

**Right-Sized Reuse – Use a Systematic Process, and Design for a Specialized, Yet Flexible Result–
13558**

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ABSTRACT

The process of transferring real property from the U.S. Department of Energy (DOE) is always the same – except when it’s not. The most frequently asked questions in the process are: how can this take so long and be so complex, and why is it different every time? The process of transferring real property from the Department of Energy is always the same – except when it’s not. Repeat as needed.

The authority for DOE to transfer property is found in the Atomic Energy Act of 1954 (AEA). Specifically, the transfer of real property for mission-related purposes is done pursuant to the AEA Section 161(g). Another rule that can provide certain unique benefits to the transferee is found in 10 *Code of Federal Regulations (CFR) Part 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development*; it can be followed for economic development purposes at defense nuclear facilities. All federal real property transfers include at minimum a National Environmental Policy Act (NEPA) review and a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) §120(h) environmental due diligence evaluation. The end-point objective is to be able to demonstrate that a transfer is protective of human health and the environment – typically attained via a risk evaluation. That’s it...mostly. None of these requirements are new; their processes are well-known. So, why is it different every time there is a transfer and what can be done to move things along?

Time and the perception of open-ended schedules kill projects. Economic development projects that are proposed by Community Reuse Organizations (CROs) and others or by parties who need private capital are especially time-sensitive. It is not reasonable to expect business interests or investors to wait two years while the property transfer process is carried out. Lenders are also risk-sensitive and not solely business-risk sensitive. After all, these are federal properties where contamination is a factor. What are some of the things you can do to address those time and risk issues?

Issues of time and complexity arise from several variables. Short-sighted vision and lack of project definition lead to wasted effort and lengthy delays. Some variability on the input side of the process can be controlled in a way that will save you time and actually work to your advantage. Steps can be taken to systematize the transfer process on the agency’s part and on the requestor/grantee’s part. Having the right mix of dedicated people from the beginning, planning with flexibility, coordinating with the clean-up program at your site, knowing the interests and issues of your stakeholders, and working with the CRO/economic development authorities – all of these measures and others can and will help you. The key is not simply knowing the steps and making a punch-list, but understanding the steps and how to work

with and use them. These concepts can be applied to create a vision of success for those engaged in real property transfer.

DOE'S REAL PROPERTY HISTORY – MEETING A NATIONAL NEED

According to the Congressional Research Office's February 8, 2012 report, the federal government owns roughly 635-640 million acres, 28% of the 2.27 billion acres of land in the United States. Four agencies administer 609 million acres of this land: the Forest Service in the Department of Agriculture, and the National Park Service, Bureau of Land Management, and Fish and Wildlife Service in the Department of the Interior. Most of these lands are in the western United States and Alaska. In addition, the Department of Defense administers 19 million acres in military bases, training ranges, and more. Numerous other agencies administer the remaining federal acreage. The DOE portion of the remainder is about 3 million acres scattered over 39 states.

In addition to its land, DOE has many programs – Science, Nuclear Security, Environmental Management, Legacy Management, and Renewable Energy to name a few, yet with all of those programs and all of those needs, DOE is not actively using all of that land. How much land is actively used is rather hard to tell. In the past, one of the real estate requirements was the annual evaluation of the utilization of federal land as part of Executive Order 12512. This report identified the utilization of federal assets and was discontinued in 2004. Land statistics are now being tracked by the Federal Real Property Council for the purpose of determining if excess land can be sold to promote the local economic development goals and add to the proceeds to the U.S. Treasury.

This actively utilized land under the management of the DOE is offset by a large percentage of land at many of the nearly 50 DOE sites that typically exists as buffer, and may also be characterized as excess, underutilized or unutilized. It can also be thought of as potentially available for other uses by other parties. For the communities that have steadfastly hosted DOE defense nuclear facilities and endured living at the edge of the Congressional budget cycle and its whipsaw effects, the land may be a much-needed boost to a flagging local or regional economic profile.

From its earliest days, property acquisition was a key task of the Department; whose origins are found in the World War II Manhattan District of the U.S. Army Corps of Engineers and the Cold War-era Atomic Energy Commission. The government identified a national security-related public need for land and shortly thereafter landowners and their families were issued notices indicating that the parties needed to be gone by a certain date, often with a very near-term certain date when the government needed their land. Property acquisition by these means, called eminent domain, is straightforward and necessary in certain circumstances, but from a property owner's point of view it was either a windfall or a free-fall. The possibility of land being returned to a community after so many years in government ownership may also bring about conversations within the communities over future uses that never came up when the land was first acquired.

DOE's mission needs have evolved over the past twenty years from one of national defense and nuclear weapons development and testing to one focused on science, security, nuclear energy, renewable energy, and environmental restoration. In that timeframe the landholding demands have also evolved, to the point where DOE actively uses and needs less land than it owns. DOE site clean-up missions continue to make

significant progress and a key element of the clean up and closure of DOE facilities is “footprint reduction.” Employment rates also tend to show that the clean-up work is winding down. Getting out ahead of that employment reduction and site mission “sunset” is crucial; it is the ideal time to start to plan for future use. It is a logical progression.

As clean up concludes, sites are then ready for other uses, typically industrial in nature, though some future uses can be open space, recreational or a mixture. The possibility of new uses is both obvious and essential. Obvious, in that reuse serves the need of enhancing community-driven economic development and independence on former federal property that tends to have excellent infrastructure; and reuse by the private sector will put the parcels back on the local property tax rolls. Essential, in that reuse can create jobs, potentially that can make the best of the unique skills of the workforce to be affected by continued clean-up progress and workforce reduction. It is also essential that these properties not remain in the federal portfolio where they continue to cost the taxpayers administrative and oversight expenses while not supporting any mission requirements.

REAL PROPERTY MANAGEMENT FRAMEWORK

The management of federal real and personal property assets in DOE follows federal laws and regulations and internal DOE orders and policies. These assets are owned by the federal government to support mission requirements, and, when the program requirements no longer require these assets, then the property staff are directed to evaluate the assets, for transfer or sale, to reduce the DOE portfolio. The property staff can dispose of these federal assets through the delegated authority given to the Certified Realty Specialist for real property (and to the Organizational Property Management Officer for personal property). Unlike the majority of other federal agencies, DOE has its own real property authority, separate and distinct from the authorities of the General Services Administration (GSA), in particular via the GSA’s 1949 Property Act. DOE’s traditional path is Section 161(g) of the AEA. The General Authorities of the AEA include a specific section dealing with real property, wherein DOE may: “acquire, purchase, lease, and hold real and personal property...and to sell, lease, grant, and dispose of such real and personal property as provided in this chapter.”

DOE can also avail itself of the services of the GSA for disposal of land via the GSA’s 1949 Property Act. As the government’s landlord, the GSA process is well-proven and practiced. These authorities and tools can be used to transfer excess or unutilized federal real property to other agencies, local governments, and the private sector for reuse to reduce the federal portfolio.

Real Property Management – Meeting a Local Need – Community Reuse Organizations

Section 3161 of the Defense Authorization Act of 1993 initiated the creation of 15 “Community Reuse Organizations” across the United States in response to the negative social and economic impacts of workforce restructuring. DOE established these CROs to support economic development in the communities near DOE sites that were negatively impacted by DOE workforce downsizing. Each CRO was given the latitude to chart an economic recovery course that was unique to its community and the characteristics of its DOE site. The communities hosting the defense nuclear sites use these organizations to be the DOE-recognized focus for economic development of DOE sites within the site’s regions of influence.

In an effort to be responsive to a need, one particularly found in the “atomic city” communities that have been most affected by DOE downsizing, etc., the National Defense Authorization Act of 1998, Section 3158, was enacted. The 1998 Act provided for the creation of a unique rule (10 *CFR* 770) precisely for the “Transfer of Real Property at Defense Nuclear Facilities for Economic Development”. This legislation requires DOE to specifically facilitate and define a process for property disposal of former defense nuclear facilities. In certain instances, these 22 sites or portions of them, with DOE Headquarters (HQ) approval, can be transferred for less than fair market value and with indemnification, if requested. Those atypical provisions found in 10 *CFR* 770 are attractive, and were intended to be so, in order to give the communities hosting defense nuclear facilities an enhanced opportunity for economic development.

MEETING LOCAL NEEDS MORE EFFECTIVELY

Despite all of the methods available for transfer, the desire on behalf of DOE site and program management is to work with their host communities so that they may facilitate economic development and property reuse as sites are cleaned up and closed. It is their purpose to use the tools such as the 10 *CFR* 770 rule, and the resources of the CROs to make it happen. Even with the support of DOE’s highly trained and well-skilled real property officers and realty specialists, the fact remains – nothing happens quickly. DOE sites can be fully responsive to a community’s interests by taking steps that include meeting prospects and sharing important environmental insights about the sites to assuage fears or concerns that outside organizations (including lending institutions) unfamiliar with DOE sites may have. Additional efficiencies can be attained by deliberately aligning and coordinating future land use potential and institutional controls with regulatory clean up agreements and plans. In addition, DOE may be able to take selected steps, such as clean-up task sequencing for example, in order to help advance certain transfer efforts. The overall communication and coordination can be used to keep congressional delegations updated and informed of the benefits of the reuse initiative so that they can also assist as situations arise.

These measures and others that can be taken by DOE cannot escape the reality of time. For a host of reasons, transfers tend not happen in a timeframe that enables the communities to take advantage of time-sensitive economic development opportunities. The “competition” of the various timeframes including the DOE closure programs, the ongoing endeavors of the CROs, the economic market, and the development plans of companies in the area can all have an effect on the success of reuse and redevelopment of the federal property. Furthermore, the expectations and vision of a CRO regarding what the disposed DOE land use should be, what the redevelopment should look like, and how quickly that reuse vision can be realized are often worthy of reconsideration in light of new realities as well as changing economic conditions. Successful reuse is a long-term proposition that relies upon the completion of certain steps ahead of time, involves particular skills, and requires significant partnership and communication.

DOE may see the land at these sites as a liability that must be dealt with through the cleanup program. Reuse however, should not be viewed as an obstacle but rather as a partner affecting that clean up. To communities with limited industrial land opportunities, former DOE land can be the solution to a community’s industrial growth potential. In certain circumstances DOE land can have a residential reuse potential, thus serving to meet residential land use pressures. In either scenario, the land demand, in a pure economic sense, can be easily understood. DOE wants to be responsive, but DOE’s nuclear

safeguards and security, environmental management, science, and multiple missions are primary; economic development is not a DOE mission and its core business isn't land disposal. A mission of the Environmental Management Program *is* footprint reduction, which is a precursor to economic development, but the economic development aspect must be addressed by the CRO or economic development community member. This is why the two federal and private sector missions must be closely coordinated; potentially yielding benefits to both.

There are also the seemingly conflicting directions the Department appears to be taking. On the one hand DOE's mission is clean up and footprint reduction. Transfer for reuse fits perfectly into that picture, especially reuse in the defense nuclear facilities' host communities. Transfers with indemnification and at less than fair market value are even more attractive to the affected communities. On the other hand the Administration has advanced the concept that land not needed by the federal government should be sold as directed in a Presidential Memorandum of June 10, 2010. This Presidential memo requires agencies to accelerate efforts to identify and eliminate excess properties. A sale of such property implies returns to the Treasury. Which objective is the right one?

Why not an open-minded consideration of both prior to a transfer? A unique opportunity appears to reside within the two major paths. The Presidential memo refers to various laws and policies where some promote and even require asset sales and dollars to the Treasury, yet 10 CFR 770 offers indemnification and less than fair market value to promote economic redevelopment. Both result in a federal cost savings. The longer view combines "footprint reduction" that highlights the reduced administrative and financial liability costs to the government by asset sales as well as the less than fair market value transfers that also reduce the federal footprint and return money to local governments. Another view of this situation is that the monies that would go to the U.S. Treasury from the proceeds of a sale may not always be the best benefit to the government when future financial liability, environmental liability, and the cost of administering unutilized and excess land over time may be many millions of dollars. It is therefore important to assure that reuse goals and activities supported by the site are understood throughout the site and with DOE management, and also with CRO management so they understand that a series of informed decisions need to be made within DOE.

Regardless of the resolution of those differing objectives that DOE has to consider, the Department can help the overall reuse initiative by taking a number of small internal steps that communicate and acculturate the way in which the DOE EM mission is understood and implemented. It can also help DOE's reuse efforts be more effective and timelier. Working-level changes at the sites and with their contractor support staff can also be implemented to facilitate streamlining, assist with timeliness, and provide opportunities for cost-savings. Lastly, recognition and action by the CROs of their affirmative roles in successful reuse and the methods and means to take on those affirmative roles is critical. The successful reuse program in Oak Ridge has been described as a "three-legged stool" wherein the first leg of the stool is the CRO, the second leg is DOE, and the contractor technical support team is the last leg. Understanding the need to work as a team from the outset is another key component of a successful reuse program, one that cannot be over-emphasized.

Lessons Learned in Right-Sizing

A vast portfolio of lessons learned is available from the Oak Ridge Reindustrialization program and its 17-year history, as well as the more recent experience with the developing reuse programs in Portsmouth and Paducah. The Oak Ridge real estate program has significant experience and expertise in the real property actions that use all of the tools and legal authorities of the DOE. The completed DOE transfers using 10 *CFR* 770 have all occurred at this office, as well as many AEA disposals of real property pursuant to Section 161(g), and the personal property disposals conducted pursuant to the Hall Amendment of the Defense Authorization Act. These activities also required interactions associated with one of the most successful and effective CROs in the complex (the Community Reuse Organization of East Tennessee).

A reuse program has many moving parts, which, if they are looked at all at one time, can seem too hard to comprehend and certainly impossible to achieve. For purposes of this paper the focus is two-pronged – (1) to identify measures that can be used to enable “right sized reuse” for your individual site with the simplest of moving parts, and (2) to assemble a project team that will help you successfully work through reuse. Creating the ideal menu of options for your site’s reuse program, be it as a phased/incremental approach or an “all out” approach, can be for naught if the team to implement the ideas hasn’t been formed yet, is the wrong skill mix, or is unprepared to work to the defined objectives.

- Taking the skill mix discussion a step further, the definition of roles and responsibilities is very important. The “three-legged stool” can’t work effectively if each party tries to do the job or jobs of the others. Work together, not at cross-purposes and let the skills of the subject matter experts shine and the success will speak for itself.
- Embrace the value of “right-sized reuse” aiming to understand why its principles are so important. Won’t the Oak Ridge model work everywhere? No, it will not. Right-sized reuse is so important because it focuses on what’s right for your site. Its basis is what was developed cooperatively for your site and its end-result is one of a defined and cultivated identity. Sites need a custom-tailored, but flexible, approach. Sites have been heard to say, “I want our site to be just like Oak Ridge,” or “I want to do what Oak Ridge has done.” While imitation may be the sincerest form of flattery, it’s critical to recognize that your site’s situation is unique, its host community is unique, its labor force is unique, and its “personality” is unique as well. Furthermore, don’t be limited by what you have seen elsewhere, rather, be inspired! Develop and cultivate that vision – champion that brand. Define yourself – don’t let your site be defined by others.
- Define your own terms – for example, the term “Energy Park” has been aired of late. What does it mean? Is it a prescription? Is an Energy Park required to be a nuclear facility or a coal-fired power plant using clean coal technology, or a field of solar panels? No, none of those scenarios is a requirement. Perhaps “Energy Park” for your site means you attract firms in the alternative energy component research and design business, or perhaps all of the firms who occupy new buildings that are built on transferred land have solar panels on their roofs to supply lighting and heat stored water. If someone else’s assumptions of what a term means doesn’t line up with your economic development partners’ assumptions it will be the fault of the economic development organization for not getting the word out.

- Base your dreams in reality – if you want to know what your site can be used for, ask the economic development professionals in your region. Whether or not you have a CRO, your site is within an economic development community that supports its success. The economic developers are the individuals who will know what types of land, with what attributes, and in what timeframe, firms are seeking. Having that information will help you bound your reality; it will tie that expectation to the existing site cleanup vision and regional vision through community market conditions and economic development potential.
- Be flexible in your expectations – the more specific land uses you say you want for your site, the more you have potentially set yourself up for failure or at least for disappointment. For example, rather than seeking only American-owned automobile manufacturers who only build hybrids and only hybrids with manual transmissions, why not start by simply seeking manufacturers? That would help the economic development professionals to cast a wider reuse net.
- Plan to be “all in” or don’t bother to get in. Reuse doesn’t just happen; it takes work, commitment and patience. The relatively untold story of the Oak Ridge experience includes the frustration, false starts, and the firms that walked away because of the timeframes to obtain property, the limitations on property use, and/or the necessary but still imposed oversight of DOE in certain situations. In the words of GK Chesterton, “If a thing is worth doing, it is worth doing badly”. Badly is a relative term and in time, with the principles recommended here, things *will* improve.
- Plan to plan and be sure the planning initiative involves a planner in a lead role. A planner can work with the economic development professionals, DOE site environmental and program professionals, regulatory specialists, and geographic information system professionals, and bring it all together in a cohesive manner. The DOE NEPA process is an ideal way to navigate the planning process, gain public input, and reach a decision that can be built on over time. NEPA is a beneficial process to identify stakeholders and interested parties, showcase the potential land uses that fit within the clean up strategy and regulatory frameworks, and identify the leadership of the private sector CRO’s and economic development groups that can all be part of this planning – all will benefit from that kind of discussion.
- Recognize that planning is not an event, it is a process. It requires dedicated engagement, an environment of open, non-judgmental discourse, a willingness to learn what it means to plan, and placing an inherent value in the ideas of others.
- Know your site – if you know your site, from wetlands to cultural resources, ongoing and planned mission needs, contaminant plumes, and remediation areas, you will be better able to assess impacts. If you need to get your site dataset in order, do it now. Knowledge will provide flexibility, but you have to have the knowledge first.
- Plan to coordinate extensively with your site clean-up program. Ensure that the clean-up objective, clean up schedule, and the transfer undertakings are consistent. For example, if your site plans to transfer utilities and they are in easements and buried to a depth of 12 feet, it is important that the clean-up program characterize the rights-of-way (and restore them if needed) to a depth of 12 feet so that a private sector transferee can access or use the site for their intended purpose.

- Don't plan for the industrial park of tomorrow, plan for the industrial park of 10 years from now. That may entail an over-the-shoulder look into the development planning history at other sites that you admire. That type of research can be very fruitful.
- The appropriate party to prepare a master plan or a development plan for a DOE site proposed for reuse is the site's presumed next landlord/landlord group with review and input from DOE. If DOE prepares a development plan or a master plan, the people who see it will assume that DOE is the future (and perpetual) landlord (and funding source), that decisions have already been made about uses – including what and where and potentially who – and that DOE is only going through the motions. These concepts would be incorrect and harmful to your success, but unless there is some type of demonstrated leadership or presence of the CRO to counter them, reuse will be explained as a self-fulfilling prophecy. DOE will also have trouble funding this reuse planning as reuse funding competes with clean up and closure funding.

TEAM BUILDING FOR SUCCESS

The Department of Energy is very rich in technical staff, in particular with nuclear and mechanical engineers, project managers, and scientists. While these individuals can be useful in carrying out DOE mission objectives, these are not necessarily the right people from the DOE and contractor team to help plan a reuse scenario. Land use planners, community planners, and environmental professionals are key, as are people who play roles in their communities, industrial/process engineers, and most importantly, people with demonstrated skills at working with others because they are active listeners.

- A dedicated group of personnel between the Department, their contractor team, and the CRO – working together to define and design their vision and mission – are crucial. Successful reuse cannot be achieved by an undefined group of people without focus or skills, or skilled personnel working only now and again on an undefined objective. Because the Department's role in overall success cannot and should not be minimized, senior management engagement and support at the site and within the programs at the DOE HQ level, is essential.
- Reuse can become an understood part of clean up, but it takes senior management leadership to impart that message. Reuse won't evolve due to good intentions. It takes work. If management can provide that focus and demonstrate that commitment and empower reuse program leadership, the internal culture can evolve to see their role, understand the objectives, and clearly link clean-up to reuse as a measurable goal.
- Taken together, building a team with the right membership, working as a team to design and achieve flexible yet measurable and worthy goals with unflagging management support, struggling through it as needed, and being committed to success will result in success.
- Keep on top of your program, take its pulse, look for its weaknesses and by all means celebrate its successes. Being in a position to continually have to say, "if only" or "what if," is not a way to do business, rather it is a way to talk yourself out of doing business. Shake it off, reassess, make necessary changes and keep moving.

CONCLUSIONS

Site reuse done well is a custom-tailored fit. It is the result of an integrated planning effort whose basis is in optimizing flexibility and accommodation. That planning effort needs to bring together the right mix of skilled, dedicated (in temperament and in time), and visionary individuals who are not afraid to try something new to help create something unique for their community and be responsive to its needs. While there are many aspects of a transfer program that lend themselves to copying what has been done elsewhere, i.e., processes; a cookie-cutter approach to planning will yield a cookie-cutter result of uninspired sameness. Surely, these DOE sites that have contributed greatly to our national scientific and technological resume can be used in ways that are complementary to and reflective of that rich heritage.

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