

U.S. Department of the Interior
**OFFICE OF THE SECRETARY
LAND TRANSACTION WORKING GROUP**

**Procedures for Acquiring Property Under the 2005
Base Realignment and Closure Act**

I. PURPOSE

The Department of the Interior (DOI) intends to ensure that, prior to acquiring real property from the Department of Defense (DoD) under the 2005 Base Realignment and Closure Act (BRAC) it makes a careful determination that such acquisition is consistent with the Department's mission and goals for land and resource management. DoD is preparing to recommend a list of its property for the 2005 round of military base closures and realignment under BRAC, which may provide DOI the opportunity to acquire real property. As potential recipients of military property under BRAC, DOI will take steps to ensure that any requests for BRAC property are consistent with the goals of its Bureaus and Offices and fit within anticipated budgets. Consistent with this guidance, DOI will identify BRAC properties which, if acquired by DOI, will further its mission and maximize its land and resource management capabilities. Bureaus and Offices must provide, in writing, a supporting rationale and must fully justify any proposal to acquire BRAC property. The proposed acquisition must be reviewed and approved by Heads of Bureaus or Offices; Programmatic Assistant Secretaries; and the Land Transaction Working Group prior to any negotiations with DoD. This document provides policy and guidance that Bureaus and Offices must follow in requesting BRAC property.

II. BACKGROUND

Title XXX of Public Law 107-107 directs the President to develop recommendations for BRAC. This statute mandates a process and establishes a schedule for recommendations to be submitted to Congress and the BRAC Commission for approval. The Secretary of Defense will send recommendations for military base closures and realignments to Congress and the BRAC Commission not later than May 16, 2005. The DoD BRAC disposal process follows the General Services Administration excess or surplus property process, as detailed in 41 Code of Federal Regulations (CFR) Part 101-47.1-101-47.4914.

One important lesson learned from BRAC transfers completed to date is the need for senior management review of potential acquisitions prior to requesting the property from DOD. On occasion, DOI has accepted DoD property without first having conducted a careful review of the costs and benefits of the acquisition. As a result, DOI has assumed significant and unanticipated liabilities associated with those properties.

III. OVERVIEW OF THE 2005 BRAC PROCESS

The Secretary of Defense has published the list of the military installations recommended for closure or realignment. That list is attached. The 2005 BRAC process is a multi-step process and a timeline of the process may be found at: <http://www.defenselink.mil/brac/docs/time05.pdf>

IV. DEPARTMENTAL POLICY

A. No request for acquisition of a BRAC property by DOI will be made to DoD until approval has been given by: Heads of Bureaus or Offices; Programmatic Assistant Secretaries; and the Land Transaction Working Group.

B. The DOI Land Transaction Working Group and the DOI BRAC Working Group

The DOI Land Transaction Working Group chaired by the Assistant Secretary - Policy, Management and Budget and composed of the programmatic Assistant Secretaries and Heads of Bureaus and Offices of land-managing bureaus will provide executive-level guidance and have ultimate approval authority on all DOI requests to acquire BRAC property. The DOI Land Transaction Working Group will be supported by the DOI BRAC Working Group, composed of staff-level personnel from affected Bureaus and Offices and chaired by the Office of Environmental Policy and Compliance (see attached list). The DOI BRAC Working Group will provide technical support and assistance on proposed transfers and develop additional guidance as needed.

C. Applicability

The DOI proposes a two-part screening process for potential acquisitions under BRAC.

First, any acquisition contemplated by DOI must be both consistent with and critical to accomplishment of the mission and goals of the relevant Bureaus and Offices and DOI. For this reason, a rigorous screening process will be applied to assure that prospective acquisitions are justified through clear linkages to such missions and goals.

Second, 40 CFR part 312 requires the completion of pre-acquisition environmental site assessments to protect DOI from certain liabilities under the Comprehensive Environmental Response, Compensation and Liability Act. Additionally, Departmental Manual Chapter, 602 DM 2, Real Property Pre-Acquisition Environmental Site Assessments, states that Departmental policy is to minimize DOI liability by not voluntarily accepting contaminated property until investigation and cleanup has been completed. Furthermore, as stated in the memorandum of May 9, 2003, from the Assistant Secretary – Policy, Management and Budget to the Army Deputy Assistant Secretary – Installations and Housing, DOI’s acceptance of real property prior to cleanup is not standard procedure; it is the exception. In general, transfer of lands will not be accepted until environmental remediation of the lands has been completed. Only when the acceptance of real property is unambiguously in the best interests of DOI and its mission will DOI consider the possibility of transfer of property prior

to the completion of environmental remediation. The DOI will also take into account the potential short and long term management implications, including costs, of acquiring the subject property.

D. Exemptions

This policy guidance does not apply to public benefit conveyances administered by the National Park Service Federal Lands to Parks Program that are governed by the existing Memorandum of Understanding (April 9, 1997) between DoD and the Departments of Education, Health and Human Services, Interior, and Transportation.

Although these procedures are applicable to BRAC property acquisitions sought by the Bureau of Indian Affairs (BIA) for its own use, they do not address BRAC property sought by DOI/BIA on behalf of requesting Tribes. Issues applicable to trust property for Tribes will be addressed in a subsequent policy guidance document.

DoD's BRAC disposal authority does not apply to withdrawn and reserved public lands which may be part of an installation. These are DOI lands on loan to the military. If (1) DOI determines the lands are not suitable to return to DOI for disposition under the public land laws and (2) the General Services Administration agrees with DOI's determination, the lands become "real property" and DoD's BRAC disposal authority becomes applicable. Withdrawn and reserved public lands will be governed under the public land laws (43 CFR § 2372.3).

V. PROCEDURES

DOI will provide a coordinated response to DoD on initial expression of interests for acquisition of BRAC property. By August 15, 2005, Bureaus and Offices must provide, to the extent available, the following information in the form of concise summaries, to the Head of the Bureau or Office for both real property and withdrawn public lands. (To the extent that information is not available, Bureaus and Offices should so state and indicate, if possible, when such information is likely to become available).

A. Acquisition justification

Expressions of acquisition interest must set forth the specific reasons why acquisition of this property is critical to the accomplishment of the Bureau or Office mission and to DOI mission areas and outcome goals (as outlined in the DOI Strategic Plan) and other pertinent statements of policy, as applicable, taking into account that such acquisition represents a long term commitment to manage the subject property. This justification must be compelling; otherwise, the property should not receive further consideration by the Bureau/Office Head or programmatic Assistant Secretary. For those properties that are forwarded for its consideration, the DOI Land Transaction Working Group will first consider this justification, and it may elect to eliminate a given property from further consideration.

B. Acquisition analysis

1. Proposed uses of the BRAC property, including any existing infrastructure (e.g., buildings).
2. The estimated condition of the BRAC property, including any known contamination or activities that might have contaminated the property, as well as any associated facilities thereon (e.g., roads, buildings, training facilities, etc.). Also, any potential occupational health and safety concerns (e.g., unexploded ordnance) and any potentially associated with future use or demolition (i.e., lead-based paint, asbestos).
3. Best early estimate of the costs related with environmental cleanup and restoration, waste management, and environmental compliance activities, including operation and maintenance of long-term remedies and liabilities and any arrangements for payment for sharing of costs. Also, the best early estimate of the timeframe for cleanup.
4. Any potential cost-sharing arrangements between DOI and DoD.
5. Any other potential liabilities arising from conditions on the BRAC property.
6. Best early estimate of the annual costs (short and long-term) of operations and maintenance, including demolition, after the real property is acquired. Also, any estimates of materials and staffing costs.
7. The need, if any, to acquire additional adjacent land beyond the BRAC property in order to meet the intended goals of the acquisition.
8. Potential restrictions or impediments to use of the property during and after clean up. For example, these can include land use controls, mineral rights, covenants, leases, easements, rights-of-way, water rights, and in-holdings
9. The potential for cooperative management or partnership arrangements with other Federal agencies, non-federal agencies, or other parties, if applicable, and their potential management and cost implications.
10. The potential budgetary implications on current and future mission capabilities of Bureau or Office operations including any other cost issues associated with Bureau or Office management of the BRAC property.
11. The potential benefits of acquisition on local communities (e.g., recreation, tourism, watershed protection, etc.).
12. If early transfer is proposed, the justification for such transfer.

B. Senior Level Management Endorsement

After final approval of the BRAC list by Congress and the President, DOI will provide a coordinated response to DoD identifying requests for BRAC property. Any request on behalf of a Bureau or Office to acquire DoD property must, to the extent that it is available, include the information in A and B above and be submitted to and be endorsed in writing by the appropriate Bureau or Office Head and the programmatic Assistant Secretary. Finally, approval of the Land Transaction Working Group must be obtained prior to initiating formal negotiations with DoD for BRAC property. Only when such an endorsement has been obtained can the Bureau or Office initiate formal negotiations with DoD.

VI. SUBSEQUENT ACTIONS

Following notification to DoD of a request for BRAC property, DOI and DoD will initiate negotiations for transfer of the property. This negotiations process will include, with the participation of the Office of the Solicitor, development of a site-specific Memorandum of Agreement addressing requirements and assigning responsibilities for transfer of the property. During the transfer process, Bureau and Office Heads will be responsible for ensuring that Bureau and Office personnel work with DoD to ensure that all environmental requirements are met as well as other transfer-related activities.

Where possible, and when consistent with its mission, DOI will assist DoD in transferring BRAC property to a nongovernmental conservation entity.

The DOI BRAC Working Group will meet periodically to review progress on transfers of BRAC property to the Department and resolve bottlenecks by working with DoD and the DOI Land Transaction Working Group.

Earliest Timeline for DOI Interests in BRAC Property

May 16	Publication in the <u>Federal Register</u> of a list of military installations that the Secretary of Defense recommends for closure and realignment.
August 15	Bureaus identify potential BRAC properties of interest and gather information for the acquisition justification and analysis.
September 1	Bureaus review and finalize acquisition justification and analysis (“A” and “B”).
September 8	<i>BRAC Commission transmits report to the President on its review of the Secretary of Defense recommendations of base closures and realignment.</i>
September 15	Bureaus forward the acquisition justification and analysis (“A” and “B”) and request for senior level endorsement of identified potential BRAC properties of interest to the Head of the Bureau/Office.
September 23	<i><u>President approves or disapproves Commission recommendations.</u> [The earliest date by which the BRAC list could possibly be finalized. However, Congress has 45 legislative days to vote acceptance or rejection of the recommendations as a whole. If Congress fails to act, the recommendations become law (i.e., closure decisions are final) after the expiration of the 45 day period].</i>
September 30	<i>Earliest date for military departments to issue an official notice of availability.</i>
October 1	*The Head of the Bureau/Office will forward potential properties of interest to the respective programmatic Assistant Secretary.
October 5	*Programmatic Assistant Secretaries forward their approved BRAC property to the DOI Land Transaction Working Group.
October 15	*DOI Land Transaction Working Group approves or disapproves potential BRAC property acquisition.
October 25	*Assistant Secretary-PMB forwards letter to DoD Undersecretary of Defense (Installations and Environment) of DOI expression of interest for BRAC property.
October 20	<i>If the President disapproves, the BRAC Commission must submit a revised list by this date.</i>
November 7	<i>President’s approval or disapproval of BRAC Commission’s revised recommendations.</i>
November 25	*DOI must submit application (GSA Form 1334) to DoD for BRAC property transfers.
Ongoing	OEPC, with the assistance from the DOI BRAC Working Group tracks the transfer process and helps resolve any bottlenecks. The DOI BRAC Working Group will report quarterly to the DOI Land Transaction Working Group on progress of transfer.

**Note: This timeline is dependent upon the final BRAC list approved by the President and Congress and reflects the earliest date for DOI to approach DoD about BRAC property. If any of these times slip, DOI would have more time to provide its response.*

**U.S. Department of the Interior
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