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# TRANSFER OF SURPLUS PROPERTIES USING NEW LEGISLATIVE AUTHORITIES

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# HOW WE GOT HERE...

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- **Navy BRAC experience**
- **Brownfields innovations & success stories**
  - ✓ Plan reuse around known problem areas
  - ✓ Tailor environmental remedies to existing conditions
  - ✓ Integrate cleanup and redevelopment
- **BRAC property conveyance breakthroughs**
  - CERCLA amendment
  - Environmental Services Cooperative Agreements (ESCAs)
- **Industry outreach**
- **Small prototype (Oakland FISC)**
- **Variations on the concept (multiple sites)**
- **Big complex cleanups (Mare Island x2)**

*...but what about the “conservation lands”???*

# CHALLENGE

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- **Local, state and federal entities have difficulty absorbing excess and surplus military property for conservation and recreational use**
  - Reasons are diverse and are enumerated below
- **At local level:**
  - There is no “developer” waiting to capitalize the project
  - These conservation tracts cost money to maintain BUT are not big revenue- generators
  - These conservation tracts do not come with an endowment fund
  - It is often unclear who will manage them

# CHALLENGE, cont

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- **At state level,**
  - States often have difficulty finding immediate budget for operation of properties (timing issue)
- **At federal level:**
  - Other federal agencies not protected by CERCLA indemnities
  - These agencies generally unfamiliar with how to partner with third parties and use private insurance to their advantage
  - FWS can acquire only “refuge quality” properties and even then may not have O&M dollars to manage them
- **Many properties we work with have been “excess” or “surplus” for more than five years**

# BOTTOM LINE

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- **Problems are not only those of contamination but ALSO of the prospective owners' budget, timing, and property management capability**
- **Navy and Army working to find a TRANSFER PATHWAY for these conservation parcels**
- **Current process cries out for intermediary who will take the deed, complete the cleanup, and find the appropriate takeout partner**
- **THIS INITIATIVE OFFERS A NEW APPROACH TO CONSERVATION TRANSFERS**

## **RESOLVING THE CHALLENGE: Involving Private, Non-Profit Conservators**

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- **Involvement of non-profit conservators energizes the transfer and helps smooth the way by:**
  - **Allowing deed transfers to a non-profit conservator**
  - **Allowing early transfers for conservation reuse**
  - **Envisioning insurance scenarios where a non-profit conservator names a federal or state entity an “additional insured” in a policy**
  - **Identifying other (non-DoD) sources of funds to minimize costs**
  - **Relieving pressure on other federal land managing agencies, such as FWS**
  - **Opens up new options/enhances competition**
- **Possible transfer of properties to non-profits in “bundles”**

# ILLUSTRATIVE CONSERVATION PARTNERS

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- **Established conservation groups**
  - The Nature Conservancy (eco-regional approach, critical habitat)
  - Trust for Public Lands; Land Trust Alliance; Conservation Fund - (all size parcels, multiple goals – open space, recreation, habitat)
  - Trust for Land Restoration; Smaller, newer Land Trusts; - all size parcels, specific interest in cleanup of dirty properties
  - Over 1500+ land trusts across the country
  - These groups have expressed interest in partnering with Army
- **These groups speak well of DoD's conservation efforts**
- **Together they have conserved more than 100 million acres of land**

# BASIC PRINCIPLES

## WORKING WITH CONSERVATION GROUPS

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- **Local land trusts are long-term deedholders**
- **Major national conservators more likely to act as interim deedholders; will re-convey title to a take-out partner**
  - OR they may help identify other potential transferees without entering chain of title
- **High levels of experience in real estate transactions**
- **Rapid acquisitions**
- **Excellent public/regulator relations**
- **Able to invest dollars (can provide return on investment for long-term stewardship costs)**



# **ILLUSTRATIVE EXAMPLE (Navy) SKAGGS ISLAND, CA**

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- **Transfer stalled over FWS issue with building demolition**
- **Outreach to Bay area non-profit conservators**
- **Non-profits mentioned San Francisco Airport Authority(SFO) and California Dept of Transportation (CALTRANS) interest in mitigation credits**
  - **For Airport and Bay Bridge expansions, respectively**
- **Navy and consultant pursued discussions with SFO and subsequently CALTRANS**
- **CALTRANS contributed \$8.5M for building demolition at Skaggs Island, removing obstacles to transfer**
- **Results: Property to transfer in late spring or summer of 2002**
  - **Largest coastal wetland restoration ever undertaken on the Pacific coast**

# **CONSERVATION CONVEYANCE LEGISLATION**

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- **Authorizes no-cost conveyances to state and local agencies and non-profit conservation entities**
  - **Includes perpetual conservation restrictions**
  - **Allows reconveyance, with conservation restriction**
  - **Permits sale of property, with DOI approval and DOD reimbursement, if property loses conservation value**
  - **Extends cooperative agreement authority to non-profit groups to perform site cleanup and monitoring**

# **“SPINOFF”: ENCROACHMENT PARTNERING**

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- **Original work with non-profit conservators has expanded into “encroachment partnering” initiative**
- **Identify lands around active (encroachment-impaired) bases that non-profits would like to acquire; coordinate this interest with the military Department**
- **Encroachment partnering legislation developed**
  - **Authorizes Secretary of the military Dept. to enter into cost-sharing agreements with private conservators for land acquisitions around active bases**
  - **Enables the Dept. to acquire property rights on a cost-shared basis and/ or to subsequently acquire an easement or lease on land that is purchased by the conservator**

# LOOKING TO THE FUTURE...

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- **Powerful new authorities now exist**
- **Services and OSD moving to implement**
- **Outreach to NGOs ongoing**
- **Initiatives underway locally**
- **Has application for “*difficult*” sites**
- **NOT limited to BRAC disposals**



## **WHO TO CONTACT**

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**National Defense Authorization Act 2003**  
**Public Law 107-314**  
**Subtitle B--Real Property and Facilities Administration**

**SEC. 2811. AGREEMENTS TO LIMIT ENCROACHMENTS AND OTHER CONSTRAINTS ON MILITARY TRAINING, TESTING, AND OPERATIONS.**

(a) IN GENERAL- Chapter 159 of title 10, United States Code, is amended by inserting after section 2684 the following new section:

**Sec. 2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations**

(a) AGREEMENTS AUTHORIZED- The Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity described in subsection (b) to address the use or development of real property in the vicinity of a military installation for purposes of--

(1) limiting any development or use of the property that would be incompatible with the mission of the installation; or

(2) preserving habitat on the property in a manner that--

(A) is compatible with environmental requirements; and

(B) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation.

(b) ELIGIBLE ENTITIES- An agreement under this section may be entered into with any of the following:

(1) A State or political subdivision of a State.

(2) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

(c) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS- Chapter 63 of title 31 shall not apply to any agreement entered into under this section.

(d) ACQUISITION AND ACCEPTANCE OF PROPERTY AND INTERESTS- (1) An agreement with an eligible entity under this section may provide for--

(A) the acquisition by the entity of all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and

(B) the sharing by the United States and the entity of the acquisition costs.

(2) Property or interests may not be acquired pursuant to the agreement unless the owner of the property or interests consents to the acquisition.

(3) The agreement shall require the entity to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property or interest acquired under the agreement or a lesser interest therein. The Secretary shall limit such transfer request to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

(4) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under the agreement.

**SEC. 2811. Continued**

`(5) For purposes of the acceptance of property or interests under the agreement, the Secretary concerned may accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 3111 of title 40, if the Secretary concerned finds that the appraisal or title documents substantially comply with the requirements.

`(e) ACQUISITION OF WATER RIGHTS- The authority of the Secretary concerned to enter into an agreement under this section for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

`(f) ADDITIONAL TERMS AND CONDITIONS- The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

`(g) FUNDING- (1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the Army, Navy, Marine Corps, Air Force, or Defense-wide activities may be used to enter into agreements under this section.

`(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.

`(h) DEFINITIONS- In this section:

`(1) The term `Secretary concerned' means the Secretary of Defense or the Secretary of a military department.

`(2) The term `State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.'

(b) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2684 the following new item:

`2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations.'



**SEC. 2812. CONVEYANCE OF SURPLUS REAL PROPERTY FOR NATURAL RESOURCE CONSERVATION PURPOSES.**

(a) CONVEYANCE AUTHORITY- (1) Chapter 159 of title 10, United States Code, is amended by inserting after section 2694 the following new section:

**`Sec. 2694a. Conveyance of surplus real property for natural resource conservation**

`(a) AUTHORITY TO CONVEY- The Secretary of a military department may convey to an eligible entity described in subsection (b) any surplus real property that--

`(1) is under the administrative control of the Secretary;

`(2) is suitable and desirable for conservation purposes;

`(3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and

`(4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property disposal processes and authorities under subtitle I of title 40.

`(b) ELIGIBLE ENTITIES- The conveyance of surplus real property under this section may be made to any of the following:

`(1) A State or political subdivision of a State.

`(2) A nonprofit organization that exists for the primary purpose of conservation of natural resources on real property.

`(c) REVISIONARY INTEREST AND OTHER DEED REQUIREMENTS- (1) The deed of conveyance of any surplus real property conveyed under this section shall require the property to be used and maintained for the conservation of natural resources in perpetuity. If the Secretary concerned determines at any time that the property is not being used or maintained for such purpose, then, at the option of the Secretary, all or any portion of the property shall revert to the United States.

`(2) The deed of conveyance may permit the recipient of the property--

`(A) to convey the property to another eligible entity, subject to the approval of the Secretary concerned and subject to the same covenants and terms and conditions as provided in the deed from the United States; and

`(B) to conduct incidental revenue-producing activities on the property that are compatible with the use of the property for conservation purposes.

`(3) The deed of conveyance may contain such additional terms, reservations, restrictions, and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

`(d) RELEASE OF COVENANTS- With the concurrence of the Secretary of Interior, the Secretary concerned may grant a release from a covenant included in the deed of conveyance of real property conveyed under this section, subject to the condition that the recipient of the property pay the fair market value, as determined by the Secretary concerned, of the property at the time of the release of the covenant. The Secretary concerned may reduce the amount required to be paid under this subsection to account for the value of the natural resource conservation benefit that has accrued to the United States during the period the covenant was in effect, if the benefit was not taken into account in determining the original consideration for the conveyance.

**SEC. 2812. Continued.**

`(e) CONGRESSIONAL NOTIFICATION- The Secretary concerned may not approve of the reconveyance of real property under subsection (c) or grant the release of a covenant under subsection (d) until the Secretary notifies the appropriate committees of Congress of the proposed reconveyance or release and a period of 21 days elapses from the date the notification is received by the committees.

`(f) LIMITATIONS- The conveyance of real property under this section shall not be used as a condition of allowing any defense activity under any Federal, State, or local permitting or review process. The Secretary concerned may make the conveyance, with the restrictions specified in subsection (c), to establish a mitigation bank, but only if the establishment of the mitigation bank does not occur in order to satisfy any condition for permitting military activity under a Federal, State, or local permitting or review process.

`(g) CONSIDERATION- In fixing the consideration for the conveyance of real property under this section, or in determining the amount of any reduction of the amount to be paid for the release of a covenant under subsection (d), the Secretary concerned shall take into consideration any benefit that has accrued or may accrue to the United States from the use of such property for the conservation of natural resources.

`(h) RELATION TO OTHER CONVEYANCE AUTHORITIES- (1) The Secretary concerned may not make a conveyance under this section of any real property to be disposed of under a base closure law in a manner that is inconsistent with the requirements and conditions of the base closure law.

`(2) In the case of real property on Guam, the Secretary concerned may not make a conveyance under this section unless the Government of Guam has been first afforded the opportunity to acquire the real property as authorized by section 1 of Public Law 106-504 (114 Stat. 2309).

`(i) DEFINITIONS- In this section:

`(1) The term `appropriate committees of Congress' has the meaning given such term in section 2801 of this title.

`(2) The term `base closure law' means the following:

`(A) Section 2687 of this title.

`(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (10 U.S.C. 2687 note).

`(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

`(D) Any other similar authority for the closure or realignment of military installations that is enacted after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003.

`(3) The term `Secretary concerned' means the Secretary of a military department.

`(4) The term `State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.'

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2694 the following new item:

`2694a. Conveyance of surplus real property for natural resource conservation.'

**SEC. 2812. Continued.**

(b) ACCEPTANCE OF FUNDS TO COVER ADMINISTRATIVE EXPENSES- Section 2695(b) of such title is amended by adding at the end the following new paragraph:

`(5) The conveyance of real property under section 2694a of this title.'

(c) AGREEMENTS WITH NONPROFIT NATURAL RESOURCE CONSERVATION ORGANIZATIONS- Section 2701(d) of such title is amended--

(1) in the subsection heading, by striking `AGENCIES' and inserting `ENTITIES';

(2) in paragraph (1)--

(A) by striking `with any State or local government agency, or with any Indian tribe,' and inserting `any State or local government agency, any Indian tribe, or any nonprofit conservation organization'; and

(B) by striking `the agency' and inserting `the agency, Indian tribe, or organization'; and

(3) by striking paragraph (4), as redesignated by section 311(2) of this Act, and inserting the following new paragraph:

`(4) DEFINITIONS- In this subsection:

`(A) The term `Indian tribe' has the meaning given such term in section 101(36) of CERCLA (42 U.S.C. 9601(36)).

`(B) The term `nonprofit conservation organization' means any non-governmental nonprofit organization whose primary purpose is conservation of open space or natural resources.'