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Transferring Army BRAC Lands Containing Unexploded Ordnance

Lessons Learned and Future Options

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Summary

Beginning in 1988, Congress has periodically directed the Department of Defense (DoD) to undertake the realignment or closure of installations no longer needed to fulfill mission requirements. DoD's four legislated rounds of Base Realignment and Closure (BRAC) actions in 1988, 1991, 1993, and 1995 resulted in the closure of 97 major DoD installations and many smaller ones. As prescribed by the BRAC legislation, DoD must transfer the closed installations to other federal, state, or local agencies, or to private entities. These closures notwithstanding, DoD estimates that it still has 23 percent more base capacity than it needs, and maintaining this excess capacity requires funds that could otherwise be spent on more critical mission needs. In response to a DoD request, Congress authorized another round of base closures to begin in 2005.

The General Accounting Office (GAO) estimated in 2002 that 58 percent of lands previously designated for transfer remain in the DoD inventory (U.S. GAO, 2002). (Additional lands have transferred since the GAO's survey.) According to the GAO, "[t]he primary impediment to transferring the remaining property involves environmental cleanup, which could take many more years to complete . . ." (U.S. GAO, 2002).¹ Environmental issues to be dealt with at BRAC properties include chemical contaminants in soil and

¹ While the GAO uses the term "cleanup," the DoD's preferred term is "environmental response."

groundwater and unexploded ordnance (UXO), both of which are consequences of extensive military training and weapons testing. This report focuses specifically on the effect of UXO on the land transfer process.²

While all military services have BRAC land containing UXO, Army sites account for 94 percent of the estimated cost to complete UXO remediation at BRAC installations (DoD, 2003). Of about 90,000 acres of UXO-containing Army lands available for transfer in prior BRAC rounds, only about 9,000 (10 percent) have actually been transferred outside DoD. Thus, as the Army approaches a new round of base closures in 2005, identifying the specific barriers inhibiting the transfer of land containing UXO might enable it to devise new strategies. These could include eliminating some of these lands from the BRAC program entirely, selectively constraining response actions and reuse options early in the BRAC process, or expediting administrative elements of transfer procedures and negotiations. This report focuses primarily on the latter two options; analysis of the first option was beyond the scope of this study.

Purpose and Methods

This report identifies factors that have facilitated or hindered the transfer of land containing UXO in the past and recommends how the land transfer process might be modified so that it better meets the goals of the BRAC program to save costs through land transfers. To identify these factors, we employed a three-step methodology. First,

² Unexploded ordnance are military munitions that have been primed, fuzed, armed, or otherwise prepared for action; that have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and that remain unexploded by malfunction, design, or any other cause. UXO includes explosive warheads, rocket motors, practice munitions with spotting charges, torpedoes, artillery and mortar ammunition, grenades, incendiary munitions, electro-explosive devices, and propellant-actuated devices. UXO is now classified as the “fired” type of munitions and explosives of concern (MEC), which are military munitions that pose an explosive safety risk. (From the “Former Fort Ord Environmental Cleanup” website, <http://www.fortordcleanup.com/cleanupprgm/oeprogram.asp>, accessed November 23, 2004.)

we gathered data on Army BRAC installations to determine what land transfers have occurred. We acquired data on 26 installations, which account for 82 percent of the acreage in the Army's land inventory from the four previous BRAC rounds. Transfers from these installations included land with and without UXO. Data are current through May 2003.

Second, we identified nine installations (seven where UXO transfers had occurred and two where they had not) and conducted case studies using structured interviews with individuals who were knowledgeable about the transfer process. The interviews included installation officials, representatives from the Environmental Protection Agency, state regulators, and individuals directly involved with local redevelopment authorities. Our interview group did not include private developers. The case studies helped us to identify factors that enhanced or hindered land transfers from the perspectives of these individuals. Based on these discussions, we generated a list of eight factors that might exert the most influence on UXO land transfers.

Third, we conducted a formal survey of 26 individuals at 10 of the 26 installations to more systematically identify key factors affecting the transfer process. Respondents were classified as base personnel, regulators, or community leaders. We asked each survey respondent whether the identified factors had facilitated, slowed, prevented, or had no effect on the transfer of land at their installation. We also asked whether there were other influential factors not on our list. The factors evaluated in the survey were as follows:

- availability of funding for UXO clearance;
- existence or lack of clear and concise information about the amount, locations, and types of UXO present;
- existence or lack of clear standards for UXO response;
- existence or lack of standard DoD operating procedures for UXO response;
- land receiver's perceptions of potential liability resulting from UXO;
- public perception of risk from UXO;
- environmental regulators' positions about risk from UXO; and

- state of knowledge of effectiveness of UXO detection instruments.

Findings

The Army has made substantial progress in transferring land without UXO and very little progress in transferring land with UXO. About 61 percent of the acreage of BRAC land without UXO has been transferred to organizations outside the Army, including transfers to other federal agencies. In our database of 26 installations, nearly all of the non-UXO acreage from the 1988 BRAC round, 79 percent from the 1991 BRAC round, 88 percent from the 1993 BRAC round, and 58 percent from the 1995 BRAC round has been transferred.

As previously noted, only 10 percent of the land containing UXO has transferred.³ Nearly all of the transfers occurred under special circumstances. In the case of the Presidio in San Francisco, the land was conveyed before it was known that UXO was present. In the case of Fort Meade, Maryland, 8,470 acres of UXO-containing land were transferred by an act of Congress. This transfer alone accounts for 91 percent of the total UXO acreage transferred. In only two cases, Fort Sheridan, Illinois, and Fort Devens, Massachusetts, did significant parcels of land known to contain UXO transfer using conventional conveyance procedures. We note again that these analyzed data are current through May 2003. Additional land transfers have been executed by the Army BRAC office subsequent to that date.

Factors Facilitating Transfer

Although very little UXO-contaminated land has passed out of the Army's control, our case studies showed that the installations that did successfully transfer such land share the following features:

³ Leased lands are not counted as transferred properties in the research conducted by RAND Arroyo Center. Although leased properties may defray some of the Army's operation and maintenance costs for the land, the Army still holds the deed to it.

- density of UXO was low;
- land was transferred to only a few recipients;
- financial incentives for transfer were strong; and
- the Army's UXO removal process proceeded with minimal regulatory intervention and oversight.

Factors Slowing Transfer

Interviewees in the case studies and respondents to our survey cited multiple factors as causes of delay. The leading factors were the following:

- lack of information about UXO locations, quantities, and types before land-reuse decisions were made;
- inability of detection technologies to ensure that all UXO items have been located and removed;
- lack of established standards for UXO cleanup; and
- inability to meet regulators' requirements for reducing risk from UXO.

It is important to note that the survey centered on factors affecting land transfers that specifically related to UXO. We did not pursue questions related to the presence of munitions constituents, other environmental contaminants, or other nonenvironmental issues, although these points were raised by respondents when we asked them to identify other factors affecting the transfer process at their installation.

Alternative Approaches for Transferring Land with UXO

The Army has taken action to address some of the factors that have slowed UXO land transfer. For example, in response to a congressional mandate to improve the information base on which UXO decisions are made, the Army is developing an inventory of all closed, transferred, and transferring training ranges where ordnance may have been used. In addition, the Army recently began the develop-

ment of a database of UXO characteristics on Army lands, the Army Environmental Database–Restoration (AEDB-R). More actions will be needed to improve decisionmaking related to UXO-containing lands.

Evidence to date shows that when UXO is present, the Army's efforts to transfer land have been problematic. Even with the availability of multiple land transfer mechanisms like public benefit conveyance, early transfer authority, and economic development conveyance, the evidence suggests that the transfer process for land containing UXO is not advancing and that the Army is not meeting its BRAC objectives on those lands. It is still too soon to tell whether the newly authorized conservation conveyance mechanism, in which nongovernmental entities can accept title to ecologically valuable lands, will change the success rate for UXO land transfers.

Additional administrative changes by the Army, more aggressive use of early transfer authority, and promotion of conservation conveyances might help to speed transfers of BRAC lands containing UXO. However, it is difficult to know *a priori* how much effect these incremental changes would have. Organizational changes could potentially make it easier for the Army to extract greater benefits from existing administrative tools. For example, the Army could assemble within headquarters a team of experts in real estate transactions and development in the BRAC process to provide a critical mass of technical support to installation managers and provide more consistency across the organization.

There may also be merit in exploring a more significant alternative organizational concept: the establishment of a federal government corporation (FGC) whose sole responsibility would be to transfer BRAC lands (both with and without UXO) more expeditiously and efficiently than the Army and other services have done to date. Such entities have been created in the past to deal with complex problems requiring special expertise not typically found in the government. The Resolution Trust Corporation, for example, was created to deal with the savings and loan crisis. Its charter enabled it to gather people with the expertise necessary to manage a host of assets and liabilities of varying character and dispose of them efficiently and

effectively, using market tools not available to the government. When its work was done, it ceased to exist. Congress would have to establish an FGC for land disposition and fund its operations. Further analysis would be needed to determine the appropriate structure, organizational goals, incentives, and oversight mechanisms to create an effective FGC for this purpose.

Recommendations

As the Army moves toward BRAC 2005, it should consider the following recommendations to overcome barriers to the transfer of existing UXO-containing BRAC land and the prospective transfer of new BRAC UXO lands:

- Make incremental changes to current Army procedures, including: improving characterization of UXO occurrence on BRAC lands before decisions about reuse; clarifying UXO clearance protocols; and improving cost/risk estimation procedures. Improving information about UXO occurrence lies on the critical path of virtually every other action.
- Explore an alternative management approach that would unify and integrate expertise and guidance on the land-disposal process within Army headquarters. This approach has the potential to lower the Army's transaction costs and lead to higher cost savings than the current approach, which is more reliant upon expertise existing at the installation level. To this end, a comparative study should be conducted on the Army, Navy, and Air Force BRAC offices to ascertain whether a more centralized approach in practice leads to improved cost savings and higher transfer rates for UXO land.
- Take the lead in working with the other services and the Office of the Secretary of Defense to conduct an in-depth study of the concept of a federal government corporation that would handle all transfers of excess DoD lands—with and without UXO—from former and future BRAC rounds.

- Specifically for the BRAC 2005 selection process, establish procedures to ascertain the value of acquiring additional information about environmental contamination and UXO at candidate installations. Some of these installations might be prime candidates for conservation conveyance transfers rather than other reuse options. Such knowledge upfront could lead to higher cost savings and faster transfers.

These recommendations could have immediate effects on the ongoing BRAC land transfers from the previous rounds. Further, implementing and evaluating their impacts on the current land inventory would strengthen the Army's position to implement BRAC 2005.