

# **Appendix D**

## **leasing Materials**

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# Model lease Application Package

## **General Information for Lease Applicants**

Once a decision has been made to close or realign an installation, property maybe made available for interim use, if it can be done in compliance with environmental requirements and without adversely affecting the DoD Component mission, including conversion activities. An Interim Lease is a short-term lease that makes no commitment for future use or ultimate disposal and is usually entered into prior to final reuse and disposal decisions. The Applicant should provide the information requested in the Application Package as completely as possible. No specific form is required. Upon receipt of the application, the Military Department will perform an internal review of the proposed use. If the application did not contain sufficient information or if the review triggers a requirement for additional information, this information will be requested from the applicant as soon as possible. Site-specific environmental, natural, cultural, or operational reviews may require restrictions on the proposed use or consideration of alternative uses.

## ***Reasons for Interim Leases***

Interim leases are intended to be used in appropriate cases to permit public and private commercial activity to begin prior to completion of the final reuse and disposal environmental review under the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321 *et seq.*). In many cases this review requires an Environmental Impact Statement and issuance of a Record of Decision (ROD), which take considerable time to complete. The NEPA review will result in a final decision on disposal or reuse. Whether interim leasing is appropriate depends on a wide variety of site-specific conditions that include compatibility with ongoing military missions, disposal-related activities, environmental analysis and factors affecting the property requested, and the intended use of the property.

## ***Lessee Under an Interim Lease***

**The** Military Department usually leases property for interim use to the Local Redevelopment Authority (if so empowered to receive property) or, if there is none, to the local government in whose jurisdiction the property is wholly located or to another local government agency or a State government agency designated for redevelopment purposes by the chief executive officer in the State. Requests for leases directly to other eligible entities may be approved by the Military Department Representative in exceptional circumstances.

## ***Exclusive Possession by Lease***

Licenses, permits, or rights-of-entry will not be used as a substitute for a Lease, in circumstances where the proposed grantee is to be given exclusive possession of DoD property. However, non-exclusive use may be granted in accordance with standard Military Department procedures, for example, for conferring non-possessory access for single, specified purposes (e.g., conducting an open house or air show; doing non-intrusive surveys of the premises; or setting up potential Lessee equipment—but not commencing beneficial operations-pending finalization of a lease).

## ***Internal Review***

**The** application information and the proposed use will be reviewed by the Military Department. This review will, in some instances, trigger additional site-specific questions that will be provided to the Applicant.

### ***Lease-Specific Environmental Review***

**The** National Environmental Policy Act (NEPA) must also be complied with for all leasing actions. Environmental impact analysis, using the Military Department's environmental impact analysis process as implemented in current Military Department and Council on Environmental Quality regulations or directives, is required prior to making a decision to enter into an interim lease. Proposed interim uses, including any improvements to the leased property, may not foreclose later consideration of any reasonable disposal and reuse alternative by the Military Department. Absent compelling circumstances, the Military Department will not permit improvements that will significantly affect the quality of the human environment and therefore require preparation of a separate EIS. In addition, other site-specific environmental, cultural or historic reviews may require restrictions on use or special compliance requirements provisions in the lease. Secretarial findings regarding wetlands (E.O. 11990) and floodplains (E.O. 11988) will be made when required. All applicable natural and cultural resource protection requirements will be considered prior to making the decision to enter into an interim use lease and appropriate restrictions, to the extent required, will be included within the lease.

### ***Environmental Baseline Survey and Finding of Suitability to Lease***

CERCLA requires notice indicating if the property has been the site of a release, storage, or disposal of hazardous substances. The Environmental Baseline Survey (EBS) and Finding of Suitability to Lease (FOSL) will be performed prior to the interim lease. These documents will provide the applicable notices to the Lessee or its Sublessees at the inception of the lease. The EBS also documents the environmental condition of the premises at the start of the lease, including the status and plans for any required environmental remediation under the Installation Restoration Program (IRP). A close-out environmental condition survey and report will be the basis for restoration requirements at the termination of the interim lease. Environmental regulators will be notified and included in the process, including receiving copies of workable draft documents and participating in on-board reviews.

## **A. Applicant Information**

### ***1. General Information***

Provide name, address, and telephone number of the Applicant and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the Applicant during the course of the project.

### ***2. Experience and Background***

Provide copies of instruments establishing the Applicant as an entity with the legal capacity to enter into leases and other binding contractual obligations.

- a. Governmental entities should provide enabling legislation or other charters.
- b. Corporations should provide the name and address of an authorized representative and evidence of current corporate status.
- c. Partnerships/Joint Ventures should provide the name and address of an authorized representative and evidence of current partnership/joint venture status.
- d. A sole proprietor should provide current address and summary of business activity.

**3. Financial Capability** (Note: The Applicant maybe requested by the Military Department to provide the following information. Private-sector financial data will be held in confidence, where necessary, upon request).

- a. If the Applicant is a corporation or limited partnership it must provide a recent **financial** statement.
- b. If the Applicant is an individual or partnership it must provide a recent personal financial statement.

- c. A preliminary budget and estimated operating costs and sources of funds for the proposed activities on the leased property.

#### **4. Signing of Application**

**The** Application must be signed by an official authorized to act on behalf of the potential Lessee. If the Lessee is a corporate or governmental entity then the signature must show the official capacity of the signer.

#### **5. Compatibility with Redevelopment Plan**

- a. If the Applicant is the LRA, it will provide a statement certifying that the proposed lease is compatible with its redevelopment plan.
- b. If the Applicant is not the LRA, it must consult with the LRA and should provide a recommendation on the proposed lease from the LRA, including a statement of compatibility with the redevelopment plan.

### **B. Intended Use**

#### **1. Subleasing**

State whether the Applicant intends to use the property or sublease the property to a third party, and if so, identify the prospective Sublessees, if known.

#### **2. Begin Date**

State when the Applicant wants the lease to begin.

#### **3. Lease Term**

State the requested duration of the lease.

#### **4. Property Description**

Identify the location of the property requested on a map of the facility and provide the following information:

- a. The approximate acreage requested; and
- b. Identification of any buildings or other improvements requested.

#### **5. Description of Activities**

Provide a detailed description of the activities proposed to be undertaken under an interim lease. Include an explanation of whether this would be a new business or the relocation or expansion of an existing business. If this is a relocation or expansion of an existing business, provide the name and address of the existing business.

#### **6. Environmental Information**

- a. If such activity will result in the generation of hazardous waste as defined by the Resource Conservation and Recovery Act, provide the following
  1. A description of the waste stream(s);
  2. An estimate of the quantity generated per month;
  3. A description of the program to manage hazardous waste; and
  4. Identification of the method(s) of treatment or disposal.
2. If such activity will require the Applicant to use hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, or petroleum products or their derivatives, provide the following

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1. A description of the hazardous substances or petroleum products to be used in such activity;
  2. An estimate of the quantity of such substances to be stored on-site at any one time;
  3. A description of the program to manage hazardous substances and petroleum products or their derivatives; and
  4. A description of the manner such substances will be stored, including whether Underground or Aboveground Storage Tanks (USTs/ASTs) will be used.
3. If such activity will result in the discharge of wastewater to an accumulation, collection or drainage system, provide the following:
- a. A description of the anticipated constituents of such wastewater;
  - b. An estimate of the quantity of such wastewater generated per day;
  - c. A description of the controls that will be used to limit the quantity or constituency of such wastewater;
  - d. Identification of any applicable effluent limitations or standards applicable to the proposed activity; and
  - e. Identification of the receiving wastewater treatment facility or receiving water of the United States.
4. If such activity will result in the emission of air pollutants, provide the following
- a. Identification of all air emissions, including hazardous air pollutants, resulting from such activities and identification of their sources;
  - b. An estimate of the quantity of emissions and hazardous air pollutants per year; and
  - c. Identification of any emission sources presently owned by the Military Department that the Lessee will need for its activities.
5. If such activity will result in the application of pesticides, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, provide the following
- a. Identification of all such pesticides that will be applied on the property;
  - b. An estimate of the quantity of pesticides to be applied to the property per year;
  - c. Identification of the applicator who will be applying such pesticides to the property.
6. If any of the property requested will be used for residential purposes or is of the type commonly used by children under the age of 7 years, identify the environmental consultant who will be responsible for identification and abatement of lead-based paint hazards, if any, on the property.

### **C. Operational Requirement'**

1. Identify the approximate amount of electricity required and the expected provider of such service;
2. Identify the type and approximate amount of fuels, e.g., natural gas, propane, heating oil, required and the expected provider(s) of such fuels;
3. Identify the amount of potable water required and the expected provider of such water;
4. Identify the approximate requirements for wastewater treatment and the expected provider of such service;
5. Identify any other requirements for utility services, e.g., telephone, cable TV, required and the expected provider of such service; and

6. Describe any construction, improvements or other alterations to the property required to enable any of the services described in response to the preceding requests to be delivered or provided to the property.
7. Describe any construction, improvements or other alterations to the property proposed to carry out Lessee activities on the property.

#### **D. Public Benefit Rental Discount**

If Applicant is requesting less than fair market rental, please provide the following additional information

1. A description of the economic impact of closure.
2. A description of the financial condition of the community and the prospects for redevelopment.
3. A description of how the interim lease will contribute to the short-term job creation and economic development of the base and the community, including projected number and type of jobs created.
4. A statement as to why the interim lease should be granted at below the estimated fair market value, and what discount is proposed.
5. A description of why fair market value is unobtainable or not compatible with the public benefit.

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*[Some of these considerations may not apply at all installations.]*

## A. Project Processing

1. Project name: (Identify the property requested and the Applicant's name);
2. Date expression of interest received: \_\_\_\_\_
3. Date initial Application package mailed/delivered to Applicant \_\_\_\_\_
4. Date Application package received from Applicant: \_\_\_\_\_
5. Date follow-up Application package mailed/delivered to Applicant \_\_\_\_\_
6. Date follow-up Application package received from Applicant \_\_\_\_\_
7. Date Finding of Suitability to Lease (FOSL) and Environmental Baseline Survey (EBS) or Supplemental EBS initiated \_\_\_\_\_
8. Date notification of initiation of FOSL and EBS or Supplemental EBS mailed to regulators: \_\_\_\_\_
9. Date workable draft of FOSL provided to regulators \_\_\_\_\_
10. Date workable draft of EBS or Supplemental EBS mailed to regulators: \_\_\_\_\_
11. Date regulator comments to the FOSL/EBS received: \_\_\_\_\_
12. Date FOSL signed and notice provided to the public: \_\_\_\_\_

## B. Applicant Information

1. Interim lease requested by
  - Local Redevelopment Authority
  - State or local government
  - 1 Private party
  - Other (Describe in detail)
2. Legal status and capacity documented by
  - Reference to State Law (provide citation);
  - Certificate of Incorporation, Articles of Incorporation and By-laws;
  - Partnership/Joint Venture Agreement;

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•/ Other \_\_\_\_\_

3. If Applicant is a corporation, did it provide
- a. Evidence of current corporate status; and
  - b. Name and address of an authorized representative?
- / Yes.
  - No.

4. If Applicant is a partnership/joint venture, did it provide:
- a. Evidence of partnership/joint venture status; and
  - b. Name and address of an authorized representative?
- / Yes.
  - No.

5. If Applicant is a sole proprietor, did it provide
- a. A current address; and
  - b. Summary of business activity?
- Yes.
  - No.

**C. Lease Administration**

1. Name, address and telephone number of the Applicant's representative(s) responsible for managing the leasing effort

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2. Will the Lessee operate the property or sublease to a third party?
- Operate
  - Sublease. If the Applicant will sublease, identify the prospective Sublessee:

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3. Date the Applicant requested the lease to begin \_\_\_\_\_

4. Requested duration of the lease:
- / \_ years; or
  - / \_ months.

**D. Property Information**

1. Tract No.(s) and Name, if any (Segment maps, Master Plan designations)

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2. Acreage: \_\_\_\_\_

3. General character of the land requested:

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4. Are Government buildings and improvements included in the property?

No.

Yes. If yes, identify and describe all buildings, facilities and improvements, e.g., size and condition, and attach copy of floor plan, if applicable.

5. Existing or preceding land use: \_\_\_\_\_

6. Proposed use: (as described in the Application)

7. United States property interest:

Fee simple absolute

Easement

Leasehold

Other \_\_\_\_\_

8. Identify and describe in detail, e.g., owner, duration, property affected, termination provisions, etc., any encumbrances on the property

Easements

Leaseholds

•1 Licenses

Permits

Others \_\_\_\_\_

9. Jurisdiction

Exclusive Federal Jurisdiction

Concurrent Federal Jurisdiction

Proprietary Status

10. Is jurisdiction to be retroceded?

•1 Yes.

No.

If there has already been a retrocession of Federal jurisdiction, indicate the date retrocession was final. If a retrocession action is pending, identify the status of that effort.

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## **E. Operational Factors**

1. Is the property currently available for leasing?

Yes.

No. If no, will it be available in time to meet the Applicant's needs?

•1 Yes.

No.

2a. Does the Stewart B. McKinney Homeless Assistance Act apply to this action?

No.

Yes. If yes, has the necessary screening been completed and is the property available for leasing to the Applicant?

No.

•1 Yes.

2b. Does the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 apply to this action?

No.

Yes. If yes, has the property been designated for homeless use in the local redevelopment plan?

No.

Yes. If yes, has I-IUD approved the homeless assistance provisions of the plan?

No.

•1 Yes.

3. Were utilities; e.g., electricity, natural gas/propane/heating oil, potable water, wastewater treatment, telephone, cable TV, etc., requested by the Applicant and, if so, are they available?

No.

Yes. If yes, identify the type, quantity, and provider of such services.

4. Will the DoD Component be providing services on a reimbursable basis?

•1 No.

•1 Yes. If yes, identify the instrument used to establish the term under which such services will be provided.

5. Are there any security, access, parking or other operational issues?

No.

•1 Yes, please state.

**F. Environmental Factors**

1. Has the activity proposed by the Applicant been analyzed for environmental impacts under the applicable environmental impact analysis process?

No. If no, estimate the time to complete such analysis

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Yes. If yes, what document was produced?

*EI* Environmental Impact Statement (EIS)

(attach justification for allowing interim use and proceeding with action);

•*J* Environmental Assessment/Finding of No Significant Impact (EA/FONSI); or

•*1* Categorical Exclusion (CATEX): (cite the authority for the CATEX)

2. Is further environmental study required?

No.

Yes.

3. Has the Base-wide Environmental Baseline Survey (EBS) or a site-specific EBS been completed?

No. If no, estimate the time to complete such analysis:

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Yes. The EBS identified the following environmental concerns:

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4. Were hazardous substances stored, released or disposed of on the property in excess of the applicable amounts; i.e., 1,000 kgs or hazardous substance and 1 kg for acutely hazardous substances?

No.

•*1* Yes. If yes, provide the information required by 40 CFR Part 373:

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5. Have remedial actions been taken so that the property is considered safe for the proposed use?

•*1* Yes.

No. If not, estimate the estimated time to complete such action \_\_\_\_\_ and if the proposed action could take place prior to such action, provide details and justification for leasing the property in its current condition, including any restrictions on access or use:

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6. Are there any sites or areas of concerns subject to the Installation Restoration Program located on the property?

No.

•1 Yes. Conditions may need to be included in the lease.

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7. Was the property contaminated with ammunition, explosives or chemical weapons?

No.

Yes. If yes, has the property been decontaminated using the most appropriate technology consistent with the proposed use of the property? Will the action require approval by the Department of Defense Explosive Safety Board (DDESB)?

•1 Yes.

No. However, transfer to another Federal Agency for compatible use of surface decontaminated real property would be appropriate, subject to limitations, restrictions and prohibitions to ensure personnel and environmental protection.

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8. Will access rights to implement any monitoring plan be required?

No.

•1 Yes.

9. Will the Applicant generate hazardous wastes, as defined the Resource Conservation and Recovery Act (RCRA), as a result of the proposed activity?

No.

Yes. If yes, identify all waste streams and quantities:

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10. Does the Applicant possess a U.S. EPA hazardous waste generator identification number that would permit waste generation on the requested property?

No.

Yes. The U.S. EPA Generator ID No. is: \_\_\_\_\_

11. Does the proposed use include the storage or disposal of non-DoD hazardous or toxic materials? If so, determine whether Title 10, USC 2692 is applicable to this lease.

No.

•1 Yes, explain.

Covered by exception  Industrial-type facility;  Other \_\_\_\_\_

Waiver granted.

12. Does the Applicant propose to use any existing Underground Storage Tank (UST) or Aboveground Storage Tank (AST) on the property?
- No. If no, does the Applicant intend to install its own USTS or ASTS?
    - No.
    - 1 Yes.
  - 1 Yes. If yes, are existing tanks in compliance with current laws and regulations and appropriate for such use?
    - No.
    - Yes.
13. Will the activity involve use of substances covered by the Toxic Substances Control Act?
- 1 Yes.
  - No.
14. Will the Lessee's activities on the leased property result in a discharge of wastewater to an accumulation, collection or drainage system?
- No.
  - Yes. If yes, is the quantity greater than one million gallons per day?
    - No.
    - 1 Yes.
15. Can the existing wastewater collection and treatment system accommodate such discharges without adverse operational or environmental impacts?
- Yes.
  - No. If not, are there other options? Describe.
16. Has the Applicant applied for or obtained a National Pollutant Discharge Elimination System (NPDES) Permit or State equivalent from the EPA/appropriate State agency?
- 1 Yes.
  - No. If not, state whether the Applicant must have an NPDES Permit or State equivalent to operate.
    - 1 Yes.
    - No.
17. Would the Applicant's operations result in a violation of a NPDES Permit or State equivalent held by the United States?
- Yes.
  - No.
18. Will approval of the Application result in the use of pesticides on the property? (See the Federal Insecticide, Fungicide, and Rodenticide Act and State pesticide regulations.)
- No.
  - Yes. Restrictions may need to be incorporated into the lease.
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19. Will the proposal result in emissions of criteria air pollutants, their precursors or hazardous air pollutants?

- No.
- Yes. If yes, does the Applicant intend to install new equipment and independently obtain any permits necessary to operate?
  - 1 Yes.
  - No. If no, does the Applicant seek to use equipment currently operated under permits held by the Military Department?
    - No.
    - Yes. If yes, describe the conditions that must be satisfied before the Applicant could operate such equipment \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. Do the proposed activities require a conformity determination under the Clean Air Act?

- This action does not require a written conformity determination in accordance with EPA's rule because:
  - 1 The installation is in an attainment area.
  - The action falls within an exemption in the rule. Attach documentation of the applicability of the exemption.
- This action is not exempt from the conformity regulation. Attach conformity determination. Describe the mitigation requirements or other restrictions, if any, that must be incorporated in the outgrant document.

21. Are there improvements with Asbestos-Containing Material (ACM)?

- No.
- Yes, attach condition and type.

22. Are there improvements constructed prior to 1978 that are considered to contain lead-based paint or that have been determined to contain lead-based paint?

- No.
- Yes, Attach survey results.
  - Are these improvements the type that children under age seven frequently inhabit?
    - No.
    - Yes, notice and restriction required.

23. Is there radon or polychlorinated biphenyls (PCBs) present?

- No.
- Yes.

24. Do any Federal or State threatened or endangered species inhabit the requested property or does it include any critical or sensitive habitat as defined the Endangered Species Act?

No.

Yes. If yes, could the proposal jeopardize any such species or the habitat of any such species?

•1 No.

•1 Yes. This action jeopardizes threatened or endangered species or the habitat of such species. Accordingly, restrictions may need to be incorporated into the outgrant document to protect the species or habitat.

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25. Will the activity jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA that a Military Department has agreed to?

•1 No.

•1 Yes. Conditions may need to be included in the lease.

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26. Is the property in a Coastal Zone Management Area?

No.

Yes. If yes, has a determination been made that the proposed action is consistent with the approved State Coastal Zone Management Plan?

No.

•1 Yes.

27. Is the requested property within a 100-year floodplain? (See E.O. 11988.)

No.

Yes. Conditions may need to be included in the lease.

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28. Are there any jurisdictional wetlands located on the property?

No.

Yes. This property includes a wetlands area and falls under the purview of Executive Order 11990; accordingly, conditions may need to be included in the lease.

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29. Has the property been surveyed for historical and cultural resources?

No. The survey will be completed by \_\_\_\_\_

Yes. If yes, were there historical or cultural resources identified on the property?

No.

Yes. If yes, has consultation occurred under Section 106 of the National Historic Preservation Act?

•1 No.

•1 Yes. Conditions may need to be included in the lease.

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30. Have Native American graves or artifacts been identified on this property? (See the American Indian Religious Freedom Act and Native American Graves Protection and Repatriation Act.)

No.

Yes. Restrictions may need to be incorporated into the lease to protect these resources.

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31. Have archaeological sites or resources been identified on this property? (See the Antiquities Act; Archaeological and Historical Preservation Act; and Archaeological Resources Protection Act.)

No.

Yes. Conditions may need to be included in the lease.

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32. Will the proposed lease impact an area designated under the Wild and Scenic Rivers Act?

No.

Yes. Conditions may need to be included in the lease.

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33. Would any other special-purpose environmental laws be applicable to the proposed activity?

No.

Yes. If yes, identify such laws and describe their effect on the proposed activities

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# Model lease Provisions

The Military Departments will execute interim leases that incorporate certain standard provisions tailored to the specific policies of the individual Departments. Each of the Military Departments have developed model lease documents. Copies can be obtained by contacting the applicable Military Department base closure office. See Appendix G for contact information. Site-specific environmental, cultural, historical, and operational requirements and restrictions will be added to the model interim lease provisions following review of the proposed use and further analysis of its impacts. It is the responsibility of the applicant to make sure that all lease provisions are understood and the condition of the premises proposed for lease are known prior to lease execution. Standard provisions include:

## 1. Use of the premises

The lease will state what purposes and uses are approved.

## 2. Term of lease

In the past, the term of an interim lease could only last for up to five years, including options to renew. Recently, Section 2833 of the NII&496 granted the Department the authority to enter into interim leases with terms that extend beyond the expected completion date for the disposal Environmental Impact Statement (EIS). This is true even if final property disposal is consequently delayed because the lessee's use of the property differs from that outlined in the Record of Decision (ROD). This authority, however, is only available if the proposed lease can be supported by a CATEX or an EA/FONSI. A policy memorandum implementing this new authority can be found on page D-28.

## 3. Termination

In addition to the right to terminate for non-compliance with the lease conditions, the Military Department reserves the right to terminate the lease and remove the tenant in the event of national emergency as declared by the President or the Congress of the United States. Unless special circumstances justify a shorter period, the Lessee will be provided with no less than 30 days' notice that termination is necessary and will be provided a reasonable time to vacate the premises.

## 4. Consideration

- a. **Public Benefit Discounted Rental.** If the Lessee meets certain public benefits criteria, to the extent authorized bylaw, the Military Department may approve consideration less than the fair market rental of the leasehold interest. If the consideration is less than fair market value, then Lessee receipts from third parties; e.g., Sublessee rental, must be used for protection, maintenance, repair, improvement, and costs related to the installation to include LRA marketing and management activities.
- b. **Fair Market Value Rental.** If the Lessee does not qualify for a public benefit rental reduction, then the total consideration, in cash or in kind, will not be less than the estimated fair market rental of the leased interest. The fair market value of the leased interest should take into account the property, the restrictions on use and access to the property, the terms and degree of Government control in the lease document, the termination rights, and any other specifics of the type of use.

In some circumstances, the Military Departments may authorize the fair market rental consideration to be offset for maintenance, protection, repair, improvement, or restoration. Lessees may maintain, protect, repair, improve and restore Government facilities on leased properties, exteriors as well as interiors, as well as the leased premises, as all or part of the rental. These obligations may extend to the entire installation. Offsets are applicable only to those activities that are in addition to the routine maintenance, protection and repair requirements of any Lessee. In any case, the value of the rental offset and/or any cash rent reserved to the Government must be equal to or exceed the fair market value of the leased interest granted. Environmental, cultural, and historical activities can be included in rental offsets, including restoration. Rent will not be offset for the value of structures unless title will be vested in the United States. Improvement should be viewed more broadly as improvement to the premises; e.g., upgrade of roads, landscaping, or capital improvements, beyond repair or maintenance. Environmental remediation must be accomplished in consonance with applicable environmental laws and regulations.

### **5. Notice**

The lease will set out how official notice will be given and state the address for written notices. Under any lease, the Lessor and Lessee will have occasion to provide the other with formal correspondence and notices.

### **6. Authorized representatives**

The lease may provide for delegation of day-to-day lease administration functions to authorized individuals.

### **7. Supervision of the premises**

The leased premises are under the supervision of a Government official, who is responsible for the use and occupation of the premises.

### **8. Applicable rules and regulations**

The Lessee and any Sublessees are required to comply with all Federal, State and local laws, regulations and standards that are applicable when the lease is executed or may become applicable to the Lessee's activities on the leased premises later. These include laws and regulations on the environment, construction of facilities, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee and any Sublessee are responsible for obtaining and paying for permits required for its operations under the Lease.

### **9. Condition of the premises**

The lease states that the Lessee has inspected the premises, understands the condition, and understands that the United States is not providing any warranties or promises to make any alterations, repairs, or additions thereto. The Military Department and the Lessee will jointly conduct an inventory and condition survey, to include the environmental condition, prior to lease execution by either party. The inventory and condition surveys will be documented in a report prepared by the Military Department, signed by both parties, which will be attached to the lease. The report may note items identified in the EBS, as well as any other environmental conditions that may not be specifically identified in the EBS report. The report will acknowledge leasehold conditions. At the conclusion of the lease period, the Military Department and the Lessee will jointly conduct a close-out survey. The Military Department will prepare a close-out report. All significant variances from the original report should be clearly documented. This close-out report will constitute the basis for settlement by the Lessee for any leased property shown to be lost, damaged or destroyed.

### **10. Transfers, assignments, and subleasing**

Provision 10a. should be used for leases that are not a master lease. Provision 10b. should be used for master leases.

- a. The Lessee may not assign or transfer the lease to another party without the approval of the Military Department. Subleasing will be authorized subject to approval of the sublease by the Military Department. The Military Department will conduct its negotiations with the Lessee, not the Sublessee(s). Sublease rental will be negotiated between the Lessee and Sublessee and may be different in amount or expressed differently than that in the prime lease. The term of a sublease will be no longer than that in the prime lease, so that expectations of continued tenancy after disposal will not be created. The provisions of the sublease must not be inconsistent with the provisions of the prime lease and the sublease must state that it is subject to the prime lease. In case of any conflict between the instruments, the prime lease will control.
- b. The Lessee may not assign or transfer the lease to another party without the approval of the Military Department. The Lessee is not required to obtain Military Department approval of subleases, unless the sublease involves the use of hazardous materials under 10 U.S.C. 2692, but must provide a copy of all subleases to the Military Department. The Military Department will conduct its negotiations with the Lessee, not the Sublessee(s). Sublease rental will be negotiated between the Lessee and Sublessee and maybe different in amount or expressed differently than that in the prime lease. The term of a sublease will be no longer than that in the prime lease, so that expectations of continued tenancy after disposal will not be created. The provisions of the sublease must not be inconsistent with the provisions of the prime lease and the sublease must state that it is subject to the prime lease. In case of any conflict between the instruments, the prime lease will control.

## **11. Utilities**

The Military Department must be reimbursed for the cost of any utilities provided. Utility issues vary widely with the specific situations of the installation. The Lessee should develop plans for assumption of the utilities by the local utility provider or other qualified entity.

## **12. Protection of the property**

The Lessee is obligated to keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee is responsible for any damage that maybe caused to property of the United States by the activities of the Lessee under this lease.

## **13. Insurance**

**If** a lease authorizes the Lessee to possess and use Government-owned improvements, the Lessee must insure such improvements for full insurable value, where practicable, to assure future Government use. State governmental entities are usually not required to provide liability insurance. Self-insurance maybe satisfactory for qualified governmental entities. Other entities may be required to obtain liability insurance.

## **14. Right to enter**

The Government has the right to enter the premises for any Government purpose, including the right to inspect the premises for compliance with the conditions of the lease and for compliance with environmental, safety and other laws, even if the Government is not the enforcement agency. Except in unusual situations, notice of these entries will be given.

## **15. Indemnity/hold harmless clause**

The United States is not responsible for damages to property or injuries to **persons** caused by the Lessee's use of the premises or for damages to the property of the Lessee. The Lessee will be expected to **indemnify** the United States from such claims. This does not including damages due to the fault or negligence of the United States or its contractors.

**16. Restoration**

At the end of the lease, the Lessee will be expected to vacate the premises, remove the Lessee's property and restore the premises or pay the United States for the cost of restoration loss in lieu of restoration, at the option of the United States. Any property of the Lessee not removed may be removed by the United States or become property of the United States.

**17. Non-discrimination**

Leases require non-discrimination in all operations, programs or activities conducted on the leased premises. If the Lease will be for less than fair market value, then the Lessee is considered to be receiving Federal financial assistance and the lease will contain certain required assurances.

**18. Subject to easements**

The United States or its predecessor in title may have granted easements, road and utility rights-of-way, or other such rights. The Lease is granted subject to these outstanding rights. Any new easements will be coordinated with the Lessee.

**19. Rental adjustment**

If the United States must revoke the **lease**, except for the Lessee's non-compliance, decrease the size of the leased premises, or materially affect the use available, then rental, if applicable, may be adjusted.

**20. Waste**

The Lessee must not commit waste of any kind or in any manner substantially change the contour or condition of the premises except as authorized in writing by the Military Department.

**21. Disputes clause**

The provision establishes a procedure for resolving claims.

**22. Environmental protection**

The DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease (FOSL), contained in the Deputy Secretary of Defense Memorandum "Fast Track Cleanup at Closing Installations," May 18, 1996, includes the following set of model lease provisions that specifically address **environmental protection issues**:

1. The sole purpose(s) for which the Leased Premises and any involvements thereon may be used, in the absence of written approval of the Government for any other use, [insert intended use of the Leased Premises]. [See Use **of the Premises.**]
2. The Lessee shall neither transfer nor assign this Lease or any interest therein or any property on the Leased Premises, nor sublet the Leased Premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of the Government. Such consent shall not be unreasonably withheld or delayed. Every sublease shall contain the Environmental Protection provisions herein. [See **Transfers, assignments, and subleasing.**]
3. The Lessee and any Sublessee shall comply with the applicable Federal, State, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises. [See **Applicable rules and regulations.**]
4. The Lessee and any Sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits.

5. The Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee or Sublessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determined the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof. [See *Right to enter.*]

NOTE: USE THE FOLLOWING PROVISION 6. IF THE LEASED PROPERTY IS PART OF A NATIONAL PRIORITIES LIST (NPL) SITE; ADAPT TO CLEANUP AGREEMENTS TO SUIT CLEANUPS UNDER STATE REGULATORY AUTHORITIES (E.G., A NON-NPL SITE).

6. The Government acknowledges that [insert name of military installation] has been identified as a National Priorities List Site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The Lessee acknowledges that the Government has provided it with a copy of the [insert name of military installation] Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region [insert number], the State of [insert name of State], and the Military Department and effective on [insert date], and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("FFA," "Interagency Agreement," or "IAG") and the provisions of this Lease, the terms of the FFA or IAG will take precedence. The Lessee further agrees that notwithstanding any other provision of the Lease, the Government assumes no liability to the Lessee or its Sublessees or licensees should implementation of the FFA interfere with the Lessee's or any Sublessee's or licensee's use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof, other than for abatement of rent.

NOTE: USE THE FOLLOWING PROVISION 7. IF A FEDERAL FACILITIES AGREEMENT (FFA) OR INTERAGENCY AGREEMENT (IAG) APPLIES TO THE PROPERTY BEING LEASED (E. G., AN NPL SITE).

7. The Government, EPA, and the [insert name of State agency] and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any Sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provision of the FFA:

- a. to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program, FFA or IAG;
- b. to inspect field activities of the Government and its contractors and subcontractors in implementing that [insert name of military installation] IRP, FFA or IAG;
- c. to conduct any test or survey required by the EPA or [insert name of State agency] relating to the implementation of the FFA or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of State agency] by the Government relating to such conditions;
- d. to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the [insert name of military installation] IRP or the FFA or IAG, including, but not limited to monitoring wells, pumping wells, and treatment facilities.

## Model Lease Provisions

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NOTE: USE THE FOLLOWING ALTERNATE PROVISION 7. IF THE INSTALLATION RESTORATION PROGRAM (IRP) OR OTHER ENVIRONMENTAL INVESTIGATION APPLIES TO THE PROPERTY BEING LEASED (E. G., A NON-NPL SITE).

7. The Government and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any Sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph:

- a. to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program (IRP);
- b. to inspect field activities of the Government and its contractors and subcontractors in implementing the [insert name of military installation] IRP;
- c. to conduct any test or survey related to the implementation of the IRP or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of State agency] by the Government relating to such conditions;
- d. to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the [insert name of military installation] IRP, including, but not limited to monitoring wells, pumping wells and treatment facilities.

8. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of the any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee and any Sublessee. The Lessee and Sublessees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable Federal, State, and local occupational safety and health regulations.

9. The Lessee further agrees that in the event of any assignment or sublease of the Leased Premises, it shall provide to the EPA and [insert name of State agency] by certified mail a copy of the agreement or sublease of the Leased Premises (as the case may be) within fourteen (14) days after the effective date of such transaction. The Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

10. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, or its [insert name of State] equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense such hazardous waste management facilities, complying with all laws and regulations. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

11. DoD Component accumulation points for hazardous and other wastes will not be used by the Lessee or any Sublessee. Neither will the Lessee or Sublessee permit its hazardous wastes to be commingled with hazardous waste of the DoD Component.

12. The Lessee shall have a Government-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the Leased Premises. Such plan shall be independent of [insert name of military installation] and, except for initial fire response and/or spill containment, shall not rely on use of installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on the request of the Lessee, or because the Lessee was not, in the opinion of the said officer, conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs.

13. The Lessee shall not construct or make or permit its Sublessees or assigns to constructor make substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the Leased Premises in any way that may adversely affect the cleanup, human health, or the environment without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For construction or alterations, additions, modifications, improvements or installations (collectively "work") in the proximity of operable units that are part of a National Priorities List (NPL) Site, such consent may include a requirement for written approval by the Government's Remedial Project Manager. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements, and installations shall become Government property when annexed to the Leased Premises.

14. The Lessee shall not conduct or permit its Sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government.

15. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its State equivalent and any other applicable laws, rules or regulations. The Lessee must provide at its own expense such hazardous waste storage facilities that comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material breach of the Lease.

*In addition, there maybe site-specific restrictions or provisions, such as to protect endangered species, restrict use of wetlands, support coastal zone management plans, or limit floodplain activities.*

### **23. Environmental baseline survey**

See discussion above.

### **24. Taxes**

As required by law, any and all taxes imposed by the State or its political subdivisions upon the property or interest of the Lessee in the premises shall be paid promptly by the Lessee. Although the property of the United States is not taxed, if and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease maybe renegotiated.

### **25. Covenant against contingent fees**

The Lessee warrants that no person or selling agency has been employed or retained to solicitor secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business.

### **26. Officials not to benefit**

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. This does not cover an incorporated company if the lease is for the general benefit of such corporation or company.

### **27. Accounts and records**

The accounts and records of the Lessee will be subject to review and audit.

**28. Modification/agreement**

The written lease is the full agreement. Any modifications must be in writing.

**29. No commitments for future use**

Interim use leases will contain provisions disavowing any right or expectation for the interim user or its tenants or subtenants to acquire the leased property. Interim leases may be entered into prior to the completion of the final reuse or disposal decisions, including, if applicable, the issuance of the ROD or prior to implementation of the action identified in the ROD.

**30. Lease signature authority**

At the time of execution of the lease, the Lessee will furnish certification of authority to sign the lease.



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

12 JUN 1996

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

**SUBJECT:** Authority to Lease Property Requiring Environmental Remediation

The National Defense Authorization Act for FY 96 contains an amendment to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) concerning the Department's ability to enter into long-term leases at base closure and realignment sites while environmental restoration is ongoing.

Section 2834 of the Act clarifies that Section 10 of CERCLA does not apply to leases at Department of Defense installations regardless of whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. The amendment also requires that, in the case of leases at base closure and realignment sites entered into after September 30, 1995, the Department, in consultation with the Administrator of the Environmental Protection Agency, shall make a determination that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in Section 120(h)(3)(B) that has not been taken on the date of the lease. Please note that this language codifies the existing "Finding of Suitability to Lease" process. At active installations, the Services should continue to support leases with appropriate documentation of the environmental condition of the leased property with respect to CERCLA hazardous substances in accordance with DoDD 4165.6, "Real Property Acquisition, Management, and Disposal," and existing Service procedures.

Leasing is one of the most important community reinvestment tools available to the Department because it enables Local Redevelopment Authorities to achieve rapid economic recovery and helps the Military Departments to reduce their caretaker costs. It is my hope that this amendment, which clarifies the legislative intent on this issue, will erase any doubt about the Department's authority to lease property requiring environmental remediation pursuant to CERCLA. Please ensure that your base closure staffs are aware of this amendment.

A handwritten signature in black ink, appearing to read "Robert E. Bayer".

Robert E. Bayer  
principal Assistant Deputy Under Secretary  
(Industrial Affairs-s Installations)





ACQUISITION AND  
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301 -3000



12 JUN 1998

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

SUBJECT: Interim Leases of Property At Bases Approved for Closure or Realignment

One obstacle to early reuse of closing bases was the presumption that interim lease terms could not extend much beyond the completion date for the National Environmental Policy Act (NEPA) analysis. The availability of only short-term interim leases (five years or less) often discouraged potential investors from leasing base closure property for fear they would be unable to recoup their investment. In response, Congress enacted Section 2833 of the National Defense Authorization Act for FY 1996 (P.L. 104-106, 110 Stat. 559), which authorizes longer term interim leases. This new authority is designed for use in those situations where a short-term interim lease is inadequate to capitalize on reuse opportunities.

Section 2833 authorizes interim lease terms that extend beyond the expected completion date for the disposal Environmental Impact Statement (EIS). This is true even if final property disposal is consequently delayed because the lessee's use of the property differs from that outlined in the Record of Decision (ROD). Accordingly, the lease provision concerning "Termination" (the Military Department's right to terminate the lease if the interim use is incompatible with the final reuse or disposal decisions) contained in Appendix D of the DoD Base Reuse Implementation Manual (DoD 4165.66-M) need no longer be included in interim leases (unless the Military Department concerned specifically wishes to do so). In addition, the five-year limitation on interim lease terms currently contained in 32 CFR Part 91.7(g)(3) is no longer relevant and will be eliminated when that regulation is revised. As of the date of this memorandum, decisions on the duration of an interim lease may be determined by the Military Departments on a case-by-case basis, taking into consideration site-specific factors and the following requirements of Section 2833:

Section 2833 authority is not to be used when the proposed lease provides for activities that will either significantly affect the quality of the human environment or make impossible the selection of any reasonable final disposal alternative. In other words, this



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*authority* is available *only* if the proposed lease can be supported by a categorical exclusion (CATEX) or a finding of no significant impact (EA/FONSI).

- Prior consultation with the Local Redevelopment Authority (LRA) concerned is a prerequisite for a lease approved under this authority.

In addition to providing for longer term leases, Section 2833 facilitates leasing in two other important respects:

- It limits the scope of any environmental analysis required to support a proposed interim lease to those activities authorized under the lease, and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease. Put simply, this provision allows a more expeditious completion of NEPA requirements to support interim leasing by focusing any necessary environmental impact analysis on lease activities alone, and not disposal and reuse issues.
- It permits building modification demolition, and new construction, if such activities can be supported by an environmental assessment and finding of no significant impact (EA/FONSI), and do not preclude the selection of any reasonable final disposal alternative. Decisions on whether to allow such activities may be made by the Military Department concerned on a case-by-case basis, but in general, lessees should not be permitted to: (a) irreversibly alter buildings integral to any reasonable final disposal alternative so as to make them unusable for any purpose under active consideration; or (b) construct new, permanent structures on areas of the installation presently set aside for recreational purposes or preserved as natural or open space. For example, under this provision, an interim lessee would be permitted to modify a building so long as the modifications are consistent with any final disposal alternative still under consideration, or capable of being removed, at the lessee's expense, without causing permanent damage.

interim leasing can be an important tool to help communities attract new businesses to adaptable facilities on closing installations. This new provision will facilitate interim leasing in a variety of circumstances previously believed to be problematic due to NEPA requirements. I urge you to take full advantage of this new authority.



Robert E. Bayer

Principal Assistant Deputy-Under Secretary  
(Industrial Affairs and Installations)

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