



TRANSFER OF DOE REAL PROPERTY

Authorities, Options, and Processes

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DOE Real Property - Overview

- 4th largest landholding federal agency
 - 2.2 M acres
 - 68% withdrawn public domain land (1.5 M ac)
 - 24 states
- National labs
- Plants and facilities
- Power marketing administrations
- Strategic Petroleum Reserve



DOE Real Property - Overview

FIGURE 1. MAJOR DOE LABORATORIES AND FIELD FACILITIES





DOE Real Property - Authorities

- Federal Property and Administrative Services Act of 1949
 - 40 U.S. Code sec. 101, et seq.
 - Established GSA as “Government’s landlord”
- Atomic Energy Act of 1954
 - 42 U.S. Code sec. 2201(g)
 - DOE’s authority as successor to AEC
- Atomic Energy Community Act of 1955
 - 24 U.S. Code sec. 2301, et seq.
 - Initial transfers to Oak Ridge, Los Alamos, Richland
- DOE Organization Act of 1977
 - 42 U.S. Code sec. 7256(c) to (f)
 - Leases at closed/reconfigured facilities
- NDAA FY 1998
 - 50 U.S. Code sec. 2811
 - Transfers at defense nuclear facilities for economic development



DOE Disposal Process - Overview

- Sites/Program Offices identify unneeded property
 - Land (vacant)
 - Buildings/structures and land
 - Buildings/structures without land
 - Off-site removal
 - Demolition
- HQ screens property to all DOE elements
- DOE Program Office responsible for disposal
 - Off-site removal/demolition
 - Transfer under DOE authority
 - Report to GSA for disposal



GSA Disposal Process - Overview

- Federal Property and Administrative Services Act of 1949
 - 40 U.S. Code sec. 101, et seq.
- Federal Management Regulation
 - Title 41 CFR, Part 102-75 Real Property Disposal
- Interagency (Federal) Screening
- McKinney-Vento Homeless Assistance Screening
- Public Benefit Conveyance
- Negotiated Sale
- Public Sale



REAL PROPERTY UTILIZATION AND DISPOSAL
U.S. General Services Administration



GSA – Interagency Screening

- Property that is “excess” to an agency
- GSA notifies other federal agencies of available property
- 30 days to express interest
- Justify need for the property
- Requesting agency pays fair market value
- Custody and control transferred
- USA remains owner
- If no federal interest, property becomes “surplus” to the Government



GSA - Public Benefit Conveyance

States, local government bodies, nonprofit institutions acquire surplus real property, at up to 100% discount, for various uses including:

- Airport
- Correctional
- Educational
- Highway
- Historic Monument
- Public Road Widening
- Park & Recreation
- Port
- Public Health
- Law Enforcement
- Wildlife Conservation
- Emergency Management
- Power Transmission Lines
- Homeless Assistance

- Sponsoring agency monitors use
- Property reverts to Government if use ends



McKinney-Vento Homeless Assistance Act

42 U.S. Code sec. 11411, et seq.

- Excess, surplus, unused, or underutilized federal property screened for use by organizations helping the homeless
 - Unused/underutilized by lease only
 - Holding agency discretion whether to lease
- State and local governments, nonprofit organizations
- Housing, storage, job training
- Property discounted at 100% of FMV
- Property must be used to assist homeless for 30 years
- HUD administers screening process
- HHS monitors use



GSA – Negotiated Sale

- States, local government, tax-supported entities
- Direct negotiations with interested party – no public bidding
- Fair market value required
- GSA forms ask for any “interested parties”
- Use does not qualify for public benefit conveyance
 - No restriction on use
 - No reversion clause
 - “Excess profits clause” on resale in 3 years, no restriction after



GSA – Negotiated Sales for Economic Development

- Public-body purchaser will:
 - Develop the property, or
 - Make substantial improvements
 - With intention to re-sell or lease
 - To advance the community's economic benefit
- Negotiated sale acceptable where:
 - Benefit to community > Proceeds from competitive public sale
- Excess profits clause still applies for 3 years after sale



GSA – Public Sale

- Anyone eligible to bid:
 - State/local government entities
 - Corporations, including non-profit
 - Individuals
- No use restrictions, reversion or excess profit clauses
- GSA chooses sales method:
 - On-site live auction
 - Sealed bidding
 - Online auction

<http://realestatesales.gov/gsauctions/gsauctions/>



Disposal by DOE or GSA?

- DOE independent authority limited to certain property
 - “Atomic Energy Act” property
 - NNSA, NE, Science labs & facilities
 - EM, LM
- Some DOE programs must use GSA
 - Power marketing administrations
 - EERE
 - Fossil Energy
- Disposal by GSA is an option for Atomic Energy Act property
 - Leverage GSA resources, experience, expertise



Example – GSA Disposal of DOE Property

- DOE property in Richland, WA
 - 1.7 acres
 - 2 buildings
- Adjacent GSA property
 - Portion of parking lot for Federal building
 - Also excess
- City of Richland interested in both
- DOE chose to have GSA manage disposal
- GSA negotiated with City for both properties



DOE – Atomic Energy Act

- DOE directly transfers property to interested party
 - Or GSA acts as DOE's agent
- Only for property under AEA jurisdiction
 - Much, but not all, of DOE's property
- Flexible process
- Subject to Government-wide rules, requirements
 - NEPA
 - CERCLA
 - Title standards
- DOE must notify Congress of all AEA transfers



Example – DOE Disposal under Atomic Energy Act

- Salmon, MS
 - 1,470 acres
 - Former Atomic Energy Commission property
 - Transferred to State of Mississippi
 - Timber production, wildlife refuge





Atomic Energy Community Act

- Historical, but still on the books
- Authorized transfers to establish communities:
 - Oak Ridge, TN
 - Richland, WA
 - Los Alamos, NM
- Transfers to:
 - Local governments
 - Private sector entities
 - Individuals
- Cited in 1997 legislation directing transfers at Los Alamos
 - P.L. 105-119 sec. 632(i)



DOE Organization Act

- Hall Amendment (1993)
 - Closed/reconfigured facilities
 - Leasing
 - Up to 10 years (Secretary may approve longer term)
 - DOE may retain proceeds, accept services-in-kind
 - Maintenance
 - Repairs
 - Environmental restoration
 - *At same facility*
 - Narrow applicability, no examples



DOE Economic Development Transfers - Background

- NDAA FY 1998/50 U.S. Code 2811(a)(1):
 - “The Secretary of Energy shall prescribe regulations for the transfer by sale or lease of real property at Department of Energy defense nuclear facilities for the purposes of permitting economic development of the property.”
 - “Interim Final Rule” published 2/29/2000
 - 10 CFR Part 770
 - Public comments on Interim Final Rule
 - Final Rule effective 12/13/2013



Economic Development Transfers Background

- Mound transfers
 - 7 transfers
 - 178 acres
- 20 transfers completed using 10 CFR 770 (2000-2013)
 - 693 acres
- 2 transfers approved, pending
 - 38 total acres
- Transfers under other authorities not included



10 CFR 770 - Applicability

Defense Nuclear Facilities (non-exclusive):

- Argonne National Lab
- Brookhaven National Lab
- Fernald site*
- Hanford site
- Idaho National Lab
- Kansas City Plant
- K-25 Plant (ETTP)*
- Lawrence Livermore National Lab
- Los Alamos National Lab
- Mound Facility*
- Nevada Test site
- Oak Ridge Reservation
- Oak Ridge National Lab
- Paducah Plant
- Pantex Plant
- Pinellas Plant*
- Portsmouth Plant
- Rocky Flats Site*
- Sandia National Lab
- Savannah River Site
- Waste Isolation Pilot Project
- Y-12 Plant

Source: App. to Preamble to 10 CFR Part 770. Fed. Reg. Vol. 65, No. 40 at 10687 (2/29/2000)

*Facilities closed since list published in 2000



10 CFR 770 – Applicability, cont.

- Not every defense nuclear facility has land available for transfer
- Facility must have unneeded land
- Land must be eligible for transfer
 - Location/security
 - Remediation status
- Withdrawn public domain land – lease only
- Underutilized property – lease only



10 CFR 770 - Eligibility

- Community Reuse Organization (CRO)
 - Governmental or non-governmental
 - Recognized by DOE
 - Represents community
 - Adversely affected by DOE work force restructuring
 - Defense nuclear facility
- State or local government
- Tribal group
- Private entity/individual



10 CFR 770 - Outline

- 770.1 Purpose
- 770.2 Real Property Covered
- 770.3 General Limitations
- 770.4 Definitions
- 770.5 Notification of Available Property
- 770.6 Requests by Interested Parties
- 770.7 Procedures
- 770.8 Less Than Fair Market Value Transfers
- 770.9 Conditions for Indemnification
- 770.10 Denial of Request for Indemnification
- 770.11 Accrual of Claim



10 CFR 770 - Process

- Interested party submits proposal to DOE
 - Description of property
 - Intended use
 - Description of economic development
 - Consideration offered
 - Request for indemnification?
- DOE review, decision
- Congressional committee notification



10 CFR 770 – Market Value

- 770.8: DOE generally seeks fair market value
- Exceptions:
 - “considerable infrastructure improvements” required for economic viability
 - public policy objectives re: downsizing defense nuclear facilities



10 CFR 770 - Indemnification

- Indemnification against claims based on:
 - Release/threatened release
 - Hazardous substance, pollutant, contaminant
 - Resulting from DOE activities
- Provided at DOE's discretion
- Only Secretary or delegated officials
- When essential for facilitating reuse or redevelopment



Changes in 2013 Final Rule

- Indemnification applies to subsequent transferees
 - Required by 2003 amendment to statute
 - Added as 770.9(e):

“Any indemnification provided will apply to any successor, assignee, transferee, lender or lessee who later acquires ownership or control.”



Other Changes in Final Rule

- Minor revisions to:
 - Definitions
 - Process
- Resulting from:
 - Public comments on Interim Final Rule
 - Clarifications by DOE



QUESTIONS?

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