

Army Land Use Controls

Final Project Report to the Army Environmental Policy Institute

Through Base Realignment and Closure (BRAC) legislation and the Federal Real Property Act, the Army has identified installations and properties that are excess to its needs. As part of the BRAC process, the Army is characterizing, remediating and leasing or transferring these properties to other Military Services, to Federal agencies, or to State and local governments for local redevelopment and reuse. Many of these properties contain unexploded ordnance or other environmental hazards that can never be completely removed or mitigated. In those situations, the Army has implemented a variety of Land Use Controls (LUCs) designed to protect human health, safety and the environment. Often these LUCs require long-term management, and continue to expose the Army to residual liability, potentially in perpetuity. In the past, the Army has undertaken three approaches to management of these LUCs: use of a trust model, such as the Guardian Trust; transfer of property to interim third parties during remediation; and, permanent transfer to a third party other than a Federal agency or state. However, no systematic overview of how these or other options may facilitate the long-term management of LUCs has been undertaken.

In reviewing and considering the feasibility of specific management options, four questions are key. What should be the Army's overall policy approach to the management of LUCs? What should be the role and responsibility of the Army, the State, and/or a private, non-state entity? What considerations favor the selection or rejection of a potential long-term management option? And, when should the Army still be liable?

Reviewing and synthesizing relevant documents and publications with the views of US Government and other key stakeholders, this report addresses these questions and recommends a series of actions that would facilitate the long-term management of LUCs. 1) First, there must be a life cycle or long-term management policy and approach toward Land Use Controls on active military installations, and on BRAC or transferring properties. 2) Second, in the ideal scenario, federal, state and local authorities must actively share responsibility for the future use and beneficial reuse of these properties. The enactment of uniform environmental covenants by all jurisdictions, and the proactive, early involvement of public stakeholders in the risk-based remediation plan will facilitate this burden-sharing. 3) Next, planners and decision-makers should select a management option that has or can be granted appropriate authority to represent and act on behalf of the interested parties, that has institutional knowledge and expertise, and that has the resources required to effectively promote long-term management. One such option is a shared Army/DOD/State/Private Quasi state Entity approach modeled after the Guardian Trust. That option requires relevant public and private sector databases and a long-term cost methodology to effective. 4) Fourth, steps should be taken to clarify and limit, where practicable, the Army's residual liability. And finally, fiscal experts should consider and recommend changes to current fiscal law and practice that will facilitate residual cleanup and multi-year funding.