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Asset Revitalization Guide for Asset Management and Reuse

[This Guide describes acceptable, but not mandatory means for complying with requirements. Guides are not requirements documents and are not to be construed as requirements in any audit or appraisal for compliance with associated rule or directives.]



U.S. Department of Energy
Office of Environmental Management

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Acronyms

1949 Act	Federal Property and Administrative Services Act of 1949
AEA	Atomic Energy Act of 1954
AR	Asset Revitalization
CDR	Covenant Deferral Request
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	<i>Code of Federal Regulations</i>
CRO	community reuse organization
CX	categorical exclusion
D&D	decontamination and decommissioning
DOE	U.S. Department of Energy
EA	environmental assessment
EBS	environmental baseline survey
EIS	environmental impact statement
EM	DOE Office of Environmental Management
EPA	U.S. Environmental Protection Agency
ETTP	East Tennessee Technology Park
FMR	<i>Federal Management Regulation</i>
FONSI	Findings of No Significant Impact
GSA	U.S. General Services Administration
HQ	Headquarters
IPT	Integrated Project/Program Team
NCO	NEPA Compliance Officer
NEPA	National Environmental Policy Act
NNSA	National Nuclear Security Administration
NPL	National Priorities List
PILT	payment-in-lieu-of-taxes
ROD	Record of Decision
ROI	region of influence
U.S.C.	<i>United States Code</i>

ASSET REVITALIZATION (AR) GUIDE FOR ASSET MANAGEMENT AND REUSE

1. PURPOSE

The U.S. Department of Energy (DOE) Order 430.1B, “Real Property Asset Management,” (Order) requires DOE sites and program offices to consider a real property asset’s disposition before real property acquisition and sustainment decisions are made. Planning for real property disposition is considered early in the lifecycle and in more detail when real property assets are no longer required for the program mission. The Order calls for the agency to “establish a corporate, holistic, and performance-based approach to real property life-cycle asset management that links real property asset planning, programming, budgeting, and evaluation to program mission projections and performance outcomes.” The Order discusses mechanisms and requirements for proper planning of assets, asset acquisition, maintenance, recapitalization, disposition, and long-term stewardship, while recognizing the importance of stakeholder involvement, privatization, cultural and natural preservation, and local economic development considerations.

DOE and National Nuclear Security Administration (NNSA) sites have developed mechanisms to best manage real property assets within the requirements of the Order. However, current fiscal challenges and an emphasis to consider local economic development interests incentivize DOE and NNSA to implement holistic, environmentally sustainable approaches to real property dispositions that consider regional community planning and development initiatives.

Pursuant to the objectives of the Order, the “Asset Revitalization (AR) Guide for Asset Management and Reuse” (AR Guide) was developed to assist DOE and NNSA sites and program offices offer unneeded assets with remaining capacity to the public or other government agencies. DOE continually refines strategies and tools, enabling it to share unique assets, including land, facilities, infrastructure, equipment, and technologies with the public. Real property planning, acquisition, sustainment, and disposal decisions are balanced to accomplish DOE’s mission; reduce risks to workers, the public, and the environment; and minimize lifecycle costs.

The AR Guide is intended to assist sites in planning, management, and reuse of assets to promote effective mission execution, optimize Federal and public resources, and support local and national goals for economic growth and diversification. The DOE AR Guide was developed using recommended actions and best practices from DOE and NNSA sites, laboratories, programs, other Federal agencies, and stakeholders and is composed of strategies and tools to implement parameters of the Order. The AR Guide intent is to proactively manage real property assets through disposition while actively maintaining lines of communication between the sites, local communities and DOE Headquarters (HQ).

The AR Guide was developed in response to the *Ike Skelton National Defense Authorization Act for Fiscal Year 2011* (Public Law 111-383), Section 3124 that stated DOE may develop a program to permit the establishment of energy parks on former defense nuclear facilities and tasked DOE to submit a report to the Armed Services Committees on the implementation of the energy parks program, including any recommendations for additional legislative actions. Pursuant to this legislation, DOE established an Asset Revitalization Initiative (ARI) Task Force in February 2011 to prepare the report to Congress in 2011 and review DOE assets and possible disposition paths. Specifically, the report stated that DOE

would: (1) review all assets at both defense and non-defense sites; (2) consider a full range of potential reuses including but not limited to energy parks as defined by the legislation; and (3) implement AR using its current authorities. The ARI Task Force determined that reuse of real properties assets, no longer needed for missions, is beneficial to DOE and can be accomplished through existing authorities and financial incentives. The AR Guide is a compilation of successful best practices and authorities for use by DOE sites and program offices to revitalize real property assets for use by local communities and governments.

2. AR GUIDE APPLICATION

The AR Guide is available for use by all DOE and NNSA organizations elements and language in the AR Guide includes NNSA in reference to the Department of Energy or DOE. The AR Guide is not prescriptive but should be used by programs and sites to meet their needs and requirements to manage the lifecycle of their portfolio of real property assets and within the asset planning and management decision process. All the tools contained within the AR Guide are to be used in compliance with site operational, security and environmental constraints and can be tailored to specific applications whether on a DOE-wide, program or site level.

Asset managers may work with their program management team members, legal counsel, and other interested parties to determine the tools and strategies listed in the AR Guide that will be most beneficial. The strategies and tools contained in the AR Guide include:

Tool 1 (T-1): Modernization – Checklist for Planning Asset Disposition

Tool 2 (T-2): Real Property Transfer Timelines – Proactive Approaches

Tool 3 (T-3): National Environmental Policy Act (NEPA) Strategies for Real Property Transfers

Tool 4 (T-4): Real Property Transfer Requests – Evaluating Requests for Less Than Fair Market Value Transfers and Indemnification

Tool 5 (T-5): Real Property Transfer Strategy Using 10 CFR Part 770

Tool 6 (T-6): Other Considerations in Transferring Real Property

Tool 7 (T-7): Authorities and Regulations Relevant to Asset Revitalization.

3. STRATEGIES AND TOOLS FOR ASSET MANAGEMENT AND REUSE (COMPONENTS OF THE AR GUIDE)

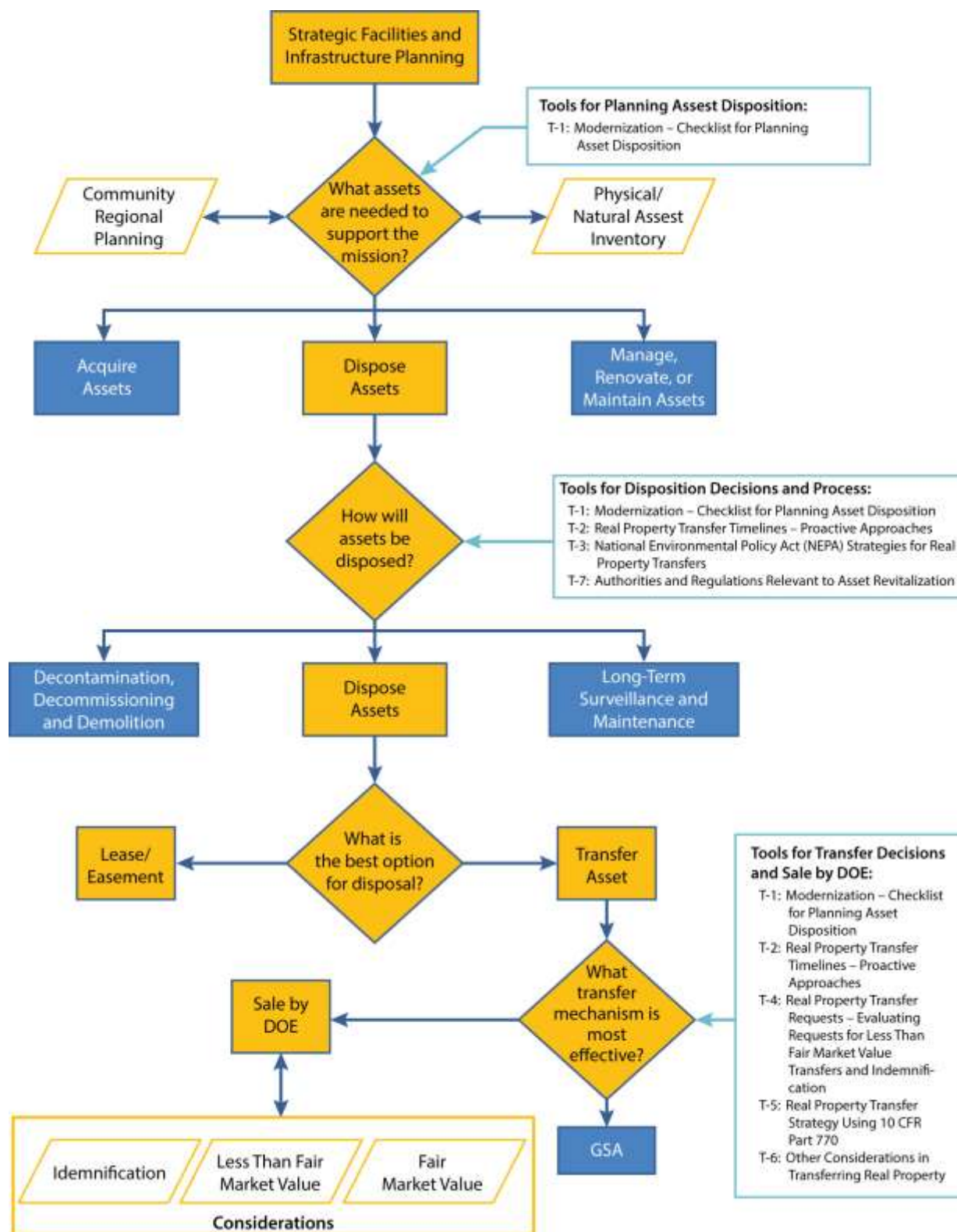
This section contains a description of the strategy documents, checklist and white papers referred to as tools that are in the Appendix of this document. The AR Tools may be used throughout the asset planning and management decision process that leads to the lease or transfer of real property assets. It does not include strategies for decontamination and decommissioning, the demolition of facilities or strategies to perform long-term surveillance and maintenance activities.

As sites determine which properties will no longer be needed for current and future missions, they should develop an overall asset management and disposition strategy that includes a methodology to evaluate disposal options within the parameters of an analysis of the National Environmental Policy Act (NEPA). The strategy should include an evaluation of disposition options and authorities and a determination as to whether to demolish, lease or transfer the asset. All disposition options should be based on asset-specific factors such as asset condition; fair market value; market interest; appraised value; community input and economic development considerations; and improvements needed for marketability. The preferred disposition option should be based on direct and indirect governmental financial benefits and compatibility with site missions; cleanup and other community agreements; community relations; mission benefits to DOE; and the appropriate authorities to achieve transfer goals. Although demolition is not the subject of the AR Guide, demolition should be considered as a way to clear the land on a site for reuse applications.

Sites and program offices should consult with DOE legal counsel sites to determine whether strategies outside the standard Federal disposal processes under Title 41 of the *Code of Federal Regulations* (CFR) Parts 102 could be used. Other factors to be evaluated include consideration of requests for less than fair market value and whether granting indemnification is in DOE's best interests. Even where DOE-specific land management and disposal authorities exist, sites may consider using the U.S. General Services Administration (GSA) to perform an evaluation for specific transfers. All disposal options must be in compliance with site operational, security and environmental constraints.

4. AR ASSET MANAGEMENT AND REUSE DECISION FLOW DIAGRAM

The decision flow diagram provides a pictorial representation of the decision points and process activities leading to lease or transfer. Tools are designated by tool number and name. The flow diagram should be referenced as the reader reviews the description of each tool. In addition, an icon depiction of the applicable decision box accompanies each description.



AR Asset Management and Reuse Decision Flow Diagram

5. SUMMARY OF AR ASSET MANAGEMENT AND REUSE TOOLS (APPENDIX)



Tool 1 (T-1): Modernization – Checklist for Planning Asset Disposition. This checklist is designed to support and plan for the modernization of site lands and facilities and can be used during several stages in the asset management process. It provides information for a proactive approach that ensures mission support from

land and infrastructure, while incorporating opportunities for community planning, reuse, and economic development.

Options for Implementation: The checklist should be used by sites to develop a modernization strategy that supports its mission, delivers the most effective use of its infrastructure, and assists local communities to transition to an environmentally sustainable, economically diverse structure as DOE realigns its budgets. Implementation of the tool requires commitment and cooperation from sites and the local community.

Other Considerations and Recommended Tools:

- The checklist is focused on a portion of the decision path for the modernization via disposition of unneeded assets. However, the checklist could be expanded to include best practices for other modernization decisions such as recapitalization via privatization.
- Sites should develop a methodology to evaluate an asset's readiness for reuse, to be used in conjunction with the checklist. This would help inform discussions within DOE initially, and later with the local community. A readiness for reuse tool would aid development of the modernization strategy and prioritization of projects such as cleanup, decontamination and decommissioning (D&D), and recapitalization.
- The capability and capacity offered by natural assets such as water discharge permit capacity; protected resources within our control; and air permit capacity may also be considered when developing a modernization strategy and determining what assets should be retained, are unneeded, or should be acquired to support missions. As we move toward increased sustainability and a reduced footprint, our natural assets and the capacity they offer may be assessed, inventoried, and documented to evaluate their role in supporting our missions, as well as the goals of our surrounding communities to attract diverse industries.



Tool 2 (T-2): Real Property Transfer Timelines – Proactive Approaches. This tool explores the manner in which timelines for transfer can be improved via proactive approaches. It recommends upfront communication and planning between sites, their communities, industry, and DOE HQ. It discusses options for managing transfers

requested for economic development by making decisions and identifying potential candidates for disposition as part of an overall disposition strategy that is not dependent on requests.

Options for Implementation: Once a site determines that its footprint should be reduced, it should begin to evaluate and establish a plan for conveyance. Sites do not need to wait until specific parcels are requested before beginning the process that would allow the transfer to be accomplished. This tool presents options for sequencing and implementing activities to alleviate long timelines once a request for transfer is received. The document can also help sites identify opportunities to engage in upfront

discussions with potential requesters, with DOE HQ, and among site offices to improve the review process.

- Authorities and Regulations Relevant to Asset Revitalization (T-7) should also be considered in conjunction with this tool.
- National Environmental Policy Act (NEPA) Strategy for Real Property Transfers (T-3) and Modernization – Checklist for Planning Asset Disposition (T-1) should be considered when developing a strategy for a transfer program and seeking to improve timelines. Other documents that would be helpful are Other Considerations in Transferring Real Property (T-6), Real Property Transfer Requests – Evaluating Requests for Less Than Fair Market Value Transfers and Indemnification (T-4), and Real Property Transfer Strategy Using 10 CFR Part 770 (T-5).



Tool 3 (T-3): National Environmental Policy Act (NEPA) Strategy for Real Property Transfers. This strategy document provides best practices and guides for implementing NEPA for proposed real property conveyances. The key is executing a proactive approach that includes upfront communication with NEPA Compliance Officers (NCOs), other Federal agencies (if applicable), and the public to review and analyze environmental impacts of all reasonable options.

Options for Implementation: This document can be used by program managers as a starting point to develop a proactive NEPA strategy with their NCOs.

Other Considerations and Recommended Tools:

- Real Property Transfer Timelines – Proactive Approaches (T-2) and Modernization – Checklist for Planning Asset Disposition (T-1) should be considered when developing the NEPA strategy and considering the most proactive timelines for an effective transfer program. Authorities and Regulations Relevant to Asset Revitalization (T-7) should also be considered.



Tool 4 (T-4): Real Property Transfer Requests – Evaluating Requests for Less Than Fair Market Value Transfers and Indemnification. This document provides a framework for adequately evaluating a request for an asset to be transferred at less than fair market value and/or one that requests indemnification. It includes strategies and best practices that should be considered to support the proposed transfer. The framework

was developed by considering the expectations of the various offices that are responsible for reviewing proposals on real property disposition to determine if the proposed action is in the best interest of the government. These interests include financial, asset management, program, and legal considerations.

Options for Implementation: The framework can be used as a guide for evaluating the potential strengths and weaknesses of a proposal for a less than fair market transfer and determining the merits for a justification. It can also be used to determine if options for market sale, negotiated sale, or other means of transfer through DOE or GSA are more feasible.

Other Considerations and Recommended Tools:

- Other Considerations in Transferring Real Property (T-6), Real Property Transfer Strategy Using 10 CFR Part 770 (T-5), National Environmental Policy Act (NEPA) Strategy for Real Property Transfers (T-3), and Real Property Transfer Timelines – Proactive Approaches (T-2) should be considered when developing a framework, strategy, and schedule for transfers. Authorities and Regulations Relevant to the Asset Revitalization (T-7) should also be considered.



Tool 5 (T-5): Real Property Transfer Strategy Using 10 CFR Part 770. This document provides information on the process for implementing transfer requests for economic development under DOE's 10 CFR Part 770 regulation, *Transfer of Real Property at Defense Nuclear Facilities for Economic Development*. This process has been successfully used by EM for many years. This tool contains information on the documents that should be included in a 10 CFR Part 770 proposal for transfer regardless of whether the request is being made for less than fair market value or with indemnification. It differs from Real Property Transfer Requests – Evaluating Requests for Less Than Fair Market Value Transfers and Indemnification (T-4) in that it provides a general description of the parts of a package needed specifically for a 10 CFR Part 770 request. It does not include detail on the specific content that would be needed to adequately consider and address a transfer request for less than fair market and/or one with indemnification. T-4 provides best practices that should be considered when developing such a framework.

Options for Implementation: Program managers can use this strategy paper to determine the requirements for a 10 CFR Part 770 package and when reviewing a transfer request to support economic development purposes. Real Property Transfer Requests – Evaluating Requests for Less Than Fair Market Value Transfers and Indemnification (T-4) should be consulted if a request is submitted to transfer for no cost or less than fair market value or to grant indemnification. Program managers, in consultation with their real property officer and other project team members, can determine if additional information is needed from a requester or if additional discussions are needed to complete the transfer package. Tools 4 and 5 can also be used to determine if a transfer request is justifiable and in the best interest of the government.

Other Considerations and Recommended Tools:

- Other Considerations in Transferring Real Property (T-6), National Environmental Policy Act (NEPA) Strategy for Real Property Transfers (T-3), and Real Property Transfer Timelines – Proactive Approaches (T-2) should be considered when developing a strategy, schedule, and plan to respond to or execute transfers under 10 CFR Part 770. Authorities and Regulations Relevant to Asset Revitalization (T-7) should also be considered.



Tool 6 (T-6): Other Considerations in Transferring Real Property. This white paper discusses considerations that sites should explore when evaluating real property transfers and developing their disposition strategy. The discussion includes transfers for the purposes of economic development.

Options for Implementation:

- Program managers can use this paper as a starting point for discussions with their real property officer and team when developing a strategy, considering options, and/or planning a real property transfer.
- When using this paper, program managers should keep abreast of revisions or pending regulations and laws applicable to their site or to the general execution of asset management. Legal counsel and real property officers should be part of project and program teams when developing strategies for managing and dispositioning assets.
- Real Property Transfer Requests – Evaluating Requests for Less Than Fair Market Value Transfers and Indemnification (T-4), Real Property Transfer Strategy Using 10 CFR Part 770 (T-5), National Environmental Policy Act (NEPA) Strategy for Real Property Transfers (T-3), and Real Property

Transfer Timelines – Proactive Approaches (T-2) should be considered when developing a framework, strategy, and schedule for transfers. Authorities and Regulations Relevant to Asset Revitalization (T-7) should also be considered.



Tool 7 (T-7): Authorities and Regulations Relevant to Asset Revitalization. This paper describes the variety of Federal government authorities relevant to the AR and that relate to the transfer and disposal of real and personal property. It includes information on DOE's unique authorities and implementing regulations. It includes authorities for AR that are not directly related to real property transfer and disposition, but whose goals and objectives can also be considered when evaluating opportunities for reuse generated by real property transfer and disposal actions.

Options for Implementation:

- When using this tool, program managers should be knowledgeable of revisions or pending regulations and laws applicable to their site or to the general execution of asset management. Legal counsel and real property officers should be part of project and program teams when developing strategies for managing and dispositioning assets.

Other Considerations and Recommended Tools:

- Real Property Transfer Requests – Evaluating Requests for Less Than Fair Market Value Transfers and Indemnification (T-4), Real Property Transfer Strategy Using 10 CFR Part 770 (T-5), National Environmental Policy Act (NEPA) Strategy for Real Property Transfers (T-3), Other Considerations in Transferring Real Property (T-6), and Real Property Transfer Timelines – Proactive Approaches (T-2) should be considered when developing a framework, strategy, and schedule for transfers.

Appendix A – Asset Management and Revitalization Tools



Tool 1 (T-1): Modernization – Checklist for Planning Asset Disposition

This checklist is for use by U.S. Department of Energy (DOE) sites to support advance planning for

the modernization of site lands and facilities. The aim of modernization is to ensure DOE's current and planned infrastructure supports mission requirements, and as real property becomes unneeded or unutilized, it is a catalyst for redevelopment and reuse activities. This assists DOE communities in transitioning from being highly impacted by DOE budgets to being economically diverse. This checklist is suitable for all sites, including those planning for closure but is contingent upon compatibility with site operations, security constraints, and environmental conditions. The premise of the checklist is early planning of asset disposition and management to support mission requirements while incorporating community priorities for environmentally sustainable reuse. Based on lessons learned from across the complex, modernization is expected to include reuse and/or transfer of land and facilities.

Five Years Prior to Modernization Action

- ☐ Assemble a site Task Force to include Federal employees with the requisite expertise, and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf). The Task Force may consult with non-Federal employees and entities, such as community reuse organizations (CROs) and economic development organizations, on an as needed basis to obtain their individual opinions, or for the purpose of exchanging facts or information.
- ☐ With the Task Force, a) identify stakeholders and establish innovative outreach strategies for environmentally sustainable modernization; b) determine community needs for local reuse of unneeded, underutilized, or potentially unneeded DOE assets; and c) develop a strategic site plan for future land and facility use (including designated closures) that integrates the site's future goals with the local community's goals and results in a strategy for modernization. Sites can create a new plan or revise existing land use plans, end-state plans, closure plans, or other site strategic plans that integrate the physical state of the site, current and future missions (including closure), and assets.
- ☐ Work with the site *National Environmental Policy Act* (NEPA) Compliance Officer (NCO) to develop a reuse NEPA strategy for the site.
- ☐ Hold public meetings to obtain information and individual views regarding reuse options from the affected community.
- ☐ Coordinate with applicable program and staff offices on proposed reuse options and potential options to move forward.
- ☐ Ensure that the strategy for reuse or transfer planning information is included and updated in the Ten-Year Site Plan (closure plan) and within the budget formulation.
- ☐ Integrate activities needed for implementation of the strategic site plan into program and project planning, prioritization, and execution. Evaluation of assets and projects should include opportunities for cost savings through reuse of assets designated for long-term surveillance and maintenance and decontamination and decommissioning (D&D).

Three Years Prior to Modernization Action

- ☐ Allow stakeholders, developers, businesses, and local community to express interest in DOE assets

that could potentially be reused given a realistic timeline for compliance with NEPA and other requirements prior to disposition.

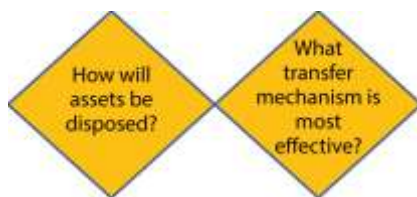
- ☐ Revisit the developed strategic site plan and update it as necessary.
- ☐ Identify potentially unneeded DOE land and facilities from the strategic site plan that could be transferred or reused to create jobs. Again, evaluation of assets and projects should include opportunities for cost savings through reuse of assets designated for long-term surveillance and maintenance and D&D.
- ☐ Begin a review of the asset for proposed reuse to develop an asset disposition strategy that determines the best strategy for disposition, such as lease, market sale, negotiated sale, or less than fair market transfer and the authority options. Considerations should include proposed reuse, economic development, whether to offer indemnification, appraised value, market interest, need for improvements, market proposals for redevelopment, government benefits, community benefits, etc.
- ☐ Work with the local community to develop a specific modernization proposal(s).
- ☐ Work with NCO to refine NEPA strategy, including how best to address a range of possible future uses, and develop a schedule to undertake NEPA review.
- ☐ Perform environmental, safety, and security reviews, to inform the NEPA process.
- ☐ Fully inform the potential grantees about remaining hazardous conditions both on the property and adjacent to the property if known.
- ☐ Complete draft justification and/or business case for DOE Headquarters review, if appropriate.
- ☐ Determine appropriate reuse or transfer authorities to use.

One Year or Less Prior to Modernization Action

- ☐ Complete real estate instruments necessary to reach selected end state. Complete review of safety, security, and classification concerns.
- ☐ Give necessary notifications to Congress and others, when required.
- ☐ Revise and complete final justification and/or final business case for approval on applicable actions. Complete walk-through (non-transferred assets) or closeout documents to finish modernization efforts.
- ☐ Complete NEPA review and sensitive resources screening that include other Federal regulations and requirements, including the *National Historic Preservation Act*, the *Endangered Species Act*, and floodplains and wetlands reviews (10 CFR Part 1022).

Information Gathering within and Outside the Department

- ☐ Obtain input from Environmental Management, if applicable, on strategic planning.
- ☐ Obtain input from appropriate Program and Site Communication offices on stakeholder views. Obtain input from Office of Management on modernization process.
- ☐ Establish a road map to connect information collected while assessing and updating the strategic plan to the latest phase of the project and updating life-cycle costs.
- ☐ Consider the goals identified in the strategic site plan and the asset disposition strategy when developing site cleanup plans. Project teams executing cleanup should evaluate opportunities that consider community resources and initiatives to promote successful reuse of assets that fall within regulatory and fiscal bounds.



Tool 2 (T-2): Real Property Transfer Timelines – Proactive Approaches

Introduction

U.S. Department of Energy (DOE) Order 430.1B, “Real Property Asset Management,” requires planning to ensure that current and future mission needs are met and establishes requirements for identifying real property that is unneeded for mission needs. It also calls for DOE to “establish a corporate, holistic, and performance-based approach to real property life-cycle asset management that links real property asset planning, programming, budgeting, and evaluation to program mission projections and performance outcomes.” Historically, many DOE transfers of real property have been conducted in response to requests received either in parallel with or following environmental cleanup. Several sites, such as the Rocky Flats site in Colorado and the Pinellas site in Florida, were transferred largely as a single parcel and the disposition was agreed to as part of the overall cleanup process. East Tennessee Technology Park (ETTP) in Tennessee and the Mound site in Ohio are examples of DOE Office of Environmental Management (EM) cleanup sites that are being transferred incrementally, parcel by parcel, for reuse as industrial/business/technology parks. Although these request-driven strategies have worked very well in the past, and may still be fitting for some missions, other more-proactive approaches to property management and transfer are consistent with most of DOE’s current missions and implementation goals, as well as Federal drivers to reduce costly portfolios of unneeded and underutilized assets. Whether a site is transferred as a single entity or partitioned into parcels and transferred over time, sites should develop an overall strategy for conveying assets that includes consideration of current and future mission requirements, cleanup schedules, reuse preferences of potential recipients, and methods and authorities for transfer. Although this document specifically refers to transfers, it should be noted that other types of conveyances, such as leases, can and should be part of the overall site strategy.

Within any transfer strategy, the requirements that most impact the transfer schedule are the development and review of environmental and financial due diligence documentation needed to assess a proposed transfer. These include the review and evaluation conducted pursuant to the *National Environmental Policy Act* (NEPA); the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA) Section 120(h); and DOE Order 458.1, “Radiation Protection of the Public and the Environment” (for sites with a history of radiological activities). Discussions with DOE Headquarters (HQ) concerning justification, method, and authorities for transfer need to be factored into the transfer schedule. Generally, the requirements for these activities are well defined and offer little room for schedule compression. However, by taking a proactive approach and starting NEPA and CERCLA reviews concurrently with other transfer and cleanup actions, the real property transfer process can be optimized. A more proactive approach allows sites to respond more effectively to single or multiple requests and provides flexibility in considering a variety of uses such as economic development; public, historical and cultural; wildlife preservation; or education (but note that indemnification is only authorized for transfers for economic development). In addition, sites can effectively evaluate disposal options including use of U.S. General Services Administration (GSA) authorities and capabilities, various DOE authorities, or other alternatives, such as leasing, easements, or access agreements that may be in the best interest of the government. A proactive approach will benefit the Department and the community.

Sites can incorporate an overall asset management and disposition strategy prior to disposition that includes a methodology to evaluate disposal options for individual assets or groups of assets and

disposition authorities, methods, and lease or transfer options. The strategy would also include a highest and best use analysis to evaluate all factors concerning the proposal to transfer the real property at less than fair market value. Sites need to evaluate if it is in the best interest of the government to adopt a transfer strategy outside the standard Federal disposal processes under Title 41 of the *Code of Federal Regulations* (CFR) Part 102, including transfers at less than fair market value or with indemnification. Where DOE-specific real property disposal authorities apply, sites can still consider using the GSA to help perform this type of evaluation for specific transfers, (but not for transfers where DOE will be offering indemnification). These evaluations can be incorporated into an overall strategy that addresses the portfolio of assets.

The following provides activities that may be part of a site's transfer process, including the driving legal, regulatory, and policy requirements applicable to most DOE transfers. Implementing these activities could result in a more-proactive approach, but not every activity would apply to every site or every transfer. Sites would have to consider the applicability of each authority and driver to convey their assets through transfers, leases, or other conveyances.

1. Authority and Drivers for DOE Real Property Transfers

The **Atomic Energy Act (AEA) of 1954, Section 161g**, gives DOE the authority to sell, lease, grant, and dispose of real and personal property that has been acquired for AEA purposes or will be used for AEA purposes.

As a Federal agency, DOE can partner with the GSA, which has authority to transfer real property under the **Federal Property and Administrative Services Act of 1949**, as amended.

The **National Defense Authorization Act for Fiscal Year 1998, Section 3158**, directs DOE to prescribe regulations for the transfer by sale or lease of real property at defense nuclear facilities and provides discretionary authority for the Secretary of Energy to indemnify transferees of real property.

10 CFR Part 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development, was initially issued in 2000, and was issued as a final rule, effective in December 2013. It includes provisions for transfer of real property at less than fair market value if the "real property requires considerable infrastructure improvements to make it economically viable" or if "conveyance at less than market value would, in the DOE's judgment, further the public policy objectives of the laws governing the downsizing of defense nuclear facilities."

The June 10, 2010, Presidential Memorandum, entitled, **Disposing of Unneeded Federal Real Estate – Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency**, provides direction to all government agencies to eliminate unneeded properties, make better use of remaining real property assets, increase revenue to the Government from the sales of unneeded properties, and produce cost savings through sales and reduced operating expenses.

2. Cost Avoidance and Footprint Reduction

Goals to reduce landlord (e.g., surveillance, operations, and maintenance) costs have become a driver for real property transfers. EM's footprint reduction goal to clean up rather than maintain sites and the National Nuclear Security Administration's (NNSA's) goal to streamline infrastructure both consider the sunk costs to maintain assets that are not needed or fully utilized. For example, these factors were considerations for transfer of EM real property at the Rocky Flats site in Colorado, the Mound site in Ohio, and the ETTP in Tennessee. NNSA is currently undergoing efforts to view its infrastructure from a corporate standpoint.

3. Legal, Regulatory, and Policy Requirements for DOE Real Property Transfers

DOE Order 430.1B, “Real Property Asset Management,” identifies requirements and establishes reporting mechanisms and responsibilities for real property asset management. DOE Order 430.1B requires planning to ensure that current and future mission needs are met and establishes requirements for identifying real property that is not needed for missions to facilitate reuse or disposal. The Order calls for DOE to “establish a corporate, holistic, and performance-based approach to real property life-cycle asset management that links real property asset planning, programming, budgeting, and evaluation to program mission projections and performance outcomes.” Other pertinent provisions of the Order include the following:

- Where applicable, unneeded real property assets that are appropriate for economic-development transfer should be identified and disposed of in accordance with **10 CFR Part 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development.**
- DOE HQ should be notified 90 days before all disposals by sale or lease under DOE authorities.
- Notification to the congressional defense committees is required 30 days in advance of economic-development-related transfers or leases where indemnification is being provided. If there is a sale of real property that does not use standard Federal practices (e.g. any real property transfer under the AEA authority), Congress has requested that the Department notify the appropriations committees 60 days in advance of the proposed sale.

National Environmental Policy Act (NEPA). As a Federal action, all proposed DOE real property transfers should be evaluated pursuant to NEPA and comply with other Federal regulations and requirements, including the *National Historic Preservation Act*, the *Endangered Species Act*, and floodplains and wetlands reviews (10 CFR Part 1022). The Council on Environmental Quality NEPA implementing regulations (40 CFR Parts 1500–1508) established three levels of NEPA review for proposed actions – environmental impact statement (EIS), environmental assessment (EA), and categorical exclusion (CX) determinations – each involving different levels of information and analysis. An EIS is a detailed analysis of the potential environmental impacts of a proposed action (and alternatives) that may have a significant impact on the environment. An EA is a brief analysis conducted to determine whether a proposed action may have a significant impact on the environment and thus whether an EIS is required. A CX is a class of actions that a Federal agency has determined do not, absent extraordinary circumstances, individually or cumulatively have a significant impact on the human environment (i.e., no EA or EIS is required). A CX determination is made when a NEPA Compliance Officer finds that a proposed action fits within a CX and meets other applicable requirements. Some proposed transfers, particularly if the proposed transfer does not result in a change in the use of the real property, may fall within a NEPA CX. If a CX applies, DOE still should ensure that reviews for other Federal requirements are completed. Other proposed transfers may require higher levels of NEPA review such as an EA or an EIS. If there are reasons¹ to transfer real property over time using multiple discrete parcels, the NEPA evaluation nonetheless should consider the entire portfolio of associated real property transfers.

Comprehensive Environmental Response, Compensation Liability Act (CERCLA), Section 120(h).² Proposed DOE real property transfers are subject to the applicable requirements of CERCLA

¹ For example, in a brownfield context where site cleanup can take years, or even decades, to complete, it may be desirable to move forward with transfers in an incremental fashion as cleanup progresses, rather than wait until all of the real property is remediated.

² The provisions of CERCLA 120(h) would not apply to transfers among Federal agencies. The requirement under

Section 120(h). A CERCLA review involves regulatory approval(s), establishes the property's baseline environmental condition, and identifies any land use restrictions necessary based on the environmental condition of the property. The CERCLA Section 120(h) review results in one of three determinations: a covenant warranting that all remedial action has been taken [120(h)(3)(A)(ii)(I)]; a covenant deferring remedial action [120(h)(3)(C)]; or identification of the real property as uncontaminated [120(h)(4)(A)]. For 120(h) (3) (A) (ii)(I) transfers, a covenant is issued warranting that all remedial action necessary to protect human health and the environment has been taken and that any additional remedial action found to be necessary after the transfer shall be conducted by the United States. For the 120(h) (3)(C) transfers, a regulator approves deferral of remedial action, based on a finding that the real property is suitable for transfer for the use intended by the transferee and that the deed contains appropriate restrictions and response action assurances. In this case, the United States is still responsible for any additional response action found to be necessary after the transfer. For 120(h) (4) (A) transfers stating that the real property is uncontaminated, the identification as an uncontaminated parcel is not complete until concurrence of the appropriate regulatory authority has been obtained. The deed for an uncontaminated parcel will also contain a covenant warranting that any response action or corrective action found to be necessary after the transfer shall be conducted by the United States. A clause is also included in all deeds of transfer providing for access to transferred real property to perform the necessary actions noted or identified post-transfer.

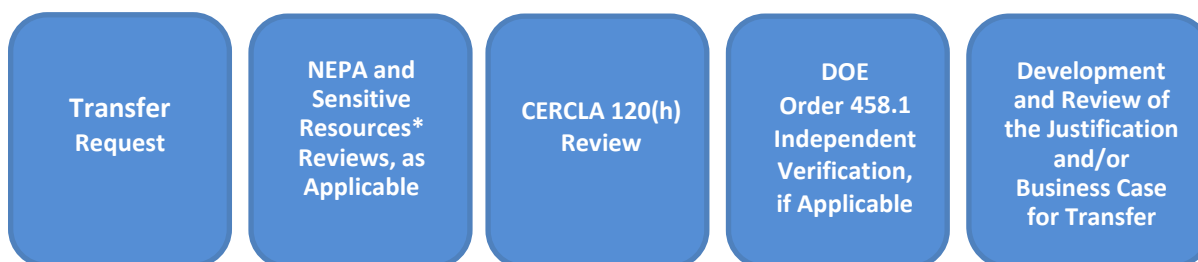
DOE Order 458.1, "Radiation Protection of the Public and the Environment," applies to sites with a history of radiological activities. The order requires the establishment of approved authorized limits and independent verification of the radiological condition of a property before it can be released from DOE control.

4. Documentation of Environmental and Financial Due Diligence in Support of Real Property Transfer

Based on the applicable legal, regulatory, and DOE requirements and authorities above, sites develop a collection of documents that support the transfer action that is often referred to as the transfer package. DOE HQ is notified to review transfer packages that are under DOE authorities to ensure compliance with applicable statutes, regulations, and policy and to assess the overall transfer strategy. If the transfer authority is outside the standard Federal disposal processes, DOE HQ reviews the transfer package before submittal to the congressional defense or appropriations committees. Tool 5 provides a general set of guidelines specifically for transfer packages for economic development using 10 CFR Part 770 that is based on EM's transfer process. Any DOE transfer package should demonstrate environmental, health and safety, and financial due diligence, whether the DOE transfer is for economic development or other purposes. Not every activity will apply to every transfer, and sites should consider the applicability and strategy for implementing these activities to develop an overall approach that meets mission requirements and site circumstances. Ideally, each site's transfer strategy will be proactive and will promote goals for reuse and collaboration with the community.

The five major activities to support approval and execution of a transfer are shown below. The activities are not steps, but can be executed in a manner that best suits a site's situation and transfer approach. Subsequent discussion about these activities is based on best practices, lessons learned, and forward thinking in an evolving governmental environment.

CERCLA 120(h)(3)(A)(ii)(I) to issue a covenant that all remedial action necessary to protect human health and the environment has been taken would not apply to leases.



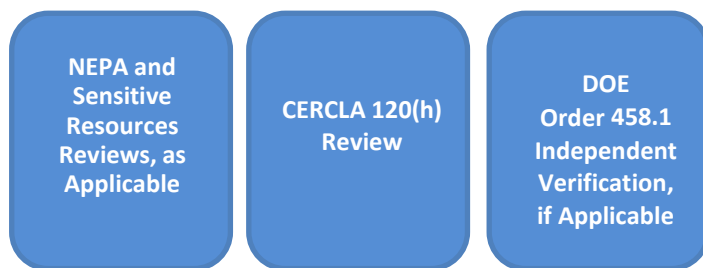
* Other sensitive resources reviews refer to other Federal regulations and requirements, including the National Historic Preservation Act, the Endangered Species Act, and floodplains and wetlands reviews (10 CFR Part

4.1 Transfer Requests

Transfer Request

Transfer requests are largely limited by the financial resources identified in the requester's business model. DOE real property disposition decisions are based on the availability of the property following evaluations of mission need, environmental condition/status (CERCLA), potential environmental impacts (NEPA), and the interests of the local community. DOE parcels deemed available for transfer may be much larger than those being considered by individual requesters. Therefore, DOE sites should take a proactive approach when working through the transfer decision processes under DOE Order 458.1, and should consider NEPA and CERCLA requirements in a site-wide framework, rather than simply reacting to transfer requests that may be narrower in scope. There are numerous options in determining the rationale and/or business case for transfers and other conveyances, including considerations of market value, market interest, needed investments, and the ability of the potential recipients to make those investments. The site can take a proactive approach by evaluating these considerations before transfer requests are received. All of the considerations involve close coordination with the community. An effective way to implement these approaches is through joint planning efforts with the community. The degree of communication and collaboration with the community is dependent on site mission, security issues, or other factors.

4.2 Environmental Due Diligence – NEPA, CERCLA, and DOE Order 458.1 Reviews



DOE can proactively initiate all environmental due diligence requirements in advance of receiving a request for transfer. Reviews should be scoped as broadly as reasonably possible to include all related property (e.g., by geography, operational history, and/or environmental condition) that the site knows will not be

needed for mission use. As called for in 10 CFR Part 770, DOE may include such property in the annual lists of real property at defense nuclear facilities that has been identified as appropriate for economic development transfers. Subsequent parcel requests may be sub-components of the parcel DOE has identified for potential transfer through these environmental upfront reviews. This approach is consistent with DOE Order 430.1B stipulations to plan for disposition when assets are identified as no longer required for current or future programs. It also allows DOE to take advantage of efficiencies realized by not performing multiple reviews on individual parcels that could be combined under one review. Again, although this discussion focuses on transfers, other conveyances such as leases or easements should be considered as part of a site's overall approach.

NEPA: DOE's NEPA review should include the entire area that is under consideration for transfer and can be completed before or after the transfer request is received, but should be completed before DOE executes the deed. The site should complete all NEPA requirements, and a proposed quit-claim deed, before sending the transfer request to DOE HQ for approval. Congress's approval is also required before the parcel can be transferred. DOE will need to evaluate the potential environmental impacts associated with the reasonably foreseeable future uses for the site as part of the NEPA evaluation. Communication with community partners early in the process and on the largest area that will eventually be considered for transfer helps the site 1) obtain an idea of community interest in parcels, allowing DOE to proactively plan for parcels that may not be readily requested, 2) anticipate future transfer requests so that the timeframes between a request and actual transfer are reduced, and 3) establish a high-level joint site/community vision for the site.

CERCLA Section 120(h) and DOE Order 458.1: The reviews under CERCLA Section 120(h) and DOE Order 458.1 are limited to the portion of the site proposed to be transferred; these reviews are conducted to determine whether transfer of the parcel, with appropriate restrictions, is protective of human health and the environment. For environmental cleanup sites, the covenant requirements imposed by Section 120(h) necessitate that the environmental baseline documentation and regulatory approval process are not started until sufficient progress has been achieved on cleanup such that the real property is suitable for transfer, with appropriate restrictions, for the intended use. For this reason, it may be appropriate to conduct the CERCLA Section 120(h) review in an incremental fashion, parcel by parcel, for larger sites with long cleanup timeframes. However, even in the case of a large cleanup with long timeframes, these reviews could be scoped to include complete portions of the site that are likely no longer to be needed for DOE missions and have been determined to be protective of human health and the environment as opposed to limiting the review to a smaller parcel that has been requested for transfer. The documentation effort is similar and the regulatory approval process is the same regardless of the size of the parcel. In some instances, these reviews could occur concurrently with the NEPA review.

- a. Sequence of reviews: Considerations when determining whether to perform reviews before or after a request is received are provided in the table below.

	In Advance of a Request	After a Request is Received
Time	<ul style="list-style-type: none"> Addressing NEPA, CERCLA Section 120(h), DOE Order 458.1 and other applicable environmental requirements in advance of a transfer request can dramatically reduce the time from request (proposal) to transfer. More opportunities to work NEPA, CERCLA Section 120(h), and DOE Order 458.1 (if applicable) processes in parallel. 	<ul style="list-style-type: none"> A site-wide EIS typically takes 18 months or more. Separate reviews on individual (severed or segmented) parcels under NEPA are not appropriate. CERCLA Section 120(h) reviews typically take 6–12 months.
Costs and Resources	<ul style="list-style-type: none"> Federal-wide drivers to divest of real property not needed for current or future mission could provide justification to commit resources. This option offers opportunities for cost savings by increasing the size and acreage of the CERCLA Section 120(h) reviews. Sites may have to commit resources without knowing if a request will be received. Options for using GSA real property disposal and targeted asset review services at no direct cost to the agency can be considered if DOE resources are not available and/or supported or if the uncertainty of a successful transfer is too great. 	<ul style="list-style-type: none"> The request could serve as a driver for committing resources.
Probability of Success	<ul style="list-style-type: none"> Determining general outside interest in site real property can increase the likelihood that transfers will occur within mutually beneficial time and cost parameters. A proactive approach readily lends itself to joint DOE/community planning efforts and establishing common goals for the site and community to increase economic diversification and private industry growth. Uncertainty associated with approval of the suitability to transfer, the requirements for deed restriction, and the time for performing reviews can be greatly reduced by performing the reviews early, on as wide a scope as possible. This can make properties more attractive. 	<ul style="list-style-type: none"> Interest in a parcel by an external organization can increase the likelihood that a transfer will be successfully completed.

	In Advance of a Request	After a Request is Received
Other Considerations and Actions	<ul style="list-style-type: none"> Sites/programs should work with communities well in advance of transfer requests to determine bounding conditions for a range of potential uses for assets. The scope of the review should be as broad as feasibly and technically possible, to include the largest land area reasonably foreseeable for future transfer, and the bounding conditions for use should be as broad as possible. The bounding conditions should be consistent with cleanup goals, if applicable. Community interaction such as through site-specific Advisory Boards and community Advisory Boards, as well as NEPA reviews, can occur well before cleanup and can inform subsequent cleanup standards. CERCLA Section 120(h) and DOE Order 458.1 reviews can be coordinated with the project cleanup schedules. 	<ul style="list-style-type: none"> CERCLA Section 120(h) and DOE Order 458.1 reviews need to be coordinated with the project cleanup schedules for applicability and timing. All real property requests will be evaluated on a case-by-case basis. DOE agreement to proceed with the evaluation for transfer will depend on the status and complexity of cleanup that may be needed; alternative properties may be suggested either initially or as a result of the due diligence evaluation.

- b. Scope of reviews: Considerations when determining how to scope the reviews – broad or parcel by parcel – are provided in the table below.

	Broad Scope – Site-Wide or Large Parcels That May be Subdivided after Due Diligence Review to Accommodate Requests	Parcel-by-Parcel Scope – Individual Review of Each Parcel Subject to a Request for Transfer Action
Time	<ul style="list-style-type: none"> The documentation effort and regulatory approval for CERCLA Section 120(h) and DOE Order 458.1 reviews are similar regardless of parcel size. Each review takes about 6–12 months to complete. Reviews on larger parcels can be more time efficient. The reviewed parcel can later be subdivided to accommodate requests. The time from request to transfer can potentially be reduced. 	<ul style="list-style-type: none"> The documentation effort and regulatory approval for CERCLA Section 120(h) and DOE Order 458.1 reviews are similar regardless of parcel size. Each review takes about 6–12 months to complete. Performing multiple reviews as requests come in expends more time for the same acreage.
Costs and Resources	<ul style="list-style-type: none"> Reviews on larger parcels would be more cost efficient. The scope of the parcel size is limited only by what would be reasonably foreseeable to transfer based on DOE mission needs. 	<ul style="list-style-type: none"> The documentation effort and regulatory approval for CERCLA Section 120(h) and DOE Order 458.1 reviews are similar regardless of parcel size. Multiple reviews with multiple documents and regulatory approvals limited by requests are cost and time inefficient.

	Broad Scope – Site-Wide or Large Parcels That May be Subdivided after Due Diligence Review to Accommodate Requests	Parcel-by-Parcel Scope – Individual Review of Each Parcel Subject to a Request for Transfer Action
Probability of Success	<ul style="list-style-type: none"> ● Uncertainty associated with approval of the suitability to transfer, the requirements for deed restriction, and the time for performing reviews can all be greatly reduced by performing the reviews early, on as wide a scope as possible. This can make properties more attractive. ● Sub-components that are not requested would be disposed of through GSA or other mechanisms. ● A method to prevent or discourage cherry-picking the best sub-components would need to be established. ● Sites can tailor the scope of the review to fit a variety of situations, whether transferring an entire site or individual parcels one at a time. Performing larger-scale reviews builds in flexibility. 	<ul style="list-style-type: none"> ● A method to prevent or discourage cherry-picking of the best parcels would need to be established. ● Parcels that are not requested would be disposed of through GSA or other mechanisms.
Other Considerations and Actions	<ul style="list-style-type: none"> ● Proactive DOE engagement as part of the NEPA review is necessary. ● Sites/programs should work with communities well in advance of transfer requests to determine bounding conditions for a set of potential uses for assets. ● Sites can offer more timely and efficient response to mission and environmental/safety limitations, as well as the needs of the community. ● The scope of the review should be as broad as feasibly and technically possible, to include the maximum footprint that may be under consideration for transfer now and in the future, and the bounding conditions for use should be as broad as possible. ● NEPA review could include multiple parcels within a DOE site, portions not needed for future or current missions, specific cleanup areas, sections of the site, etc. ● NEPA reviews can occur well before cleanup and can inform subsequent cleanup standards. ● CERCLA Section 120(h) and DOE Order 458.1 reviews should be coordinated with the project cleanup schedules. 	<ul style="list-style-type: none"> ● This strategy can be applied to reduce Federal real property at sites where full transfer may not be possible or where environmental cleanup requirements are expected to take many years to complete. ● Sites can be responsive to the mission and environmental/safety limitations, as well as the needs of the community. However, responses may not be as timely.

4.3 Justification for Transfer

Development
and review of
the Justification
and/or Business
Case for Transfer

There are options for sequencing, writing, and reviewing the justification for transfers. Justifications for real property transfers for economic development include a business case with various options that include considerations on whether the site is implementing a transfer program for economic development; whether real property transfers will occur independent of an overall program; whether the entire site is being transferred or parcels will be transferred incrementally; whether transfers at less than fair market value will be considered; and whether granting indemnification is in DOE's best interests. The business case can also address how other types of conveyances, such as leases and access agreements, may be incorporated. Sites should develop a methodology or framework to demonstrate the evaluation of disposal options for parcels. A highest and best use analysis evaluates all factors involved in making the decision to transfer the real property at less than fair market value. Sites need to determine the best way and estimate the time required to perform justification reviews to ensure effective, timely transfers. A key component of any process, however, will be upfront communication among site offices that will be involved, DOE HQ, and the community.

Much like performing NEPA reviews that address an entire site in advance of a transfer request, sites can evaluate developing the rationale for the transfer program and approach for the entire area planned for transfer as far in advance of a request as possible. Upfront efforts to obtain information and facts from the community may be beneficial, and development of the site's end-state and land use plans should be readily coordinated with regional planning efforts and the needs of the surrounding communities. Through these efforts, the site can determine the basis for potential transfers and the scope of the program, if one is established. For example, the site may determine it best to implement a program for economic development transfers. Parameters for the program should be established and agreed upon by the site and DOE HQ in a forward-thinking, programmatic business case approach. The individual requests would then be evaluated against the parameters for DOE HQ review and Congressional notification. Sites may also develop a strategy that includes a mix of uses that best represents what is reasonably foreseeable and has been voiced. Sites will need to determine if these transfers should be presented as a program where all of the parts contribute to the whole, as is normally the case with economic development transfers, or if transfers should be presented on individual merit. This approach readily lends itself to joint DOE and community planning efforts and establishing common goals for the site and community to increase economic diversification and promote private industry growth. It also encourages an approach where sites evaluate the various options and strategies for performing each transfer, including whether requests for transfers at less than fair market value are justifiable and within the best interest of the government. Again, an important component is upfront communication with DOE HQ and the community on the transfer of potentially available real property.

- a. Sequence and scope of reviews: Considerations when determining whether to perform reviews before or after a request is received and whether to develop a programmatic justification or parcel-by-parcel justification for real property transfers are provided in the table below.

	Programmatic Approach – Develop Justification Before Requests for all Potential Real Property are Considered for Transfer that Could Meet the Specified Program Objectives	Parcel-by-Parcel Justification and Review
Time	<ul style="list-style-type: none"> • Requests are reviewed against previously established criteria, reducing preparation and review time for individual transfer requests. • A programmatic approach that includes a site-wide strategy would gain senior management understanding and acceptance of the site's future with regard to transfers. Individual transfers could be seen as phases of implementing the larger site-wide concept, streamlining reviews. • A site-wide strategy recognizes context that could otherwise be lost by seeing individual parcels as stand-alone. Having that context for evaluation purposes should provide for more- realistic, market-based appraisals, resulting in strong justifications. • Evaluation of potentially available real property using a programmatic or site-wide approach could result in the development of more than one program or category for transfers, depending on feedback from surrounding communities, e.g., economic development, and other end uses could each be separate programs or categories within an overall program. Each category or program would have its own criteria for evaluating requests or proposals. • Uncertainty associated with approval of the justification can be greatly reduced, making properties more attractive and transfers timelier. • The time from request to transfer can potentially be reduced. 	<ul style="list-style-type: none"> • Review of individual parcels would require parcel-specific justification that may need to draw merit from an overall goal perspective. • Development and review may be unnecessarily repetitive and time consuming.
Costs and Resources	<ul style="list-style-type: none"> • Resources are spent once to develop and work the details of an acceptable programmatic justification between the site and reviewing parties. • Resources needed to complete requested transfers that are within the parameters of the programmatic justification can be greatly reduced. 	<ul style="list-style-type: none"> • Similar levels of resources are used each time to develop and work the details of an acceptable justification.

	Programmatic Approach – Develop Justification Before Requests for all Potential Real Property are Considered for Transfer that Could Meet the Specified Program Objectives	Parcel-by-Parcel Justification and Review
Probability of Success	<ul style="list-style-type: none"> • This approach readily lends itself to joint DOE/community planning efforts and establishing common goals for the site and community to increase economic diversification and promote private industry growth. • There is greater opportunity for full partnership with the range of transferees from the beginning of the process. • Sub-components that are not requested would be disposed of through GSA or other mechanisms. • Sites can bundle an entire area to be transferred and negotiate the financial considerations involved to ensure that DOE is not left with fragmented, remnant real property. • Sites can tailor the scope of the review to fit a variety of situations, whether transferring an entire site or individual parcels one at a time. Developing the justification in a programmatic fashion builds flexibility. 	<ul style="list-style-type: none"> • The parcel-specific business case can be a weak framework for evaluating the government's best interest. • A method to prevent or discourage cherry-picking of the best parcels would need to be established. • Parcels that are not requested would be disposed of through GSA or other mechanisms.
Other Considerations and Actions	<ul style="list-style-type: none"> • Proactive DOE/community engagement consistent with the <i>Federal Advisory Committee Act</i> is necessary. • Proactive engagement with DOE HQ is necessary. • Sites/programs should work with communities well in advance of transfer requests to determine bounding conditions for a set of potential uses for assets. • Sites can offer more timely and efficient response to mission and environmental/safety limitations, as well as the needs of the community. • Enables DOE to issue a notification of availability of real property for transfer that fully describes the environmental condition of the property and the parameters for negotiating the financial considerations for the property (i.e., DOE could list the property with an asking price and terms and conditions based on the environmental condition and appraisal). • Because this approach requires the most proactive engagement from DOE, it also requires the highest level of sustained commitment from DOE field office management; however, the duration of the sustained commitment may be shortened due to the proactive nature of the approach. 	<ul style="list-style-type: none"> • Can be applied to reduce Federal real property at sites where full transfer may not be possible or where environmental cleanup requirements are expected to take many years to complete. • Sites can be responsive to the mission and environmental/safety limitations, as well as the needs of the community. However, responses may not be as timely.



Tool 3 (T-3): National Environmental Policy Act (NEPA) Strategy for Real Property Transfers

U.S. Department of Energy (DOE) proposed real property transfers should comply with the *National Environmental Policy Act* (NEPA). NEPA Compliance Officers (NCOs) responsible for the affected real property determine if a DOE categorical exclusion (CX) can be applied or recommend to their site office heads preparation of an environmental assessment (EA) or environmental impact statement (EIS), as needed. The NCOs make these determinations after consulting with site officials (e.g., program or project officers and counsel) and considering anticipated activities on the property and other relevant information, such as applicable environmental, health, and safety requirements.

A phased approach may allow interim decisions. For example, site characterization may precede a decision to transfer real property.

- DOE CXs are listed in Appendices A and B to Subpart D of DOE NEPA implementing regulations (10 CFR Part 1021). For example, B1.24, Real Property Transfers, could apply to transfers without the potential to cause a significant change in environmental impacts. Other CXs may cover transfers to protect cultural resources, to preserve habitat and manage wildlife, or to allow construction and operation of specific types of facilities, such as small-scale educational facilities and renewable energy pilots.
- DOE NEPA regulations list proposed actions normally requiring an EA or EIS (Appendices C and D to Subpart D, respectively). For proposed actions not listed in Subpart D to DOE NEPA regulations, DOE decides to prepare an EA or EIS based on the potential for significant environmental impacts associated with the proposed transfer.

Following are recommendations to improve the efficiency and quality of NEPA reviews for proposed transfers:

- Involve the appropriate NCO as soon as property transfer is identified as a possibility and begin NEPA review as soon as a proposed action is reasonably well defined. Identify all reasonably foreseeable uses of the property to those who are likely to have an interest in the project.
- Review existing EAs and EISs for applicable data and approaches. Use reasonable analysis and alternatives that not only reflect the scope of the proposed action but also provide flexibility for subsequent decisions.
- Initiate a communication plan that includes public involvement for EAs and EISs to ensure public concerns are understood.
- If proposed actions involve other Federal agencies with NEPA responsibilities, initiate discussions early with those agencies. Consider options to coordinate NEPA review requirements such as working together as joint-lead agencies or designating a cooperating agency.
- Transfer instruments (leases and fee simple and quit-claim deeds) should limit activities on the transferred property consistent with decisions based on NEPA review. If other uses proposed later were not included in the original NEPA analysis, the NEPA document may be supplemented.



Tool 4 (T-4): Real Property Transfer Requests – Evaluating Requests for Less Than Fair Market Value Transfers and Indemnification

Introduction

U.S. Department of Energy (DOE) Order 430.1B, “Real Property Asset Management,” requires planning to ensure that current and future mission needs are met and establishes requirements for identifying real property that is unneeded for mission needs, and to facilitate reuse or disposal of such property. It also calls for DOE to “establish a corporate, holistic, and performance-based approach to real property life-cycle asset management that links real property asset planning, programming, budgeting, and evaluation to program mission projections and performance outcomes.” As part of this process, sites may determine that some assets no longer meet current or future mission needs and should be disposed of. This may be done via sale, transfer, donation, demolition, lease, or other form of conveyance. DOE Order 430.1B and the DOE Asset Management Guide provide the various authorities, regulations, and requirements under which DOE sites can perform these actions.

The *Federal Property and Administrative Services Act of 1949* grants the U.S. General Services Administration (GSA) the authority to dispose of properties for Federal agencies. The *Federal Management Regulation* (FMR), at Title 41 of the *Code of Federal Regulations* (CFR) Part 102, sets forth the regulatory requirements for how Federal agencies should dispose of properties, including leases and sales. These procedures generally involve monetary consideration and a competitive bid process for sales. The procedures described in the regulation are the standard Federal practices that should be used by all Federal agencies to dispose of real property, unless an agency has its own authorities for disposition.

DOE has its own authorities to dispose of certain real property owned by DOE. Section 161g of the Atomic Energy Act (AEA) of 1954 gives DOE the authority to sell, lease, grant, and dispose real and personal property that has been acquired for AEA purposes or will be used for AEA purposes. In addition, 10 CFR Part 770, *Transfer of Real Property at Defense Nuclear Facilities for Economic Development*, provides regulations for the indemnification and transfer by sale or lease of real property at defense nuclear facilities for economic development purposes as authorized by Section 3158 of the *National Defense Authorization Act for Fiscal Year 1998*.

As sites determine which properties will no longer be needed for current and future missions, they can develop an overall asset disposition strategy. This strategy can be developed in advance of disposition and can include a methodology to evaluate disposal options for individual assets or groups of assets. This would include evaluation of opportunities and challenges for success associated with disposal options, authorities, and methods and a review of demolition vs. lease or transfer. Considerations should be based on asset-specific conditions such as fair market value, market interest, economic development opportunities, improvements needed for marketability, and market or community interest in making those improvements; direct and indirect financial benefits to the government for each option; direct and indirect compatibility with the site’s missions; cleanup or other agreements with the community; community relations and mission benefits to the government; and the appropriate authorities to achieve the goals for the transfer. In addition, sites should determine whether legal transfer authorities outside the standard Federal disposal processes should be used, including consideration of requests for transfers at less than fair market value, the conditions that will warrant consideration of transfers at less than fair market value, and whether granting indemnification is in the best interest of DOE. Sites may consider

using the GSA to help perform this type of evaluation for specific transfers. These evaluations can be incorporated into an overall strategy that addresses the portfolio of assets that can potentially be transferred.

Purpose

The purpose of this tool is to provide asset, project, and program managers and realty specialists who typically comprise an Integrated Project or Program Team (IPT) a framework for what will be reviewed if evaluating a real property transfer for less than fair market value, or one with a request for indemnification under 10 CFR Part 770, *Transfer of Real Property at Defense Nuclear Facilities for Economic Development*. This tool reviews basic considerations and areas of review for a less than fair market value transfer, with or without indemnification, areas of emphasis, and advice on how to present data.

Background

A less than fair market value transfer means a sales price below the estimated fair market value, which includes a sale for no monetary consideration. DOE has the authority to transfer real property that has been acquired for AEA purposes or will be used for AEA purposes for less than fair market value under Section 161g of the AEA. The 10 CFR Part 770 regulations address transfers for economic development purposes and the indemnification process. Section 770.8 states that DOE generally attempts to obtain fair market value for economic development transfers, but may accept less than fair market value if either: (a) the real property requires considerable infrastructure improvement to make it economically viable, or (b) a conveyance at less than fair market value would, in DOE's judgment, further the public policy objectives of the laws governing the downsizing of defense nuclear facilities. It should be noted that not all DOE facilities fall within the definition of defense nuclear facilities, and offices should consult with legal counsel to determine whether these authorities apply to their site(s).

A strong, defensible fair market value analysis and documentation is needed to support the proposed disposal/transfer. Many of the practices discussed in this document can be applied to different transfer mechanisms. This document, however, focuses on transfers at less than fair market value in part to communicate the desired level of rigor for completing a transfer.

Other Considerations

Several elements will contribute to a successful transfer effort. Some observed best practices and points to remember include:

- **Form an IPT that includes a realty officer.** The project or program manager sponsoring the proposed disposition of assets can form an IPT. A realty officer will coordinate the various technical areas in the process, and will be able to ensure the transfer follows laws, regulations, DOE guidance, and best practices. The overall justification for transfer relies extensively on the information provided by the program proposing the disposal and is the keystone of the decision supporting the real property disposal. The realty officer will provide information and reference supporting documentation, including all of the information from the proposed transferee³ and the program, to support the government's decision.

³ Transferee refers to the party obtaining title, regardless of compensation, and transferor refers to the United States of America, represented by DOE.

- **Focus on the key criteria of 10 CFR Part 770 when an economic development transfer is proposed.** Proposal contents: 10 CFR 770.7(a). Requests for indemnification: 10 CFR 770.7(a) (2). Transfers for less than fair market value: 10 CFR 770.8.
- **Realize that transferring property is an iterative process and that a transfer is not guaranteed.** Certain analysis and documentation may need to be revised several times before a transfer has been completed. Analysis may determine that a transfer is not suitable, or a mission need may arise such that the real property is not available.
- **Fully develop costs, benefits, and supporting materials.** Justifications for transfer could include tangible and intangible costs and benefits of the transfer and include a summary of economic viability of the transfer, appraised value, and the impacts of the transfer on the site's region of influence (ROI). Economic effects of other DOE activities in the ROI may also be considered. These materials are used to inform Headquarters (HQ) reviewers of how the proposed transfer helps DOE to attain its best value, thereby obtaining their approval.
- **Consider upfront communication with HQ program office and transfer package approvers.** A transfer package (the compendium of documents that support the transfer from all aspects) sent for final HQ approval should demonstrate due diligence, especially with regard to costs and benefits. Therefore, coordination early on in the transfer process or reuse program can help identify potentially significant issues, guide certain analyses, and lead to quicker HQ review and approval. This step can be integrated into program or IPT pre-planning efforts.
- **Provide an executive summary outlining the transfer package.** Provide an upfront summary that concisely describes the rationale leading to the recommendation for transferring the asset. This would include a summary of the site and real property descriptions (discussed in Sections 3 and 4 of this document, respectively) and the cost-benefit analysis and rationale considered by the site in making the recommendation to transfer at less than fair market value.

(1) Analysis

Any transfer decision should be supported by robust, sound, and reasoned justification and rationale. This section includes examples of aspects to be explored when DOE prepares a justification.

(a) Appraisal and Valuation

If the analysis and justification requires a high level of certainty regarding fair market value of the real property, an appraisal could be performed by a certified, independent (third-party) appraiser to ensure a robust justification. Otherwise, in certain cases, the realty officer may make a value determination. The DOE realty officer is responsible for determining the need for and procurement of an appraisal in conformance with applicable regulations, directives, and guidance, including 41 CFR Sections 102-75.300-320. The DOE realty officer is instrumental in this process as he or she will develop a scope of work with the appraiser and provide the appraiser with all pertinent information about the real property.

The program/project manager and realty officer should work together to verify and validate that all site- and real property-specific factors have been provided to the appraiser so that the appraisal meets standard practices. Some factors that could affect valuation include:

- Environmental conditions, constraints, and/or controls that could restrict use of the real property such as the need for continued or future monitoring or groundwater use constraints

- Land use considerations such as zoning and deed restrictions, utility easements, lack of access, ingress, or egress that affect property value/land use opportunities (e.g., badge access requirements, lack of parking)
- Utilities or services, such as security, provided to the property and if they can be continued after transfer or after the DOE mission is complete
- Status of cleanup and remaining contamination that could restrict or complicate reuse
- Physical impairments to the property (e.g., site cleanup that left residual conditions such as open pits, unsecured stairways, non-engineered fill, abandoned infrastructure), topographic or sensitive resource limitations that would restrict reuse
- Proximity to other similarly developable land (e.g., scarcity or availability, adjacent or distant, restricted or unrestricted uses)

Each of these factors can affect value in a unique combination of ways.

Considering Upgrades and Improvements Made or Needed: In certain instances DOE may have modified the real property now proposed for transfer to support ongoing DOE mission activities. An example would be paving a parking lot that is now not needed by DOE. These improvements would be factored into the appraisal and could affect the market value. Conversely, run-to-failure facilities or infrastructure would have a negative valuation, and may also negatively affect adjacent properties.

There may be instances where DOE has completed the cleanup of real property proposed for transfer, but where contamination remains. While no further action is required of DOE with regard to the contaminants on that parcel, action may be needed to address how contamination will affect end use. Some examples could include monitoring wells that will remain long term and will thereby affect future development.

In other cases, if the proposed transferee has already upgraded infrastructure or other improvements that benefit the site and/or the community, provide the information on the modifications that have been made over time to the property proposed for transfer (which may have been improved while leased), the site, and/or the ROI that have benefited the community affected by DOE downsizing. Data on the cost of the improvements, adjusted over time, should be used if they are available.

(b) Cost-Benefit Analysis

The cost-benefit analysis will likely be one of the last completed elements of a transfer justification, but should be the key focus of consideration from the outset of any transfer. Cost-benefit analysis is one of the most critical decision-making elements of a transfer. One reference for analysis includes U.S. Office of Management and Budget Circular No. A-94, *Revised Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*. Although this circular primarily deals with evaluating funds for new projects or programs, it contains useful information that can be applied to other situations.

Ideally, a fully monetized cost-benefit analysis would be the easiest to consider and review. However, many costs and benefits are difficult to monetize without extensive data, statistical analysis, and an array of assumptions, many of which may be variable. Sites should try to monetize elements as much as reasonably feasible and make a judgment on the more-qualitative elements based on the specifics of the transfer, including the overall elements used to support the transfer decision and the type and quantity of data needed.

In a less than fair market value transfer for economic development purposes, the cost-benefit analysis becomes the business case. The business case and analysis for an economic development transfer should compare and contrast anticipated benefits from a transfer at less than fair market value with a sale at fair market value. A buyer at fair market value would presumably seek to put the property to economic use, which would provide a level of economic development to the community. Therefore, the analysis should include and quantify how a less than fair market value transaction would create greater community and government benefits or be reinvested in the community compared to selling the property at market price.

Information that can be used to support this evaluation follows.

(i) Cost and Benefit Elements: The types of costs and benefits are divided into *historic* and *projected*.

Historic Costs and Benefits: In this context, *historic* means costs and benefits that rely on historic or collected data that are readily compared to benchmarks (preferably commonly used industry benchmarks). These costs and benefits can be supported by valid and verifiable data. In general, historic data are more quantitative and as a result can be compared against common industry or government practices and metrics.

Projected Costs and Benefits: *Projected* in this context means costs and benefits that are more qualitative, future-looking, and focus on the situation-specific potential results of the transfer. Quantitative measures may be used for some; however, they will often be projections based on the situation. DOE should also consider more-qualitative conditions that address DOE's objectives in addition to industry-wide, quantitative standards and metrics. Examples may include jobs created, potential businesses brought to the area, proposed improvements that will benefit DOE, and longer-term regulatory results that can positively or negatively impact DOE such as reduction in the DOE cleanup footprint or creation of more interim responsibilities for DOE oversight. For projected costs and benefits, it is critical to fully develop and explain the logic used to arrive at conclusions.

Together, historic and projected costs and benefits form the basis for DOE to assess whether a proposed transfer represents a best value to the government. The following sections provide examples of elements that have been used to justify a less than fair market value transfer. Some elements may benefit both the government and the transferee.

(ii) Costs and Benefits to DOE: Examples of costs and benefits to the government that have been used by DOE and other government agencies include:

Historic

- Security, operation, and maintenance costs for the real property, including its infrastructure
- Cost avoidance of deferred maintenance and/or demolition through expedient divestiture of assets
- Costs associated with continued compliance with Federal requirements, orders, and guidelines if the real property is retained (If site-specific, historic data are not available for this or the prior two bullets, consider using benchmark data from other sites that have privatized facilities and operations.)
- Government payments-in-lieu-of-taxes (PILT)

Projected

- How the transfer helps DOE meet mission goals such as footprint reduction, potential reduced

risk, increased focus on mission needs for assets, and flexibility with regard to shifting limited resources toward maintaining scientific facilities

- Cost avoidance of potential liabilities due to particular conditions resulting from being in remote areas or from business decisions to operate facilities that will not be needed for future missions until they fail vs. investing in major maintenance or repair of these facilities.
- Risk of future contamination from adjacent (non-DOE) properties where it is in the government's interest to transfer title of unneeded real property
- The benefit to DOE of being able to accelerate cleanup by not having to perform surveillance and maintenance and/or demolition of the transferred property
- Economic development opportunities for private sector firms that do not need safeguards or security, but that will benefit from proximity to their DOE clients
- Sustainability goals that may be able to be reached on DOE sites by the development of alternative energy on transferred properties
- Relationships with community partners for economic development that support mission objectives such as cleanup
- Support for the community vision (Benefits to the community are discussed in more depth in the following sections.)

(iii) Costs and Benefits to the Community: If a transfer is requested for less than fair market value, and before DOE agrees (after consideration of all of the factors used in the transfer justification), it is useful to provide objective metrics and data that support the government's position in support of transfer at less than fair market value.

Information that can be provided by the potential transferee, for DOE review, includes:

- Percentage of jobs lost in the established ROI due to DOE downsizing
- Short- and long-term job generation
- Overall economic health of the ROI
- Other common metrics used by local governments to measure the impact of government expenditures

The following are examples of analyses that have been used in justifications by DOE or by other agencies.

- Diversification of local economies through new private sector investment
- Economic development – short- and long-term job generation, including types of employment projected, increase or stabilization of sales and income tax revenues, and other regional benefits
- Potential for greater transferee reinvestment into the site or community due to cost savings for property transferred at less than fair market value
- Improved economic outcomes and the realization of DOE goals at closure sites

(c) Describing Previous Work for or with DOE

If the proposed transferee who is seeking a less than fair market value transfer has already completed improvements to the asset in question that also benefit the public/community, those public benefits should be explained. These factors may not be part of the real estate appraisal, but contribute to the government's ability to fully understand the benefit that may result from the proposed transfer. Examples include infrastructure improvements, enhancements to public facilities and venues, increased accessibility to amenities, demolition of out-of-use structures and fixtures, etc.

(d) Resources and References

The following resources and references should be gathered: information on the environmental condition of the real property proposed for transfer (found in the environmental baseline survey [EBS] determination and the Covenant Deferral Request [CDR], if applicable); appraisal/valuation information; any constraints, restrictions, impairments, and/or advantages of the property proposed for transfer for consideration by the appraiser; local and ROI economic and employment data; cost of upgrades or improvements made; value of PILT; and any special legislation.

(2) Monetizing Costs and Benefits

Ideally, sites should monetize the costs, benefits, and justification when possible to support the decision of a less than fair market value disposal. The strength of the justification depends largely on the breadth and depth of data available, as well as the ability to quantify and monetize the information. For elements that are monetized, the discussion should concisely present the basis, assumptions, and/or methods used for monetization. This could include a historical basis, planned program budgets, project execution baselines, program savings calculations, jobs data, or non-proprietary information received from the transferee.

(3) Site Conditions

Description of the overall site can be broad and may vary depending on the specifics of the site and disposal path being proposed. Each transfer justification is unique. In this section, provide information on the site, both positive and negative, and reference site plans that provide information on projected land use (i.e., Ten-Year Site Plan) and any supporting documentation that could support the justification being used to transfer assets.

(a) Site Description

Describe overall site size (acres) and location, setting of the surrounding area (e.g., rural, suburban) and population, situation (e.g., isolated, accessible), rough percentage of site land developed and undeveloped, the general real property acquisition history, and how the property has been used to support the Federal mission. Include employment levels over time and the current economic situation of the site's established ROI.

(b) Site Contamination and Cleanup

If the site is contaminated, describe how it was contaminated and to what extent it has been cleaned up. Identify if the site is included on the *National Priorities List* (NPL) or a state Superfund list; or is otherwise the subject of a state or Federal regulatory order, agreement, or judicial remediation decree of order. List the various types of media contaminated (e.g., groundwater, surface water, soil, sediment, structures) and the general cleanup and monitoring plans going forward.

(c) Site Restrictions and Controls

The status of the site's remediation and the expected regulatory agreement at the end of cleanup affect the options and deed provisions of the transfer. Identify any regulatory restrictions on site reuse that exist or if it is anticipated that site transfers will be available for unrestricted release. Describe general regulatory restrictions, institutional controls, real property constraints, facility agreements, deed restrictions, out-grants, easements, cultural or natural resource protections, and/or mineral rights and how they would affect or be affected by future uses, including disposals. Describe access to the site and any physical constraints to redevelopment.

(d) Site Infrastructure

Describe the status/condition of the site infrastructure, including extent of distribution on site, expandability, upgrades/major improvements in the last 5 years, code deficiencies, if the site is in an underserved area or if areas of the site are underserved, etc. (This information is a part of the site utilities screening, recommended for use in upfront modernization and sustainability planning at each site). List any capital improvements budgeted for and scheduled for the next 3 years that would be avoided if a sale or transfer occurred in the near future.

(e) Vision for the Site

Describe the community's vision for site reuse and how it is consistent with any *National Environmental Policy Act* (NEPA) reviews (underway or completed) and decisions already reached. Note how the community's vision relates to the local and regional vision for development (i.e., from a city, county, or regional development or planning authority or a community reuse organization [CRO], economic development authority, or land development authority). Describe the NEPA documents prepared for site reuse and the type of future use envisioned. Note the results of other regulatory reviews that provided end states/end-use decisions. Describe how the vision is consistent with the Presidential Memorandum of June 10, 2010, *Disposing of Unneeded Federal Real Estate*, FMRs, DOE Order 430.1B, the site's mission, and input into that mission.

(f) Resources and References

The following resources and references should be gathered: NEPA documentation (environmental assessments [EAs], Findings of No Significant Impact [FONSIs], environmental impact statements [EISs], Records of Decision [RODs]); lists of historic and cultural resources present on the property; Annual Site Environmental Reports; Federal Facility Agreements; *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA) or *Resource Conservation and Recovery Act* RODs; site end-state vision or similar documents; land use plans; zoning ordinances; applicable court orders/consent decrees; etc.

(4) Real property Conditions

Real property information is similar to the site conditions section, but specific to the property proposed for transfer. Provide all existing information about the property proposed for transfer, both positive and negative, and reference supporting documentation that could affect the property's marketability to support the justification used to transfer the asset. Include all existing information from any proposed transferees (e.g., their proposals and any supplementary information) as a resource for this section.

(a) Real property Description

Describe the following information on the site and its situation: property size (acres) and location within the larger site and surrounding area; the characteristics of the adjacent property (e.g., DOE-owned and undergoing cleanup, DOE-owned for other ongoing missions, private industrial, private residential, vacant, greenbelt); the amount of real property developed and undeveloped; any buildings/structures on the property; any sensitive environments that are present, such as wetlands and geologically and/or topographically challenged areas; and how the property and any buildings were used to support the Federal mission of the site over time. Also consider if there are beneficial aspects of the property such as the provision of security, real-time emergency response, enhanced infrastructure, industrial capacity/capability, etc.

(b) Real property Contamination and Cleanup

If the real property requested for transfer was contaminated, describe how it was contaminated and to what extent it has been cleaned up. Identify if the site is included on the NPL or a state Superfund list. List the extent of contamination per the CERCLA Section 120(h) EBS report (i.e., groundwater, surface water, soils, sediments, and structures) and CDR, if applicable. Provide information on the status of the cleanup and, if not completed, describe the future cleanup that is planned. Note the end-state exposure objective (industrial, residential, recreational, or agricultural).

(c) Real Property Restrictions/Controls

Identify any regulatory restrictions or if the real property is available for unrestricted use. Consider any regulatory restrictions, access controls, institutional controls, real property constraints, facility agreements, deed restrictions, out-grants, easements, covenants such as those for conservation and historic preservation, and/or mineral rights on the property and how they would affect or be affected by the future land use envisioned by the proposed transferee.

(d) Real Property Infrastructure

Describe the status/condition of roads and infrastructure assets on the. Note the property's accessibility for use, including distribution, expandability, upgrades/major improvements in the last 5 years, code deficiencies, if categorized as underserved (including a lack of access of parking), etc. Describe existing, abandoned, or out-of-service infrastructure on the property and if development plans will necessitate its removal/reconfiguration.

(e) Vision for the Real Property

Describe the long-term plans for the use envisioned or interest expressed for the, and if applicable, how it will be marketed and the markets targeted. Describe the economy of the region, quality of life, and the skills of the labor pool. The transferee's description of the economic viability of the transfer is paramount. Include how the transfer will lead to new job creation and the ability of the existing labor pool to meet the demand. Describe job retention or other public benefits. For 10 CFR Part 770 proposals, provide information on any pending interested parties identified by the proposed transferee, as well as any development timetable or phasing schedule that describes major milestones and phased efforts that they need to take to prepare the property for use or that will be taken by the future user to prepare the property for use. Include improvements, in particular infrastructure improvements, and identify the existing condition of the infrastructure (using information provided by DOE), proposed/planned upgrades and conceptual duration/schedule, and means of financing.

Describe how the type of proposed future use for the subject property compares with the community's vision for the site and how it is consistent with any NEPA evaluations (underway or completed) and decisions already made. Consider adding reasonably foreseeable future uses in addition to the proposed use.

The status of the NEPA review is important; if the NEPA review is not complete, provide a strategy and schedule for completion. Address the compatibility of proposed use(s) for the property with the DOE cleanup objectives or the site mission and any potential existing adjacent transferees and adjacent land uses. If the proposed transferee assumes DOE will provide the utilities/services/infrastructure, a reimbursement strategy should be included in the proposal.

(f) Resources and References

The following resources and references should be gathered: complete transfer proposal [or for non-10 CFR Part 770 transfers, the business plan]; EBS; CDR (if applicable); land use or development plans, including job creation or retention plans; financing strategies; marketing plans; regulatory cleanup documentation; community plan/vision; NEPA documents as applicable (categorical exclusion [CX] determinations, EAs, FONSI, EISs, RODs); infrastructure screening; existing deeds; out-grants; and other related realty materials.

(5) Indemnification for 10 CFR Part 770 Transfers

Indemnification under 10 CFR Part 770 provides the Secretary of Energy discretionary authority to provide reimbursement to the transferee, as well as later transferees, for any suits, claims, etc., arising from any claims of personal injury or property damage associated with contamination that is a result of prior DOE activities.⁵ Section 770.7(a) (2) addresses how to request indemnification in a proposal. An explanation of how DOE processes claims for indemnification post-transfer is found in 10 CFR 770.9.

Requesting Real Property Transfer for Indemnification Pursuant to 10 CFR 770.7(a) (2)

Indemnification, if desired, should be requested by the proposed transferee as noted in 10 CFR 770 (a) (2). If indemnification is not requested by a proposer, DOE should inform the proposer of his or her right to request it (10 CFR 770(a) (3)). Waiting for the completion of other key steps, such as the environmental due diligence review and identification of any necessary deed restrictions, are other factors in determining whether providing indemnification is appropriate.

Providing justification to HQ for indemnification is primarily the responsibility of the site, and can be informed by various sources, including the proposed transferee. Restricting the future use of the property to certain land uses or certain markets may limit the number of interested transferees, as would other conditions such as inclusion (or former inclusion) on the NPL and proximity to legacy contamination or contamination sources, as with closure and operating sites, respectively.

The property's history of contamination will be found in the documentation of the environmental due diligence conducted pursuant to CERCLA Section 120(h), *et seq.* (Limited guidance on how to process claims submitted pursuant to indemnification on transferred property is available in 10 CFR 770.9). The environmental due diligence, which may include a risk evaluation, is documented in each property's EBS report. The EBS is part of the transfer package and an exhibit to the deed. For example, if the property is down-gradient from a contaminant plume created by DOE, data and scientific studies, such as

groundwater analysis, will show contamination potential, which would be factored into DOE's decision on whether to offer indemnification.

Each deed is unique to the property for which it is developed. Regardless of the type of property to be transferred, per CERCLA Section 120(h) (1) and (3), and 40 CFR 373.3, all deeds where hazardous substance activity has occurred should contain two provisions: 1) any future response action that is identified will be conducted by the U.S. government and 2) the U.S. government is granted future access to conduct any future response action. This is also known as the CERCLA Covenant and Warranty.

While the CERCLA Covenant and Warranty assures that all future response actions to be taken will be taken by the government, it does not provide for indemnification for the transferee. Indemnification is provided by DOE pursuant to Title 50 of the *United States Code* (U.S.C.) Section 2811 and 10 CFR Part 770, et seq.

If indemnification is requested for a parcel without contamination, or for a property that is deemed clean by the U.S. Environmental Protection Agency (EPA) and the state, the request for indemnification should be supported by data that demonstrate a risk to the property that is posed by release or threatened release of a hazardous substance or pollutant or contaminant as a result of DOE activities on which the real property is located, as that determination is to be made on a case-by-case basis. The transmittal package from DOE HQ to the congressional committees needs to include this request for indemnification from interested parties and it needs to be part of the disposal package.

(6) Additional Transfer Options

When evaluating the strategy and plan for a transfer, services provided by GSA may be considered. GSA is responsible for promoting effective use of Federal real property assets, as well as the disposal of real property that is no longer mission-critical to Federal agencies. GSA may use either its own disposal authority or provide services under DOE's disposal authorities and may provide an expedient option for transfer that meets the site's intended objectives. The IPT should explore the variety of services offered by GSA and use each agency's strength as it applies to the proposed transfer. The realty officers on the IPT should be consulted regarding GSA disposal services.



Tool 5 (T-5): Real Property Transfer Strategy Using 10 CFR Part 770

The U.S. Department of Energy (DOE) Office of Environmental Management (EM) has successfully transferred 2,177 acres of land since 1996, and has been using Title 10 of the *Code of Federal Regulations* (CFR) Part 770, *Transfer of Real Property at Defense Nuclear Facilities for Economic Development*, since 2000.

In its commitment to transparency, DOE publicly announces DOE real property slated for transfer. DOE strives for community involvement in the proposed development and use of available real property. In this spirit, and in accordance with requirements of the President's Memorandum on *Transparency and Open Government* and the Open Government Directive, field offices can engage communities before land use proposals are solicited and evaluated. DOE also is committed to streamlining the transfer process.

Section 3158 of the *National Defense Authorization Act for Fiscal Year 1998*, as amended (50 United States Code [U.S.C.] 2811), authorizes economic development transfers and the discretionary provision of indemnification to promote economic redevelopment at DOE defense nuclear facilities. These provisions are processed under 10 CFR Part 770. DOE-owned unneeded real property can be transferred by sale or lease to a State, a private entity, individual, community reuse organization or other entity.

The field office should include a copy of the written proposal from the requestor, in the package submitted to DOE Headquarters (HQ) for review and approval. The proposal should comply with the requirements of 10 CFR Part 770.7 and adequately identify economic development plans.

What should a proposal under 10 CFR Part 770 include?

- **A description of the real property proposed to be transferred**

The description should include the site's infrastructure assets, such as buildings, land, and utilities. Initially, a general description of the real property is sufficient. The final negotiated description should include metes and bounds, and/or the plat map with description or the County/State Records Office description. The real property for transfer may need to undergo an independent appraisal. Alternately, a local real estate professional may estimate the property's value.

- **The intended use and duration of use of the real property**

- What are long-term plans for the property?
- Which utilities and services will be required (water, power, sewage disposal, transportation)?
- Which companies will provide the utilities and services? If DOE provides utilities, services, and infrastructure, how will DOE be reimbursed? Federal regulations require full-cost recovery for utilities and services.
- What are the potential environmental impacts of the economic development?

- **A description of the expected economic development following the transfer**

- How will this development lead to job creation and retention?

- What improvements will be made to the property, and how will they be financed?
- Provide a detailed assessment of the site’s infrastructure assets (i.e., buildings, transportation, and utilities) and required improvements.
- **Information supporting the economic viability of the proposed development**
 - What products and services are in demand in the region?
 - Which industries in the region may be interested in locating at the site?
 - What is the marketing plan for attracting industries to the site?
 - What are the strengths and weaknesses of the property and surrounding community?
- **The consideration offered and any financial requirements**

Does the prospective transferee want the property for less than fair market value? If so, what is the basis for not paying market value? The value of the property (at least a range of values for the area) should be included in this proposal.

The proposal will be used as a basis for DOE’s *National Environmental Policy Act* (NEPA) review. Therefore, it should provide sufficient details to allow the NEPA analysis to address potential environmental impacts of the proposed action, the no action, and reasonable alternatives. The proposal is also the basis for the business plan the site submits to DOE HQ. The proposal should provide sufficient information about the potential transferee’s economic development plans. 10 CFR Part 770 does not affect or modify the *Comprehensive Environmental Response, Compensation, and Liability Act of 1980* (CERCLA) Section 120(h) provisions. Once a proposal is received, the field office and its legal staff should work with the entity requesting the property to resolve concerns and deficiencies in the proposal.

Indemnification can be provided with the property transfer under 10 CFR Part 770 in the event there is contamination resulting from prior DOE activities constitutes a release or threat of release or onsite contamination. However, indemnification should be granted only after the transferee makes a written request and DOE makes a determination that the provision of indemnification is essential for the purpose of facilitating reuse or redevelopment. Indemnification is considered on a case-by-case basis. Following receipt of a transfer request under 10 CFR Part 770; the field office will need to determine whether a transfer is in the government’s best interest. Before the transfer may occur, the field office should address several requirements and prepare a package for DOE HQ review. Following the transfer, the recipient is responsible for maintaining compliance with any deed or lease requirements.

What constitutes a package for HQ review under 10 CFR Part 770?

A package for real property transfer conducted under 10 CFR Part 770 for HQ review should include the following documents prepared by the field office in coordination with the appropriate National Nuclear Security Administration (NNSA) or DOE program office:

- Memorandum from the field office manager, through the appropriate DOE program office or NNSA, to DOE General Counsel and the Offices of Management and Congressional and Intergovernmental Affairs.
- Environmental baseline survey report, which includes a health risk screening evaluation (if applicable) and NEPA analysis, to support the title transfer of property.

- Covenant Deferral Request (CDR), required if cleanup is not complete.
- CDR approval letter from the U.S. Environmental Protection Agency (EPA) Regional office required if a CDR is used and the property is on the EPA's *National Priorities List* (NPL).
- CDR concurrence letter from the governor required if a CDR is used and the property is on the NPL.
- CDR approval letter from the governor required if a CDR is used and the property is not on the NPL.
- Concurrence with Clean Parcel Determination by the EPA regional office if the property is on the NPL or by the Governor if the property is not on the NPL, required if cleanup of the property is not required.
- If the property has a radiological history, the Authorized (radiological release) Limit, Survey Report, and Independent Verification Report. See DOE Order 458.1, Sections 4.k. (6) through 4.k. (9).
- Draft quit-claim deed or lease for real property.
- Business case supporting transfer of real property.
- If the NEPA review has not been completed, a statement describing a strategy and schedule to complete the NEPA review. The field office should provide evidence of the completion of the NEPA review. For a categorical exclusion (CX) determination, provide the determination date and the CX(s) applied. For an environmental assessment (EA), provide the name, date, and document number of the approved EA and a copy of the associated Finding of No Significant Impact. For an environmental impact statement (EIS), provide the name, date, and document number of the completed EIS and a draft Record of Decision.
- The following documents are prepared by the field office and signed by the appropriate DOE or NNSA program office or the Secretary of Energy:
- Prepare the memorandum recommending the proposed transfer of the real property to the entity.
- If required, letters to the Congressional Committees transmitting the notice of a real property transfer:
 - Notice to the appropriations committees for a real property sale that does not follow standard Federal practices (House Report 107-112); a sale would include transfers at no cost.
 - Notice to the congressional defense committees of a real property transfer where indemnification is being provided under 10 CFR Part 770.



Tool 6 (T-6): Other Considerations in Transferring Real Property

Section A

Issue

This tool discusses considerations that sites should explore when evaluating real property transfers, including requests and proposals for the purposes of economic development. Certain considerations factor into transfers proposed for less than fair market value; others pertain to the means to potentially retain proceeds from real property transactions; while others assist with determining the appropriate transfer authority to use, such as whether using other agencies is more efficient to complete a transfer. These considerations are merely tools that may enhance a transfer strategy or provide a more-beneficial path. They should be evaluated on a case-by-case basis and coordinated appropriately with General Counsel and real property staff at both the site and Headquarters (HQ).

As the U.S. Department of Energy (DOE) evaluates real property for disposal, there are many issues to consider in the decision process, from environmental and regulatory constraints to fair market value considerations and retention of proceeds. DOE then determines the best disposal path and authority that best suits the transaction. DOE has both the *Department of Energy Organization Act* and the *Atomic Energy Act of 1954* (AEA) as authorities for disposals (including leases). DOE would follow the process delineated in Title 10 of the *Code of Federal Regulations* (CFR) Part 770 if indemnification is requested. Finally, DOE can utilize the resources of the U.S. General Services Administration (GSA) either to support the transaction or, after DOE completes the due diligence and documentation necessary to complete a Report of Excess (SF-118), then GSA can complete the disposal. How the disposal is accomplished is the result of planning, discussions with the program elements and DOE HQ if necessary, and preparation of the many pieces of information and documentation needed prior to final execution of the deed.

Authorities

Most Federal agencies should use the GSA and the *Federal Property and Administrative Services Act of 1949* (1949 Act) to dispose of Federal real property interests. DOE has its own authority under the AEA for certain properties and determines which authority is best for the transfer at hand. Disposals where indemnification is requested use the AEA authority and follow the process set forth in 10 CFR Part 770, which is specifically designated for economic development disposals involving defense nuclear facilities. For real property disposal transactions that are not conducted according to standard Federal disposal processes, DOE is requested to provide notification to the appropriations committees.

Both DOE and GSA have authority to conduct real property transactions. DOE real property transfers may utilize the AEA and the legal authorities for providing indemnification (10 CFR Part 770) for economic development purposes, as noted above. GSA operates under various authorities, particularly the 1949 Act. It is important to note that a disposal using DOE authority can be structured so that certain phases of the work are done by DOE and others by GSA, utilizing the strengths and expertise from each agency. For example, GSA has considerable experience in determining market value and real estate appraisals, in many of the items listed in Section B under Real Property Due Diligence and Valuation, and in performing Targeted Asset Reviews (also described in Section B). A list of GSA services that may be pertinent to transfer efforts is found in Section B. For instance, in several DOE disposal actions, DOE used GSA as the agent to market the property, conduct the competitive auction, or negotiate the public entity transfer (referred to as Public Benefit Conveyances by GSA), while DOE used its own expertise and legal

authority to complete the environmental compliance, due diligence, *National Environmental Policy Act*, *National Historic Preservation Act*, and other regulatory requirements. Sites should work with GSA to evaluate the best options and strategy.

If the 1949 Act process is used, the holding agency (DOE) prepares a Report of Excess (SF-118) that serves as the application to GSA to initiate the disposal process. The SF-118 is quite short, but the background information that supports the SF-118 is quite extensive. It includes all of the real estate documents, acquisition records, deeds, title documents, real estate surveys and facilities improvement descriptions, real estate appraisals, environmental and regulatory compliance documentation, and other due diligence support documents. Once this information is completed, a Report of Excess package can be submitted to the responsible GSA disposal office. Variations on this option are listed below.

It should also be noted that when the 1949 Act is used with GSA, GSA conducts the appropriate actions and, in many cases, a significant portion of the costs for support from GSA for real estate services is borne by GSA as part of its mission requirements. This saves DOE staff time and funding.

Conclusions

As the transfer process evolves, DOE program elements and the DOE realty officer need to evaluate the various disposal and transfer pathways available. As sites look forward to downsizing or closure, evaluation of future land uses, environmental and regulatory constraints, local market conditions, and community visions should be evaluated with the future DOE mission needs. Planning tools beyond the DOE Ten-Year Site Plans could include using GSA for Targeted Asset Reviews and real estate appraisals to analyze market conditions. The complexity and costs of future disposal actions should play a role as the site and the realty officer evaluate the disposal options.

For parcels with no contamination, utilizing the 1949 Act and GSA for the disposal, particularly when there are no special considerations, such as a 10 CFR Part 770 request, may be the best disposal path. Using DOE authorities may be more beneficial for complex properties, contaminated properties, and is mandatory for 10 CFR Part 770 requests. If indemnification is requested from an economic development entity, follow the 10 CFR Part 770 process, making sure that the property is a defense nuclear facility.

Section B

A. Example GSA Services

1. Real Property Due Diligence and Valuation

- Appraisals and Marketability Studies
- Targeted Asset Reviews
- Asset/Disposal Options Studies
- Title Reviews
- Reports of Excess Preparation
- Sustainability Surveys
- Facility Condition Assessments
- Energy Audits
- Land Surveys (Metes and Bounds)
- Historic Preservation Consultation

2. Transactional Services

- Sales Execution
- Exchange
- Includes marketing, auction services, document preparation, and closings
- GSA can use the 1949 Act and other authorities to accomplish an exchange.

3. Post-Disposal Services

- Land Use Control Monitoring
- GSA can monitor land uses that are prescribed through regulatory documents, deed restrictions, or other institutional controls.
- Reverters
- Deeds may have reverter clauses such as clauses used in Lands to Parks authority transfers, and GSA can monitor these clauses for the government.
- Compliance Inspections
- Although DOE normally performs these tasks, they can be contracted to other entities such as GSA or the state regulators.

B. Unique GSA Services

Some other notable approaches and services available through GSA that sites may consider are as follows:

1. Targeted Asset Reviews

The Targeted Asset Review is used to develop a real estate baseline for an asset. It documents the conditions of a property that may affect the sale, provides a recommended course of action to ensure success, and can also be used for day-to-day asset management and life-cycle analysis. It is an excellent screening and readiness tool. For example, one of the significant benefits of a Targeted Asset Review is the compilation of the real estate records that assures that all deeds are in the records, the surveys and outstanding interests such as easements and drainages are defined and known, and the appropriate information needed for eventual disposal is obtained (documentation needed to support a DOE disposal or complete a SF-118 for GSA). Sources for documents may be lost over time and this process identifies the need to collect the breadth of information for later disposal actions.

2. Disposal Options Study

The Disposal Options Study can be a separate offering or included as part of a Targeted Asset Review. The study examines available realty authorities and, in coordination with DOE, recommends a viable course of action. A Disposal Options Study can be an ideal pre-planning tool such as is recommended elsewhere in Asset Revitalization resource materials.



Tool 7 (T-7): Authorities and Regulations Relevant to Asset Revitalization

A variety of Federal government authorities relate to the transfer and disposal of real and personal property. The U.S. Department of Energy (DOE) also has unique authorities and implementing regulations. Other authorities are not directly related to real property transfer and disposition; however, their goals and objectives may be considered when evaluating real property transfer and disposal options in the context of the Asset Revitalization (AR). Below is a summary of many of these authorities.

Laws and Regulations

- **The Atomic Energy Act of 1954, as amended, Section 161g**, authorizes the sale, lease, grant, and disposal of real and personal property that has been acquired for Atomic Energy Act of 1954 (AEA) purposes or will be used for AEA purposes.
- **The National Defense Authorization Act for Fiscal Year 1994, Section 3154 (Public Law 103-160)**, also known as the Hall Amendment, amended Section 646 of the *DOE Organization Act* to allow DOE under certain circumstances to lease real and personal property for up to 10 years for economic development.
- **The National Defense Authorization Act for Fiscal Year 1994, Section 3155 (Public Law 103-160)**, authorizes the Secretary of Energy to transfer, for consideration, all rights, titles, and interests of the United States, to personal property and equipment at a DOE facility to be closed or reconfigured, if the Secretary determines such transfers will mitigate adverse economic consequences that might otherwise arise from closure of the DOE facility.
- **Transfer of Real Property at Defense Nuclear Facilities for Economic Development (50 United States Code [U.S.C.] 2811; 10 Code of Federal Regulations [CFR] Part 770)** establishes how DOE transfers, by sale or lease, of DOE-owned real property at defense nuclear facilities for the purpose of economic development may occur. The regulations contain procedures to request indemnification for any claim that results from the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of DOE activities at the defense nuclear facilities. For land that is withdrawn from the public domain, DOE may transfer, by lease only.
- **The Energy Policy Act of 2005 (Public Law 109-58)** established energy management goals for Federal facilities. It also amended portions of the *National Energy Conservation Policy Act*.
- **The Energy Independence and Security Act of 2007 (Public Law 110-140)** moved the United States toward greater energy independence and security by increasing the efficiency of products, buildings, and vehicles; by promoting research on greenhouse gases and greenhouse gas capture and storage options; and by improving the energy performance of the Federal government, among other purposes.
- **The Federal Advisory Committee Act (FACA)** of 1972 (Public Law 92-463) ensures that advice by the various advisory committees is objective and accessible to the public. The Act formalized a process for establishing, operating, overseeing, and terminating advisory bodies. Each Federal agency that sponsors advisory committees should adhere to the requirements established by the FACA.

Executive Orders

- **Executive Order 13514, “Federal Leadership in Environmental, Energy, and Economic Performance”**, creates an integrated strategy to establish the Federal government as a leader in sustainability and identifies reduction of greenhouse gas emissions as a priority for Federal agencies.
- **Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management”**, sets goals in energy efficiency, acquisition, renewable energy, toxics reductions, recycling, renewable energy, and environmentally sustainable buildings for Federal agencies.