Transferring Army Land Containing UXO
Problems and Possible Solutions

Since 1988, the Department of Defense has been closing bases that it no longer needs and transferring them to other government agencies, including state and local bodies, or to private organizations. Thus far, it has closed more than 100 bases and transferred about 40 percent of the land. Because it still has more bases than it needs, DoD is planning more closures in 2005. It has been particularly difficult to transfer land containing unexploded ordnance (UXO) left over from military training or weapons testing, and the problem has been especially acute for the Army. Of the approximately 90,000 acres containing UXO on installations slated for closure, the Army has been able to transfer only about 10 percent. The Army would like to transfer land more rapidly, and it asked RAND Arroyo Center first to identify and assess obstacles to the transfer of land containing UXO and then to identify innovative ways to accomplish such transfer. Arroyo researchers report the results of their efforts in Transferring Army BRAC Lands Containing Unexploded Ordnance: Lessons Learned and Future Options.

What the Research Showed
A survey of the status of closed bases reveals that the Army has made ample progress in transferring land without UXO and very little progress in handing over land with it. Furthermore, most of the land with UXO that did transfer did so under exceptional circumstances. In one case, the land transferred before it was known that it had any UXO, and in the second case, the land was transferred by an act of Congress. Only two significant parcels of land have been handed over using conventional conveyance procedures.

Although the sample is not large, the two parcels of land that did transfer had several common characteristics. First, the land did not contain much UXO and, second, only a few recipients were involved in the transfer. Furthermore, the land was quite valuable (one parcel was situated on the shores of Lake Michigan in Chicago), so the recipients had strong financial incentives to complete the transaction. Finally, the process of removing the UXO was carried out with minimal regulatory oversight.

The research also revealed common characteristics for land that did not transfer. A key one was not knowing the amount, type, and location of UXO before deciding how the land would be used. Compounding this problem was the inability of detection technologies to ensure that all UXO items had been located and removed. An absence of established standards for UXO cleanup also complicated transfers, as did an inability to meet regulators’ requirements for reducing risk from UXO.
Is There a Better Way?
The Army is already taking steps to address some of the problems that hamper transfer of land with UXO. For example, it is developing an inventory of closed, transferred, and transferring training ranges where ordnance may have been used and a database of UXO characteristics on Army land. But because conventional procedures have not worked well, it wishes to use other ways to transfer land with UXO. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires the transferring party to verify that the land poses no threat to human health and the environment before land can transfer. Under the original Base Realignment and Closure (BRAC) legislation, this meant that the military departments had to complete all cleanup actions before DoD could enter into transfer agreements. Meeting these requirements can take a long time and does not guarantee that the benefits outweigh the costs. Another issue is that organizations are reluctant to accept land with UXO because of concerns over liability.

Recognizing these issues, Congress authorized a waiver of CERCLA’s pretransfer clearance requirements for federal facilities in what is known as early transfer authority. This authority allows deed transfer of federal property before completion of necessary remediation. Other land-transfer conveyances like public benefit deed transfer of federal property before completion of necessary remediation. Other land-transfer conveyances like public benefit and economic development are available as well. Congress has also recently authorized conservation conveyance legislation that allows the Army to transfer BRAC land to private, nonprofit land-conservation groups without first clearing the UXO and dealing with other environmental contamination. Congress authorized this mechanism to conserve ecologically valuable lands more expeditiously, recognizing that a large-scale cleanup might not be necessary on lands where human access and activities would be restricted. It is too early to gauge the effect of this recent legislation, but the evidence shows that even with multiple conveyance mechanisms available to it, the Army is still not meeting its land-transfer objectives.

Additional administrative changes, more aggressive use of early transfer authority, and promotion of the conservation conveyance may speed up land transfers. But it is difficult to know in advance how much effect these changes might have. Arroyo researchers suggest that there is merit in exploring a more significant alternative organizational approach: establishing a federal government corporation (FGC) whose sole responsibility would be to transfer BRAC and other lands with and without UXO. FGCs operate at the boundary of public and private organizations and share some characteristics of each. Congress has created a number of them over the years. In some cases they last for a long time, a good example of this type of FGC. Its charter enabled it to hire staff with the expertise necessary to manage a host of assets and liabilities and dispose of them efficiently and effectively, using market tools not available to the government. Its work done, it ceased to exist. For UXO-containing lands, 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:

- Make incremental changes to current Army procedures, especially improving information about the location, amount, and type of UXO on BRAC lands. Better information about UXO lies on the critical path of virtually every other action. The Army should also clarify UXO clearance protocols and improve cost/risk estimation procedures.
- Explore an alternative management approach that would consolidate 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 relies considerably more on expertise existing at the installation level. To this end, a comparative study should be conducted on the Army, Navy, and Air Force BRAC processes to ascertain whether a more centralized approach is likely to lead to greater 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, 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 options, which could lead to higher cost savings and faster transfers.

These recommendations could immediately affect ongoing BRAC land transfers from the previous rounds. Further, implementing and evaluating their effect on the current land inventory would strengthen the Army’s position to implement BRAC 2005.
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