

Finding of Suitability to Transfer (FOST) and Finding of Suitability to Lease (FOSL)

The purpose of a Finding of Suitability to Transfer or Lease is to document the Army's determination that specific property is environmentally suitable to transfer or lease. While the documents are similar, they serve different purposes.

The primary purpose of a Finding of Suitability to Transfer (FOST) is to document that the property is environmentally suitable for transfer by deed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Department of Defense (DoD) FOST Guidance. The FOST process was developed to meet the statutory and regulatory requirements associated with transferring federal real estate. A FOST must demonstrate that either the property is uncontaminated or that all necessary remediation has been completed or is in place and operating properly and successfully. These demonstrations are necessary to support the deed covenant required by CERCLA Section 120(h) that all remedial action necessary to protect human health and the environment has been taken. In addition, under CERCLA Section 120(h)(3)(A), a deed to transfer property by the United States must contain (1) notice of the type and quantity of hazardous substances, (2) notice of the time at which such hazardous substance, storage, release, or disposal took place, and (3) a description of any remediation action taken.

The primary purpose of a Finding of Suitability to Lease (FOSL) is to determine that the property can be leased for an intended use without an unacceptable risk to human health and the environment and without interference with any existing or planned environmental restoration activities, consistent with CERCLA and the DoD FOSL Guidance. DoD and the Environmental Protection Agency (EPA) developed the FOSL process pursuant to congressional direction to consult on procedures to ensure Base Realignment and Closure (BRAC) military property is suitable to lease to private parties. Under CERCLA 120(h)(3)(B) a suitability determination made in consultation with the EPA is required to lease BRAC property. This includes a determination that the property is suitable for lease, the uses contemplated for the lease are consistent with protection of human health and the environment, and there are adequate assurances that the United States will take all future remedial action.

Both allow the Army to develop appropriate deed/lease provisions based on the environmental condition of the property. After the FOST/FOSL is approved, it is sent to the Army's Real Estate Agent (Corps of Engineers) so that appropriate deed or lease restrictions are incorporated into the real estate documents.