



ACQUISITION AND  
TECHNOLOGY

DUSD(ES/CL)

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

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MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY  
(INSTALLATIONS AND ENVIRONMENT)  
ASSISTANT SECRETARY OF THE NAVY  
(INSTALLATIONS AND ENVIRONMENT)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND  
ENVIRONMENT)  
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)

SUBJECT: Guidance on Land Use Control Agreements with Environmental Regulatory  
Agencies

Attached is the template, referenced in the January 17, 2001, DoD "Policy on Land Use Controls Associated with Environmental Restoration Activities," that shall be used when drafting a voluntary agreement for the implementation of land use controls (LUCs) at DoD installations. As stated in the DoD LUC policy, there is no legal or regulatory requirement for these agreements; they are voluntary and are intended to improve the visibility and viability of LUCs at an installation.

These voluntary agreements with environmental regulatory agencies should only be developed in exceptional cases to facilitate the use of LUCs at a specific installation (normally active installations only) for property under the control of the Component, and are primarily a description of the parties' specific responsibilities within the existing framework of laws and regulations regarding land use controls. They are not enforceable regulatory documents, nor are they to be an enforceable term or condition of an environmental restoration decision document or interagency agreement.

Components may elect to adopt a LUC management strategy at installations consistent with the principles stated in this guidance without necessarily entering into an agreement with regulatory agencies. An agreement is normally effected through a memorandum of agreement (MOA) or memorandum of understanding (MOU). Generally, MOUs memorialize agreements and MOAs additionally contemplate a reimbursable support requirement.

This guidance provides flexibility to Components to develop tailored installation agreements that are consistent with DoD policy. As stated in the DoD LUC policy, an agreement with a regulatory agency that is consistent with the attached template and the principles outlined below is exempt from the 72-hour review requirement. Significant deviations from the template, however, are subject to the 72-hour review requirement.

As stated in the DoD LUC policy, whenever possible, installations shall use existing processes and mechanisms (e.g., the installation environmental restoration management action plan, existing land use management practices) for the implementation and management of LUCs. For property being transferred out of Federal control, documents such as the deed and contract for sale are appropriate places to define LUC responsibilities. A separate agreement may be needed with a private party (such as the transferee) assuming LUC responsibilities. Neither the DoD LUC policy nor this guidance restricts such agreements. Such agreements with private parties, however, should be consistent with the DoD LUC policy and the principles and template contained in this guidance.

Principles incorporated in the template and to be highlighted in Agreements with regulatory agencies are as follows:

- Agreements shall be consistent with applicable law and authority. Agreements shall not include additional substantive requirements beyond those authorized in Federal and applicable state or local laws and regulations not in conflict with Federal law.
- Responsibility for managing and monitoring LUCs should be at the local level; the property owner should have the primary responsibility, and existing local processes should be used.
- Agreements should address only specific sites where LUCs will be employed, not the installation as a whole, and preferably should be drafted only after the remedy is proposed or selected.
- As DoD does not have authority to dispose of any real property rights at an active installation (e.g., recording a restrictive covenant or easement), implementing LUCs will not create, dispose, or alter any real property rights on active installations.
- DoD has authority to make land use decisions at active installations; however, where a proposed land use change requires a change to the decision document, the decision document change normally will require the same level of regulatory involvement as the original decision document.
- Mutually acceptable and reciprocal reservation of rights clauses should be used to avoid otherwise irreconcilable conflicts and stalemates in the development of the Agreement.
- State services in support of LUC Agreements and implementation of LUCs are not covered by the Defense State Memorandum of Agreement (DSMOA) process and related funding. Payment of applicable, nondiscriminatory state and local fees for LUC implementation and monitoring activities are allowable but must be consistent with DoD policy and guidance.
- Agreements will not limit the ability of the parties to delete any site from the Agreement based on a change in cleanup standards that obviates the need for the LUC.
- The Agreement shall specify that it will terminate upon transfer of the subject property, and LUC responsibilities should be incorporated into the contract for sale and deed.

The point of contact for this guidance and template is Mr. Shah A. Choudhury at (703) 697-7475.



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Attachment:  
as stated

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