented					
AREA TYPE 7 Area that is unevaluated or that requires further evaluation					



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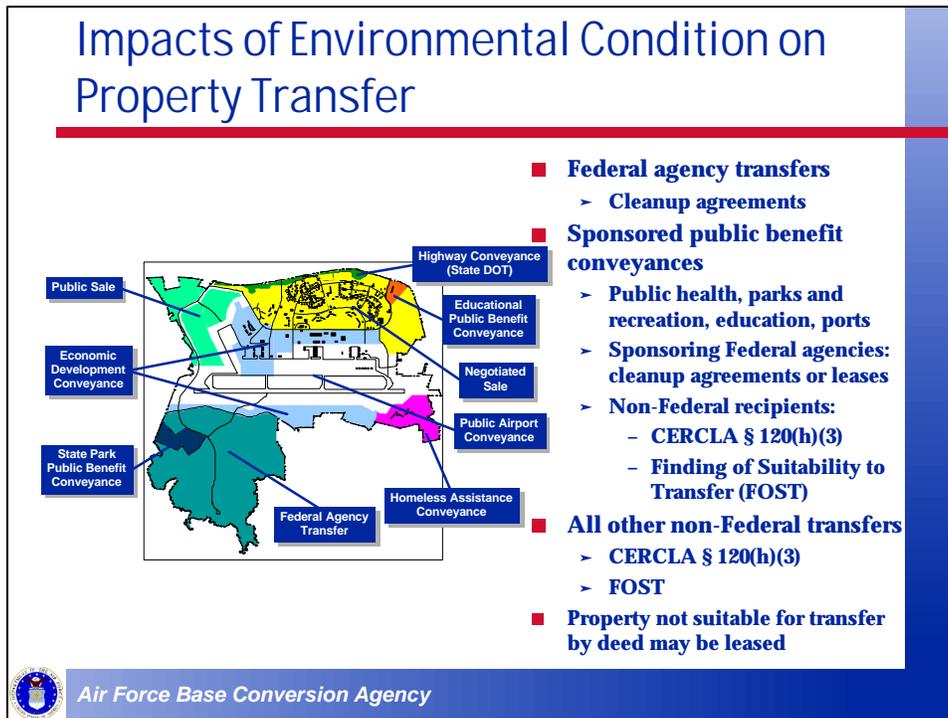
Finding of Suitability to Transfer (FOST) Requirements for Notification, Covenants, and Access

This table describes the seven environmental condition of property Area Types or categories, provides the reference citations for notification and covenant requirements, and identifies the relevant DoD FOST guidance. Note that storage or release of petroleum products is evaluated as part of the FOST EBS, but storage or release of petroleum products only does not prohibit the property's transfer under CERCLA Section 120(h).

Note also that only property meeting the criteria of categories 1-4 is eligible for transfer by deed.

Reference: Fast Track to FOST, A Guide to Determining if Property is Environmentally Suitable for Transfer, Interim Final, February 1995

Impacts of Environmental Condition on Property Transfer



Possible Impacts of Environmental Condition of Property on Final Transfer

After a decision has been made (via the disposal Record of Decision or equivalent decision document) to convey property, the environmental condition of the property will play a role in the final transaction. Both the transfer method and the degree of environmental contamination will have an impact.

Federal Agency Transfers

- May require Air Force to complete cleanup (and FOST equivalent) before accepting property assignment, or may request a separate inter-agency agreement to assure cleanup is paid for by Air Force

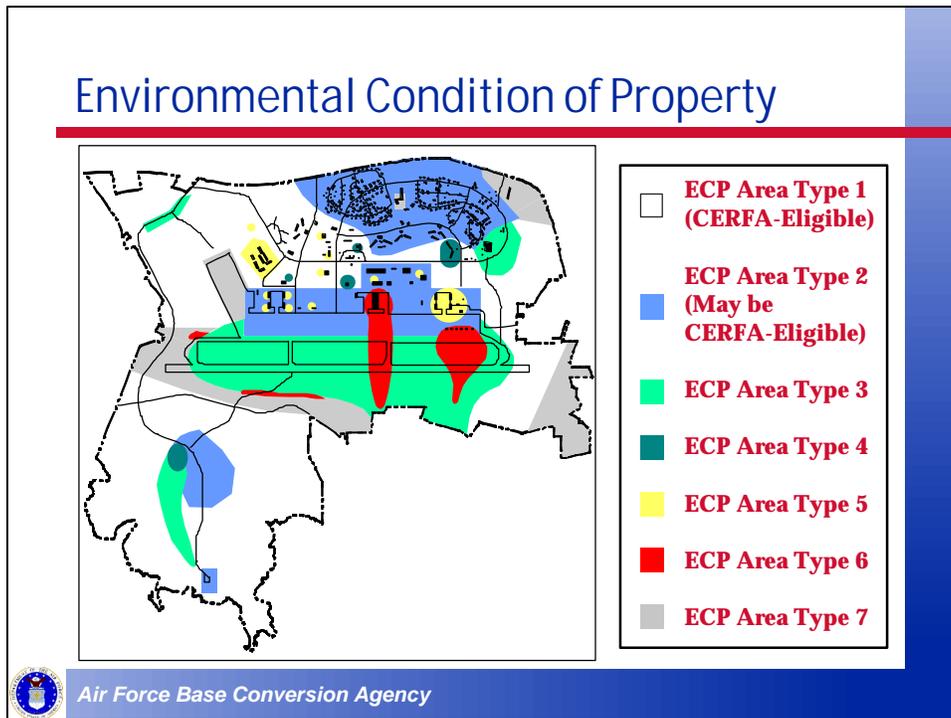
Public Purpose Conveyances

- Sponsored public benefit conveyances involve assignment by Air Force of property to Federal sponsoring agency, prior to transfer to ultimate eligible recipient
 - Some Federal sponsoring agencies have refused to accept assignment of contaminated property until FOST can be issued, because of perceived CERCLA liability
 - Other Federal sponsoring agencies are willing to allow lease passthroughs
- Approved public benefit conveyances are made directly to eligible recipient; the approving Federal agency does not receive assignment of property, and environmental considerations are driven by the DoD FOST policy

Negotiated Sales and Public Sales

- Environmental considerations are driven by the DoD FOST policy

Environmental Condition of Property



Example Environmental Condition of Property Map

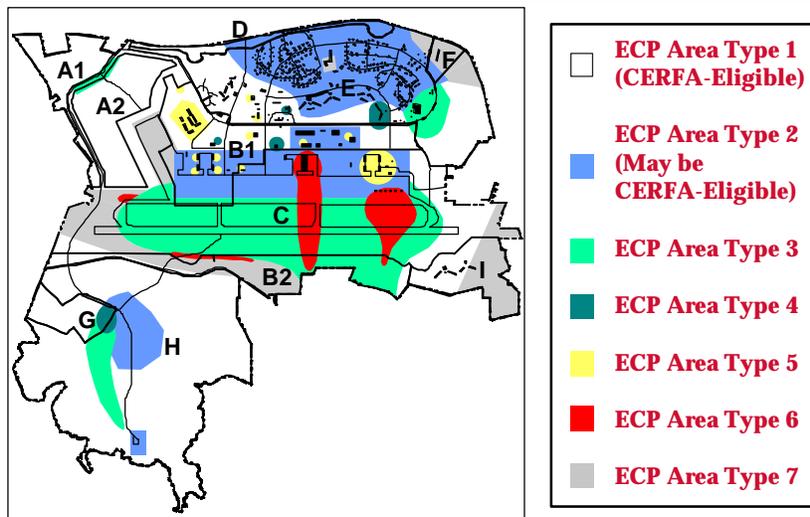
The above map illustrates the environmental condition of property (ECP) for a notional installation.

Note that ECP Area Type 1 property (and Type 2 property when storage has occurred for less than one year) is eligible for identification as “uncontaminated” under CERFA. However, these “uncontaminated” areas, while potentially including significant acreage at an installation, do not commonly occur in contiguous or readily reused portions of a base. This is because for many conveyances (e.g., public airport conveyances), parcel boundaries are configured according to reuse requirements and may not bear any relationship to environmental condition of property. In addition, note that Area Type 1–4 properties are all eligible for transfer by deed, even though they do not all meet the definition of “uncontaminated” under CERFA.

The environmental condition of property is determined by an analysis of all contamination, whether present at the surface or in the subsurface.

References: DoD BRAC Cleanup Plan (BCP) Guidebook; DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where Release or Disposal has Occurred, 1 June 1994

Environmental Condition of Property and Disposal Parcels



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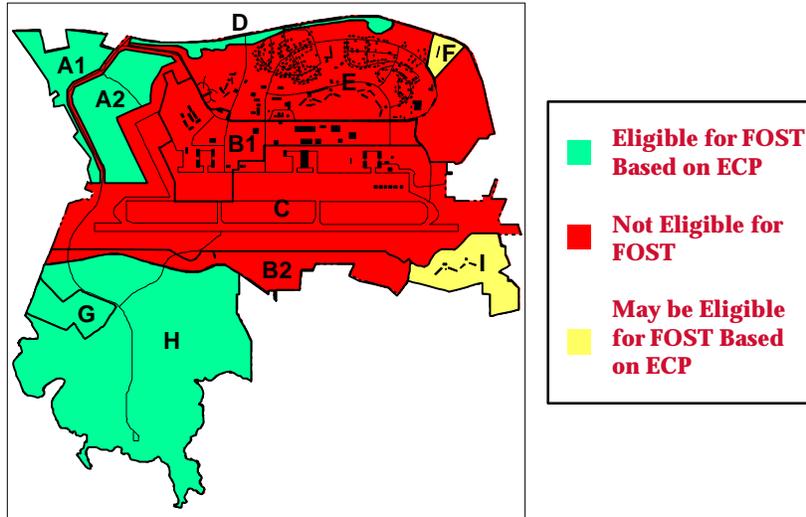
Comparison of Environmental Condition of Property and Disposal Parcels

The above map overlays the preceding environmental condition of property map with the disposal parcels identified in a Disposal Record of Decision or other disposal decision document. The distribution of environmental contamination is commonly independent of parcels and their reuse potential. Despite this fact, several of the nine (A-I) disposal parcels are eligible for transfer by deed (see next slide).

Several areas of the installation are designated as Area Type 7 property, requiring further evaluation. Sufficient information about these areas (e.g., additional records analyses or focused environmental sampling) is not available to allow a more definitive designation. In addition, an area may be designated Type 7 property when reuse-based cleanup standards have not yet been established and the distinction between Area Types 3 and 6 cannot be made.

References: DoD BRAC Cleanup Plan (BCP) Guidebook; DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where Release or Disposal has Occurred, 1 June 1994

Eligibility of Disposal Parcels for FOST



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Eligibility of Property for Transfer by Deed

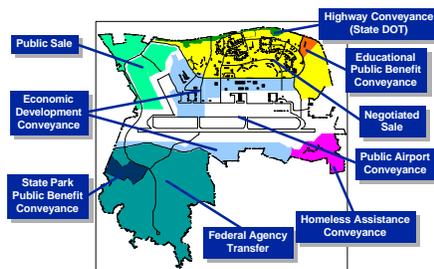
The above map reconciles environmental condition of property with disposal parcels and presents the result in the most concise form, identifying those parcels eligible for transfer by deed (Finding of Suitability to Transfer [FOST]). Note that any parcels consisting solely of ECP Area Types 1–4 property are eligible for a FOST. Parcels containing any areas designated as Area Types 5 or 6 are not eligible for a FOST. Parcels containing Area Type 7 property may be eligible for FOST upon further evaluation, if Area Types 1–4 are the only other area types within the parcels.

Compare this map with the previous ones and identify the requirements for making all parcels eligible for a FOST. Are the requirements the same for each parcel? Can some parcels be made eligible for a FOST with less apparent effort (and cost) than others? How do parcel-specific requirements compare to the likely reuse priorities for the parcels (see the land-use map in the Redevelopment Planning block for comparison)?

A FOST also considers other factors, such as intended use of a parcel and restrictions on use of the parcel, if any; identification of ECP Area Types is not always equivalent to making a Finding of Suitability to Transfer.

References: DoD BRAC Cleanup Plan (BCP) Guidebook; DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where Release or Disposal has Occurred, 1 June 1994

Lease in Furtherance of Conveyance



- Used when CERCLA prevents deed transfer
- Terminates when deed conveyance can be accomplished
- Preceded by an EBS/FOSL
- Additional NEPA/other analyses may be required
- Must include termination clause (still a lease, not deed)
- Tailored to specific situation
- Lease should specify terms and conditions applicable to final conveyance



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Leases in furtherance of conveyance (Source: Base Reuse Implementation Manual, Chapter 5.2.3)

- After the Secretary of the Air Force issues a final disposal decision, applications for conveyance of the property from the LRA or other qualified party and the terms of the conveyance can be negotiated and approved. However, in some cases, immediate conveyance of the property following agreement on the terms is not possible, usually because environmental remedial action obligations under CERCLA § 120(h) prior to deed transfer have not been fulfilled
- In cases where CERCLA § 120(h)(3) prevents an immediate deed transfer, immediate possession of all or portions of the installation may be granted to the ultimate transferee through a lease. This lease may be for a term longer than 5 years, and will terminate as soon as the deed conveying the property is accomplished. The reuse needs of the LRA or other recipients will be considered in determining the term of the lease
- This document is a lease and is not a conveyance of title. It is an agreement that grants an exclusive possessory interest in real property for a period of time for a specified consideration
- The lease must be preceded by an EBS and by a FOSL
- If the proposed use or activity is outside the scope of existing NEPA reviews or the Air Force disposal decision, additional NEPA analysis may be required
- The lease should contain provisions similar to the model interim lease provisions and all of the DoD standard environmental provisions. The lease must include a right of termination for the Government for breach of the material provisions of the lease and a right to terminate when the property is ready to be conveyed. In all cases, the environmental clauses are considered material provisions of the lease
- The lease should also contain express provisions or conditions restricting the use of the property; e.g., the proposed use must be compatible with the disposal decision; major construction and subleasing activities will require Government approval; a change in use must be approved by the Government. The Air Force, as landlord, must oversee the Federal interest in the property
- Because of the unique circumstances of each proposed conveyance, a lease in furtherance of conveyance will be tailored to the specific situation. Additional terms may be added to reflect site-specific operational, environmental, natural and cultural resources, and other requirements. Attention should be given to impacts on wetlands and sensitive habitats
- A lease in furtherance of conveyance should specify:
 - The price, terms, and conditions applicable under a negotiated sale; or
 - The terms and conditions of an EDC; if an EDC is anticipated, then the lease should be tied to an application that has been reviewed and approved
 - The terms and conditions for disposal under alternate authorities

Indemnification of Property Transferees

- **Section 330 of the National Defense Authorization Act for FY 1993 (Pub. L. 102-484, as amended) states:**

“... the Secretary of Defense shall ... indemnify [persons or entities acquiring ownership or control of any facility] from ... any suit, claim, ... or other fee ... that results from ... the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any [closing] military installation ...”



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NDAA 93 (Pub. L. 102-484), Section 330(a) [as amended by NDAA 94 (Pub. L. 103-160), Section 1002]:

SEC. 330. INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY.

(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

- (2) The persons and entities described in this paragraph are the following:
- (A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).
 - (B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.
 - (C) Any other person or entity that acquires such ownership or control.
 - (D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).
- (3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

Other Impacts on Property Transfer— Deed/Use Restrictions



- **Natural and Cultural Resources**
 - > Threatened and endangered species
 - > Sensitive habitats, wetlands and floodplains
 - > Archaeological resources
 - > Historic structures
 - > Native American resources
- **Public-purpose conveyances**
- **Cleanup-based use restrictions**

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Natural and cultural resources impacts on property transfers **Related environmental factors impacts on property transfers**

Even if the environmental condition of a transfer parcel of installation property is pristine, a variety of natural and cultural resources factors may impact property transfers. Some of these include:

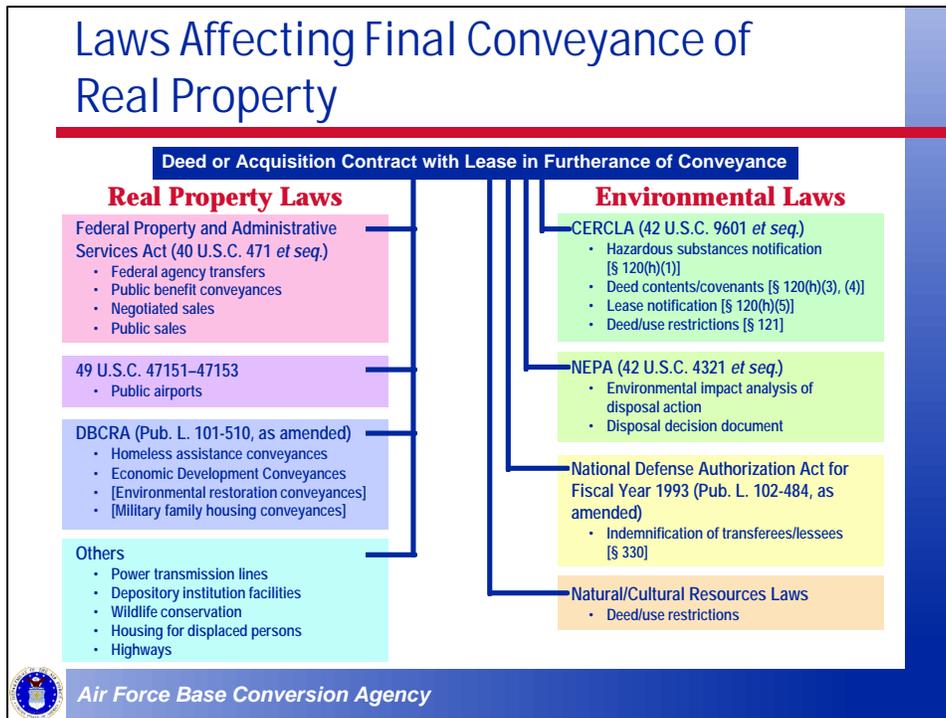
- Threatened and endangered species (Federal and State)
- Sensitive habitats
- Wetlands
- Surface waters
- Floodplains
- Historic structures
- Prehistoric sites
- Native American resources
- Others, as applicable

The impacts on these resources from disposal should have already been analyzed as part of the environmental impact analysis process, Section 106 National Historic Preservation Act consultation with the State Historic Preservation Officer, or other local planning processes.

Additionally, notification and other requirements relating to lead-based paint, asbestos, radon, and other related environmental factors must be met in order to convey the property.

References: Block 2, and Appendix A, Base Reuse Implementation Manual

Laws Affecting Final Conveyance of Real Property



Final conveyance of real property at BRAC installations is affected primarily by two general classes of laws: **real property laws** and **environmental laws**. Of these, the environmental laws have a broader impact. Each final real estate transaction is authorized by the single real property law that created the conveyance (e.g., Federal Property and Administrative Services Act for a public benefit conveyance or the Defense Base Closure and Realignment Act for an Economic Development Conveyance). However, each transaction is affected by several environmental laws.

CERCLA § 120(h)(1) requires that a recipient be notified before the transaction occurs if any hazardous substances had been stored for 1 year or more, released, or disposed of on the property. Section 120(h)(3) requires that the deed for the conveyance contain a covenant warranting that all remedial action necessary to protect human health and the environment has been taken with respect to such substances and that the Federal Government will remain responsible for any required additional remediation of contamination it caused; if this covenant cannot be given, a deed cannot be issued and an acquisition contract with a lease in furtherance of conveyance must be used. Section 120(h)(4) requires a similar warrant for property identified as uncontaminated under CERFA. Section 120(h)(5) mandates that the State be notified of leases (such as leases in furtherance of conveyance) that extend past the date of termination of Air Force operations on the property. Finally, section 121 can impose deed or use restrictions on the property, if such restrictions were part of any chosen CERCLA remedial action.

NEPA requires an environmental impact analysis of the Air Force's proposed disposal actions before any deed or lease in furtherance of conveyance can be granted; the selected disposal action(s) must then be documented in a NEPA Record of Decision or equivalent decision document.

The National Defense Authorization Act for Fiscal Year 1993 (§ 330) stipulates that the Air Force must grant broad indemnification to any property transferee or lessee so that the recipient is not liable for damages, claims, etc. resulting from releases of hazardous substances or petroleum products caused by the Air Force.

Lastly, **Natural and Cultural Resources Laws** can affect final deed or lease transactions by imposing deed or use restrictions necessary to protect resources located on or near the property.

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