

**DoD GUIDANCE ON THE ENVIRONMENTAL REVIEW PROCESS TO REACH A  
FINDING OF SUITABILITY TO TRANSFER (FOST)  
FOR PROPERTY WHERE RELEASE OR DISPOSAL HAS OCCURRED**

I. PURPOSE.

This policy provides guidance to the Department of Defense (DoD) Components on the necessary process to document parcels of real property made available through the Base Realignment and Closure (BRAC) process and which are environmentally suitable for transfer by deed under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. Section 9620(h)). This policy does not apply to transfers of property to persons paying the cost of environmental restoration activities under the provisions of Section 2908 of the National Defense Authorization Act for FY 94. The DoD Components may develop implementation procedures which may contain additional requirements based on their own specific needs and unique requirements but will, at a minimum, include the following documentation and procedures. This guidance applies to property where release or disposal of hazardous substances or petroleum products has occurred and which is being considered for transfer by deed. Nothing in this policy negates the requirement to comply with the National Environmental Policy Act (NEPA).

II. APPLICABILITY AND SCOPE.

This policy applies to all DoD installations selected for closure or realignment pursuant to the Base Closure and Realignment Act of 1988 (P.L. 100-526) (BRAC 88) or the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) (BRAC 91, 93, and 95). The policy's scope intends to meet the following objectives:

- A. Ensure protection of human health and the environment.
- B. Develop a DoD-wide process to assess, determine and document the environmental suitability of properties for transfer by deed.
- C. Ensure transfer of properties by deed does not interfere with response actions being conducted at National Priorities List (NPL) sites under the provisions of a Federal Facilities Agreement or at non-NPL sites under the provisions of other types of agreements or any corrective action orders.
- D. Ensure compliance with all applicable environmental cleanup requirements and allow the DoD Component to demonstrate compliance with Section 120(h) of CERCLA before properties are transferred by deed.
- E. Provide for adequate public and regulatory participation without unduly encumbering the Defense Department Components' authority and mandate to make property available for reuse in a timely manner.
- F. Ensure a sufficient environmental review of the real property being considered for transfer is conducted to avoid unwarranted risks of future liability.

III. POLICY.

- A. Requirement for Assessment, Determination and Documentation of Properties Suitable for Transfer by Deed.

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or his/her designated representative, shall assess, determine and document when properties where release or disposal of hazardous substances or petroleum products has occurred are suitable for transfer by deed. This assessment and determination will be based on an Environmental Baseline Survey (EBS) and will be documented in a Finding of Suitability to Transfer (FOST) as described below.

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### B. Investigation.

1. Environmental Baseline Survey (EBS). An EBS will be prepared encompassing any property to be transferred. The EBS will be based on all existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or petroleum product. In certain cases additional data, including sampling, if appropriate under the circumstances, may be needed in the EBS to support the FOST determination.

A previously conducted EBS may be updated as necessary and used for making a FOST determination, where appropriate. An EBS also may satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Lease [FOSL] or satisfy the requirements of the Community Environmental Response Facilitation Act [CERFA]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning all environmentally significant current and past uses of the real property and shall, at a minimum, consist of the following:
  - a. Detailed search and review of available information and records in the possession of the DoD Components or records made available by the regulatory agencies or other involved Federal agencies. DoD Components are responsible for requesting and making reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for radioactive materials, asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA and RFI], Underground Storage Tank Cleanup Program) to determine the environmental condition of the property.
  - b. Review of all reasonably obtainable Federal, State, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum product, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.
  - c. Analysis of aerial photographs which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies that may reflect prior uses of the real property.
  - d. Interviews with current and/or former employees involved in operations on the real property.
  - e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, noting sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.
  - f. Identification of sources of contamination on the installation and on adjacent properties which could migrate to the real property.
  - g. Ongoing response actions and actions that have been taken at, or adjacent to, the real property.
  - h. A physical inspection of property adjacent to the real property, as appropriate, and to the extent permitted by owners or operators of such property.

NOTE: For the purposes of paragraphs b, e, f, g, & h above, “adjacent properties” are defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that could pose significant environmental concern and/or have a significant impact on the results of the EBS.

3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:
  - a. An Executive Summary briefly stating the areas of real property (or parcels) evaluated and the conclusions of the survey.
  - b. The property identification (e.g., address, assessor parcel number, legal description).
  - c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available maps.
  - d. Any relevant information obtained from a review of the recorded chain of title documents regarding the real property. The review should address those prior ownerships/uses that could reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.
  - e. A description of past and current activities, including all past and current DoD and non-DoD uses to the extent such information is reasonably available, on the property and on adjacent properties.
  - f. A description of hazardous substances and petroleum products management practices (to include storage, release, treatment or disposal) at the property and at adjacent properties, to the extent such information is reasonably available.
  - g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.
  - h. Description of ongoing response actions or actions that have been taken at or adjacent to the property.
  - j. Reference to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request.)
4. Analysis of Intended Use. Before the signing of a FOST, an analysis of the intended use of the property, if known, will be conducted and will include:
  - a. An evaluation of the environmental suitability of the property for transfer by deed for the intended purpose, if known, including the rationale for the determination of such suitability.
  - b. A listing of specific recommended restrictions on use of the property, if any, to protect human health and the environment or the environmental restoration process. For remediated parcels such restrictions would include those documented in the Record of Decision (ROD) under the National Oil and Hazardous Substances Contingency Plan (NCP) or equivalent decision documents.

NOTE: The covenant required by CERCLA Section 120(h)(3) regarding hazardous substances must be based on either (1) a determination that no remedial action is required or (2) a determination that all remedial

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action necessary to protect human health and the environment has been taken. The determination that no remedial action is required or that all remedial action has been taken shall be supported by the appropriate documentation required by the program (e.g., CERCLA, RCRA, UST, DERP, state law) under which the property was evaluated and addressed. Such decision document may include a CERCLA Record of Decision (ROD), No Further Action ROD, No Further Response Action Planned (NFRAP), or other such similar RCRA, UST, DERP, or state law documentation, or other documentation that describes a consensus between the lead regulatory agency and the DoD Component. The intent is to use the processes under existing cleanup authorities and programs, and not create an additional separate process, to determine whether property requires remedial action or can be transferred as is. For property that requires remedial action, whether or not an NPL site and regardless of which cleanup authority is used, the covenant that all remedial action has been taken may only be made after a demonstration to EPA that an approved remedy is installed and operating properly and successfully.

### C. Finding of Suitability to Transfer (FOST).

After completion and review of the EBS, the intended use analysis, and any available local community reuse plan, the DoD Component will sign a FOST once a determination has been made that the property is suitable for transfer by deed for the intended purpose, if known, because the requirements of CERCLA Section 120(h)(3) have been met for the property, taking into account the potential risk of future liability. The DoD component will provide a copy of the signed FOST to the regulator.

## IV. PROCEDURES AND RESPONSIBILITIES.

- A. Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available, including the EBS and the proposed FOST. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOST.
- B. The regulatory agencies and public will be notified of the intent to sign a FOST. This will take place at the earliest possible time, but no later than 30 days prior to a transfer by deed. The notification will be mailed to the regulatory agencies and will include the draft FOST. Either the EBS report or a summary of the findings of the EBS process that pertain to the parcel to be transferred will be made available to the public. Additional supporting documentation will be made available upon request. The DoD Components will address relevant comments from regulatory officials and other appropriate entities that have been received within this 30-day period. After consideration of all relevant comments (unresolved comments will be included as an appendix to the FOST) and signing of the FOST, the DoD Component may proceed to convey the property by deed.
- C. The DoD Components will provide public notice of the signing of the FOST and will retain the signed FOST, including all regulatory comments and responses on the EBS and/or FOST, in the transaction file (and the Administrative Record, where applicable) and will make the FOST available to the public upon request.
- D. Conditions will be included in the transfer deed to:
  - 1. Ensure environmental investigations and remedial and oversight activities will not be disrupted at any time. Such conditions will include, but are not limited to:

- a. Providing for continued access for DoD (or its designated contractor) and regulatory agencies to monitor the effectiveness of cleanup, perform five-year reviews, and/or take additional remedial or removal actions.
  - b. Prohibiting activities that could disrupt any remediation activities or jeopardize the protectiveness of those remedies such as the following:
    - (1) Surface application of water that could impact the migration of contaminated ground water;
    - (2) Subsurface drilling or use of ground water unless DoD determines that there will be no adverse impacts on the cleanup process; or,
    - (3) Construction that would interfere with, negatively impact, or restrict access for cleanup work.
2. Limit use as required by the FOST.