

The Services' Experiences with Land Use Controls

presentation by

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Overview of Restrictions on Land Use

- Anyone who owns property is regulated in how they can use their land.
- One very important reason for restricting the use of land is to protect the health of people and the health of the environment
- Protecting human health and the environment is one of DoD's central priorities and responsibilities in the reuse and redevelopment of closing military installations

Working Definition

- Land Use Controls (LUCs) are mechanisms that restrict the use of, or access to, property to prevent exposure to hazardous substances. These controls can both protect the integrity of the remedy and limit exposure of individuals after property has been transferred, by limiting the reuse activities that can be performed on a particular site.
- $LUCs = ECs + ICs$

LUCs in BRAC

- LUCs are and will be used on BRAC property
- They are recognized in the NCP as appropriate methods of addressing contamination
- BRAC, overall, is progressing toward property transfer
- Increased awareness, consideration, and use of LUCs is following this progression

LUCs Play an Essential Role

- LUCs control or eliminate exposure pathways
- The lack of feasible and/or cost effective remedies may necessitate the use of LUCs
- LUCs are used where no active remediation is needed because the level of contamination is below screening levels for a particular land use
- LUCs are used to supplement and maintain the integrity of the remedy

Services' Experiences with LUCs

- Limited experience with LUCs on transferred BRAC property so far
- LUCs are in place and being used on only a few transferred properties
- LUCs have been used successfully, long-term on non-BRAC property

DoD Guidance on LUCs

- Applies to real property being transferred out of federal control; does not apply to active installations or property being transferred within federal government
- Developed in coordination with the Services and GSA
- Assumes that an environmental decision has been made, resulting in a decision to restrict land use
- Guidance covers pre-transfer, at-transfer, and post-transfer

DoD Guidance on LUCs

LUCs at the Intersection of the Environmental and Real Estate Processes

- DoD will develop remedy consistent with the proposed reuse
- DoD will provide information about the LUC and the property
- Property is then transferred and incorporated into state and local systems of control

DoD Guidance on LUCs

Pre-Transfer

Consideration of LUCs in the Environmental Process

- The goal is to facilitate, as much as possible, the needs of the community
- Decisions to use LUCs on BRAC property are always made with stakeholder involvement

DoD Guidance on LUCs

Pre-Transfer Documentation of LUCs

- When LUCs are used they will be recorded in the FOST (or similar document).
- Information recorded in the FOST will include:
 - specific description of the control
 - rationale for the control
 - description and location of property

DoD Guidance on LUCs

Pre-Transfer Implementation of LUCs

- State and local agencies are involved early
- Involve multiple agencies and use a layering strategy
- Use agencies and mechanisms that are already in place
- Develop implementation plan for land use controls

DoD Guidance on LUCs

At Transfer

- DoD will provide information in the FOST
- Service will draft quitclaim deed language
- Quitclaim deed will be recorded by the transferee
- Property is then incorporated into established systems of management and control

DoD Guidance on LUCs

Post Transfer

- There are a number of land use management tools available to ensure LUCs are maintained
- DoD has limited authority over property that it no longer owns
- Growing trend in state environmental law to develop LUC management and enforcement systems

DoD Guidance on LUCs

Modification/Termination and Records Management

- DoD will terminate or modify LUCs if the remedy has met cleanup standards or a transferee cleans up property to a higher standard
- DoD's existing central database will be modified to include fields for tracking LUCs

Services are Developing Complementary Guidance and LUC Implementation Strategies.

- Army
- Navy
- Air Force

Maintaining LUC Effectiveness

- Violations can occur for various reasons
- DoD guidance aims to address these issues

Maintaining LUC Effectiveness

- Examples of violations raised at last DERTF
 - Alameda Naval Air Station
 - Myrtle Beach
 - Jefferson Proving Ground

Maintaining LUC Effectiveness

- There are very few transferred BRAC properties with LUCs in place and even fewer violations of these LUCs
- LUCs will typically be used where there is a low level of contamination

Maintaining LUC Effectiveness

- DoD guidance provides a more comprehensive and systematic approach to LUCs than has existed before
- When implemented by the Services it will minimize the likelihood of a violation, and ensure the timely discovery of any violations that may occur

Paradigm for Success of Land Use Controls

- LUCs are often necessary supplements to cleanup remedies
- DoD has developed a LUC framework designed to optimize implementation, management, and enforcement of LUCs
- With the measures and mechanisms recommended by this framework in place, LUCs can remain protective of human health and the environment