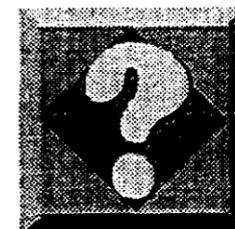


# 5

## leasing for Reuse

### ***Frequently Asked Questions About Leasing for Reuse***

➤ <i>What is DoD's philosophy and goal for BRAC leasing?</i>	Section 5.1
➤ <i>What types of leases are available for reuse?</i>	Section 5.1
➤ <i>Do the Military Departments have a common leasing approach?</i>	Section 5.1
➤ <i>What are the guidelines for interim leases?</i>	Section 5.2
➤ <i>Who is eligible to apply for an interim lease?</i>	Section 5.2
➤ <i>How is rental consideration type and amount determined?</i>	Section 5.2
➤ <i>Are there specific guidelines for subleases?</i>	Section 5.2
➤ <i>What is the Early Transfer Authority?</i>	Section 5.2
➤ <i>How does an LRA apply for a lease ?</i>	Section 5.3



### 5.1 INTRODUCTION

#### 5.1.1 Philosophy and goal

Early leasing of property at a BRAC installation can spur rapid economic recovery and job creation and can reduce the Military Department's caretaker costs before the ultimate disposal of installation property. Therefore, leasing is one of the most important tools available to the Military Department and LRA for reaching common goals.

To help the LRA realize the maximum benefit from leasing BRAC property, the Military Departments are committed to working with the LRA by

- Helping the LRA identify early leasing opportunities.
- Hosting pre-leasing conferences to explain leasing process details, including what is required of both the Lessee and the Military Department.
- Providing timely responses to leasing requests.
- Processing lease applications within a reasonable time period.
- Providing recommendations for a leasing strategy that will best suit the LRA's plans and needs.

***What is DoD's philosophy and goal for leasing BRAC property?***

***What commitments are the Military Departments willing to make?***

What information  
can be found in this  
Section of the  
Manual?

### 5.1.2 Summary

This Chapter, along with the information found in Appendix D of this Manual, consolidates Military Department policies and practices on leasing and is intended to provide a **summary** of and guidance for the BRAC leasing process. It is not intended to replace specific lease provisions, nor to create an enforceable right in **any** party. Laws and regulations that govern leasing are summarized in Appendix A (Laws and Regulations Affecting Base Reuse Implementation). Each installation or base will have site-specific real estate, environmental, and natural and cultural resources compliance requirements. The Military Department will inform prospective Lessees of all requirements as early in the leasing process as practicable.

### 5.1.3 Definition of lease types

What is an 'interim  
lease?'

#### INTERIM LEASE

- Generally, an interim lease is a short-term lease that makes no commitment to the Lessee for future use or conveyance of title to the property to the Lessee upon its disposal. An interim lease is **usually** entered into before **final** disposal decisions are made by the Secretary of the Military Department.
- 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 NDAA 96 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 NEPA Record of Decision (ROD). This authority, however, is only available if the proposed lease can be supported by a Categorical Exclusion (CATEX) or an EA/FONSI. Additional information about the Department's policies regarding Section 2833 can be found in Appendix D.
- At the completion of the NEPA process, the interim lease can convert into a long-term lease or deed transfer. Separate NEPA analyses-as well as air pollution, wetlands, floodplains, historic structures, and other natural and cultural resources determinations and consultations-may be required prior to a decision to lease.
- An interim lease must be preceded by an EBS and by a FOSL. The restrictions and lease conditions in the FOSL must be incorporated into the lease.
- Interim leases will generally terminate at the time that final reuse and disposal decisions are implemented.
- Interim leases may be for consideration at or below the estimated fair market rental value for the leasehold.
- Capital improvements may be made by the Lessee except where, in the judgment of the Military Department, they will trigger a requirement for an EIS under NEPA.

LEASE IN FURTHERANCE OF CONVEYANCE

- A lease entered into after the Secretary of the Military Department has complied with NEPA and has issued a **final** disposal decision for the property. A lease in furtherance of conveyance provides immediate possession of the property to the entity identified in the disposal decision as the recipient of the property.
- Leases in furtherance of conveyance are authorized by CERCLA. Section 2834 of the NDAA 96 amended CERCLA to clarify that the deed covenant requirements do not apply to leases at DoD installations regardless of whether the Lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. See Appendix D for more information about Section 2834.
- . Such a lease maybe long-term and maybe for all or for a portion of the property identified for conveyance to the Lessee in the disposal decision.
- . If ongoing environmental remediation is the only reason property is not being considered for deed transfer, use of the Early Transfer Authority discussed in Section 5.2.3 should be considered.
- A lease in furtherance of conveyance must be preceded by an EBS and a FOSL. The restrictions and lease conditions in the FOSL must be incorporated into the lease.
- A lease in furtherance of conveyance will terminate when a deed **transfer** can be accomplished.

|| *What is a “lease in furtherance of conveyance?”*

MASTER LEASE

- A master lease maybe either an interim lease or a lease in furtherance of conveyance. It is a lease that serves as the principal lease instrument for the entire base or for major portions of it.
- . Individual parcels and properties maybe sublet under the terms of a master lease. Environmental requirements contained in the master lease must be carried through to subleases.
- Master leases and each subsequent sublease must comply with appropriate EBS, FOSL, NEPA, and other applicable natural and cultural resources determinations and consultation requirements.

|| *What is a “master lease?”*

**5.1.4 General practice for leasing real property at BRAC installations**  
To facilitate timely review of lease applications and to ensure lease documents are completed as quickly as possible, the Military Departments shall delegate leasing authority from headquarters to the field level. Figure 5-1 shows the general practice that the Military Departments follow for processing applications and for entering into and closing out leases. Numerous factors influence how long it will take to review and approve a lease including how far the installation has progressed in the closure process and in the preparation of environmental documentation required for closure. As a result, the time it takes to complete the

|| *Does each Military Department follow a similar leasing process?*

process will vary from situation to situation. The leasing process can be summarized as follows:

### PROCESS APPLICATION

- A party (generally the LRA) expresses an interest in leasing property. The Military Department meets with the Lessee to explain the application process and information requirements. Regulatory requirements, the timelines for processing a lease, examples of allowable "offsets," and the cost of government-furnished utilities should be part of the background provided at pre-leasing conferences. The BRAC Cleanup Team and BTC should participate in these meetings to ensure that environmental cleanup is closely coordinated with leasing needs and plans.
- If the facility is potentially available, the prospective Lessee completes and submits an application (see Appendix D for model application format).
- The Military Department reviews the application in a timely fashion (see Appendix D for model review criteria).
- The Military Department either accepts the application for further processing, rejects the application, or requests that it be revised.

### PREPARE FOSL (AND NEPA/OTHER DOCUMENTATION)

- The Military Department consults with EPA and other regulatory Agencies and determines whether environmental conditions on the property trigger environmental notice requirements or present unacceptable risks to the prospective Lessee, or whether leasing will impact ongoing environmental cleanup efforts. This is accomplished by preparing, if necessary, and reviewing an EBS and issuing a FOSL.
- . The Military Department determines whether environmental impacts, or impacts on any protected natural and cultural resources, will result from the proposed leasing activity. This is accomplished by completing appropriate NEPA analyses, and by making the other environmental determinations and consultations necessary.

### PREPARE LEASE

- The Military Department and Lessee negotiate the consideration for the lease and draft lease terms and conditions, based upon standard model lease provisions (see Appendix D for model lease provisions). This may occur concurrently with the preparation of appropriate environmental and natural and cultural resources documentation.
- . The Military Department makes the decision on whether to approve the lease and any reuse restrictions the lease will contain.
- . The Military Department and Lessee agree on the environmental and physical condition of the property prior to lease execution.

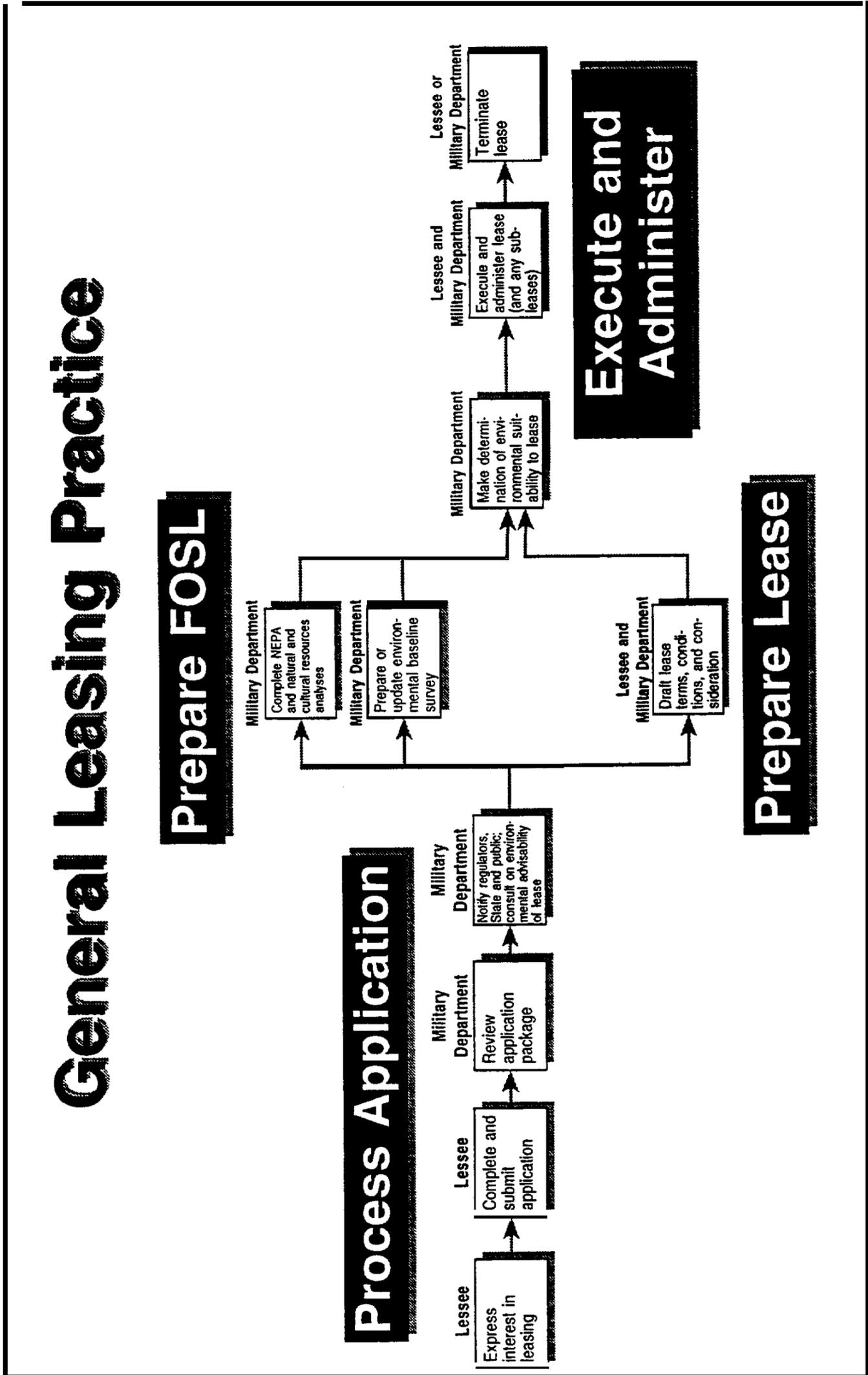


Figure 5-1. General Practice for Leasing Real Property at BRAC Installations

## Leasing for Reuse

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### EXECUTE AND ADMINISTER LEASE

- The lease is signed and required notices are issued.
- The Lessee submits proposed subleases to the Military Department for their review and approval if the terms and conditions of the proposed sublease do not comply with or are not included in an approved master lease. In accordance with 10 U.S.C. 2692, subleases that involve the use of hazardous materials will require Military Department approval.
- . The environmental and physical conditions of the leasehold are reevaluated at lease termination.

### 5.2 LEASING GUIDANCE

*What guidelines apply to all leases?*

Leasing from a Military Department is different from leasing in the private sector, because Federal laws and regulations define leasing requirements that must be met by the Military Department and the Lessee. Summaries of laws and regulations affecting base reuse implementation can be found in Appendix A of this Manual. This Chapter of the Manual describes processes designed to both simplify leasing and to more closely follow private-sector practice, within the framework of prescribed Federal laws and regulations.

#### 5.2.1 General guidance

Following the approval of closure or realignment, property maybe made available for leasing in the interest of speedy economic redevelopment or other acceptable purposes, if it can be done

- Without interfering with environmental cleanup activities.
- . In compliance with applicable real estate, homeless assistance, environmental and other requirements.
- Without interfering with the remaining Military Department mission, including disposal-related activities.

#### 5.2.2 Interim leasing guidance

The following guidance applies to interim leasing activities:

*Are there guidelines for interim leases?*

*Who will the Military Department lease to?*

- . The Military Department will generally lease property for interim use to the LRA. If there is no LRA, or if it is not authorized to lease property, the Military Department may lease the property to either
  - The local government in whose jurisdiction the property is located, or
  - An appropriate local or State redevelopment agency, as designated by the Chief Executive Officer of the State in which the installation is located.
- . Requests to lease property directly to other eligible entities will be approved only in exceptional circumstances. Ongoing (e.g., pre-closure approval) leasing programs, such as agricultural and grazing, youth programs, community outreach, etc., may be continued.

- The Military Departments should use model lease Provisions that contain standard terms and conditions (see Table 5-1 and Appendix D). Many terms and conditions of Federal leases are required by Federal law, and by general landlord-tenant “common law” that has evolved over many years. These provisions, including environmental provisions required by Federal law and policy, are essentially non-negotiable. Additional terms and conditions may be added to reflect other site-specific operational, environmental, and natural and cultural resources requirements.

**What provisions can be found in an interim lease?**

List of Common Lease Provisions Used at BRAC Installations	
Use of the premises	Term of lease
Termination	Consideration
Notice	Authorized representatives
Supervision of the premises	Applicable rules and regulations
Condition of the premises	Transfers, assignments, subleasing
Utilities	Protection of the property
Insurance	Right to enter
Indemnity/hold harmless clause	Restoration
Non-discrimination	Subject to easements
Rental adjustment	Waste
Disputes clause	Environmental protection
Environmental baseline survey	Taxes
Covenant against contingent fees	Officials not to benefit
Accounts and records	Modification/agreement
No commitments for future use	Other provisions, as appropriate

**Table 5-1. List of Provisions Common to BRAC interim Leases**  
(See Appendix D for a detailed description of provisions)

- Installation commanders will be consulted regarding the availability of the site for the proposed use and regarding the compatibility of the proposed leasing activity with the ongoing mission. Special lease provisions maybe required to prevent interference with base operations or closure or with environmental cleanup activities.
- The following factors are among those that will be considered in determining the lease term:
  - Date of operational closure.
  - Proposed use of the property.
  - Compatibility with the base operations before closure.
  - Compatibility with the LRA’s redevelopment plan.

**How is the term of an interim lease determined?**

## Leasing for Reuse

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**How are interim leases terminated?**

- Date of anticipated final disposal **decisions** and actions by the Secretary of the Military Department.
- Environmental condition of the property.
- Historically, the Military Departments have included a termination-at-will clause **in** lease documents to be used if the property was ever found to be needed for military purposes. This practice is no longer required. Generally, the Military Department should only reserve the right to terminate and remove the tenant before the end of the stated term
  - For non-compliance with the provisions of the lease;
  - In the event of a national emergency as declared by the President or the Congress of the United States.
- . The Lessee will be provided with notice that termination is necessary and reasonable time to vacate the premises, which normally will be no less than 30 days.

**What is the rent for an interim lease?**  
**Are there guidelines for how it is determined?**

- Consideration for the lease maybe in cash or in kind. Services relating to the protection and repair, improvement, restoration and maintenance of the installation may constitute all or part of such consideration.
- . Rent maybe for fair market value. Rent may also be for less than fair market value when:
  - A public interest will be served as a result of the lease; and
  - The fair market value of the lease is **unobtainable**, or *not compatible with such public benefit*.
- Examples of criteria that will be used by the Military Department to determine when a public interest will be served as a result of the lease areas follows:
  - The lease will provide public benefits consistent with those that would be derived from the property's transfer under a public benefit conveyance (e.g., for historic monument, education, public health, public park or recreation, non-Federal correctional facilities, port facility, or other sponsored or approved purposes).
  - Job creation or job retention potential of the lease, including the number and quality of the jobs that will be created or retained.
  - The lease will foster needed economic development in the community.
  - The lease will provide economic benefit to the Federal Government (e.g., release from protection and maintenance costs).
  - The lease will foster reuse and redevelopment of the property.

- The lease will protect the property from degradation or deterioration.
- The lease will help to maintain the integrity of the property
- Interim leasing promotes early reuse and helps local communities create jobs. To this end, the Military Departments should strive to offer Lessees attractive rental rates. If deemed appropriate and consistent with the goals of early reuse and job creation, the rental rate may include a charge for the pro rata costs of common support services provided by the Military Department that benefit the Lessee.
- Interim leases will contain provisions reinforcing that such leases do not convey any right nor should they create any expectation on the part of the interim user, tenants, or subtenants to acquire the leased property.
- The Lessee may make improvements to the leased property, so long as doing so will 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). Generally, all leases will include a clause that may require any improvements made to the property by the Lessee to be removed and the property restored at the end of the lease term, or, if the Military Department decides to accept the improvements, they will become the property of the United States without compensation to the Lessee. Improvements made by the Lessee that the Military Department decides to accept should not be included in any future appraisals of the property when the property will be conveyed to the entity who made the improvements. This would not apply, however, to tenant improvements made in lieu of rental payments.
- The Military Departments may also allow some building modification, demolition, and new construction under an interim lease, if such activities can be supported by a CATEX or an EA/FONSI and do not preclude the selection of any reasonable final disposal alternative.
- Existing provisions of Federal law prohibit discrimination on the basis of race, color, national origin, handicap, or age. In addition, property used for public accommodations must not discriminate on the basis of sex and religion.
- Non-exclusive use maybe granted without the use of a lease, in accordance with standard Military Department procedures. Licenses, permits, or rights-of-entry may be used as a substitute for a lease in these limited instances. If the property is used for conferring non-possessory access for single, specified purposes; e.g., to conduct an open house or air show; non-intrusive surveys of the premises; setting up potential Lessee equipment (but not beginning beneficial operations) pending lease finalization, a formal lease may not be needed.

*Can an interim lease be used as a first step toward property ownership?*

*Can a Lessee make property improvements ?*

*Are leases required for all temporary uses of BRAC installations?*

### Example Scenario—BRAC Interim Leasing

An installation has been identified for closure. The EIS/ROD will not be completed for another 18 months. The EIS will consider alternatives for reuse based on heavy, medium, and light industrial reuse scenarios. A base-wide EBS has been completed. The Early Transfer Authority will not be used and it is **anticipated** that environmental remediation activities will not be completed (so as to allow the CERCLA deed covenant) three years following completion of the disposal ROD.

- Agricultural and grazing leases have been issued over a portion of the installation for many years. No remedial activity is identified for this area. This program may be continued under an interim lease.
- The installation has several warehouses. The LRA has two prospective Sublessees, one requesting a 12-month sublease to store seasonal merchandise, the other requesting a **three-year** lease to fulfill a short-term order to assemble computers. The only alterations required are the installation of a new lock, a fire sprinkler, and an alarm system to meet a local building code and insurance requirements. The merchandiser Sublessee will retool an internal box-delivery system to accommodate his or her merchandise. The Sublessee also wishes to do some cosmetic repairs and painting. The manufacturer plans on similar renovations, but will also install removable assembly equipment. Neither proposal would commit the property to any future use, the alterations do not change the property in a significant way, the upgrades are required to comply with local codes, retooling of any equipment is for the Sublessee's benefit, and painting and other cosmetic repairs have no significant impact on the facility. Interim leases could be approved upon completion of the EBS/FOSL processes.
- The LRA requests a lease for the entire installation. The proposal is to construct additional **facilities**, demolish several older buildings, dredge the harbor, construct additional railroad spurs, and make renovations to existing facilities to accommodate an industrial Sublessee. The LRA requests a 25-year term, beginning in one month. The Military Department can only agree to a term that does not extend beyond the expected completion date of the disposal EIS because the proposed actions could, as a practical matter, irreversibly commit the Military Department to a particular disposal decision.

#### SUBLEASING GUIDANCE

*What are the guidelines for subleases ?*

- **The** Military Department will generally conduct all leasing-related activities with the Lessee, not the Sublessee(s).
- The rental value of subleases will be negotiated between the Lessee and Sublessee. The sublease rental maybe for a different amount or expressed differently than that of the lease between the Military Department and the Lessee ("prime lease").
- Lessees are authorized to sublease property included in a master lease without obtaining Military Department approval of the sublease, provided the sublease **incorporates the terms** of the master lease (except for rental terms which may be different in amount or expressed differently) and does not include any provisions that are inconsistent with the master lease. A copy of the sublease must be provided to the Military Department. In accordance

with 10 U.S.C. **2692**, if the sublease involves the use of hazardous materials, Military Department approval of the sublease is required.

- Rents from subleases will be applied by the Lessee to the protection, maintenance, repairs, improvements, and costs related to the installation including LRA marketing and management costs (e.g., LRA staff salaries and expenses).
- The term of a sublease cannot be longer than that of the prime lease.
- Subleases will contain provisions reinforcing that such leases do not convey any right or expectation on the part of the interim user or subtenants to acquire the leased property from the Military Department.
- The provisions of a sublease must be consistent with the provisions of the prime lease and must contain all environmental provisions included in the prime lease.
- In case of a conflict between the prime lease and any sublease, the prime lease will control.

### 5.2.3 Guidance for leasing in furtherance of conveyance

The following guidance applies to leasing in furtherance of conveyance activities.

- After the Secretary of the Military Department issues a final disposal decision, applications for conveyance of the property from the LRA or other qualified party and the terms of the conveyance can be negotiated and approved. However, in the past, immediate conveyance of the property following agreement on the terms was not possible, usually because environmental remedial action obligations under CERCLA § 120(h) had not been fulfilled (see explanation below).
- However, property can now be deeded before all remedial actions have been fulfilled. Section 334 of the NDAA 97 amended CERCLA to allow contaminated Federal property to be transferred to private parties before remedial action has been taken. Commonly referred to as the “Early Transfer Authority,” the deferral of the requirement to comply with CERCLA § 120(h) can be granted by the Administrator of EPA with the concurrence of the Governor of the State (for National Priorities List (NPL) sites) or the Governor of the State alone (non-NPL sites). In doing so, the Administrator of EPA or the Governor must first determine that the property is suitable for transfer and that the deed or other agreement proposing to govern the transfer contains assurances that all necessary response actions will be undertaken. Initial guidance on the authority issued by the Office of the Deputy Under Secretary of Defense (Environmental Security) (ODUSD(ES)), states that it may be used by the Military Departments on a case-by-case basis after notice to and consultation with the ODUSD(ES). Pending the issuance of detailed guidance, it is anticipated that a process similar to the existing FOST process will be used in determining suitability and obtaining the Governor’s or EPA’s approval to defer the § 120(h) requirements.

|| *Are there any guidelines for “long term” leases?*

|| *What is the Early Transfer Authority?*

### Relevant Provisions of CERCLA Section 120

CERCLA § 120 establishes a framework for responding to hazardous substances, pollutants, or contaminants, and identifies specific requirements relating to deed transfers of any Federal property, which must be satisfied before a deed can be executed.

- On parcels of real property where hazardous substances, pollutants, or contaminants were stored for one year or more, released or disposed of, CERCLA § 120 requires the Military Department to provide a covenant in all deeds stating that all remedial action necessary to protect human health and the environment with respect to any such [hazardous] substances remaining on the property has been taken.
- The Military Department can satisfy the requirement that “all remedial action,” as described in CERCLA § 120, “has been taken” prior to deed transfer if “the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator [of EPA] to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property.” [42 U.S.C. § 9620(h)(3)]
- Alternatively, in circumstances where a remedy has been accomplished, but no ongoing treatment or operation and maintenance is required; e.g., “clean closure” or excavation of soil with off-site treatment, all remedial action means that all action required to meet applicable State or Federal regulatory standards, including, as required, State or Federal regulatory approval, has been taken.

- Prior to the condition for a deed transfer being met (including an Early Transfer), immediate possession of all or portions of the installation may be granted to the ultimate transferee through a lease. This lease will terminate as soon as the deed conveying the property is accomplished. The reuse needs of the LRA or other recipients will be considered in determining the term of the lease.
- This document is a lease and is not a conveyance of title. It is an agreement that grants an exclusive possessor interest in real property for a period of time for a specified consideration.
- The lease must be preceded by an EBS and by a FOSL.
- If the proposed use or activity is outside the scope of existing NEPA reviews or the Military Department disposal decision, additional NEPA analysis may be required.
- The lease should contain provisions similar to the model interim lease provisions (shown in Appendix D) and all of the DoD standard environmental provisions (included in Appendix D in their entirety). The lease must include a right of termination for the Government for breach of the

material provisions of the lease and a right to terminate when the property is ready to be conveyed. In all cases, the environmental clauses are considered material provisions of the lease.

- The lease should also contain express provisions or conditions restricting the use of the property; e.g., the proposed use must be compatible with the disposal decision; major construction will require Government approval; a change in use must be approved by the Government. The Military Department, as landlord, must oversee the Federal interest in the property.
- Because of the unique circumstances of each proposed conveyance, a lease in furtherance of conveyance will be tailored to the specific situation. Additional terms may be added to reflect site-specific operational, environmental, natural and cultural resources, and other requirements. Attention should be given to impacts on wetlands and sensitive habitats.
- A lease in furtherance of conveyance should specify
  - The price, terms, and conditions applicable **under** a negotiated sale; or
  - The terms and conditions of an EDC; if an EDC is anticipated, then the lease should be tied to an application that has been reviewed and approved according to the procedures in Chapter 7 of this Manual; or
  - The terms and conditions for disposal under alternate authorities.

#### 5.2.4 Environmental Urelated guidance

The Military Departments are required to complete a series of surveys and reports prior to leasing or disposing of property. These surveys and reports address environmental planning (i.e., NEPA), cleanup (i.e., CERCLA) and preservation (i.e., wetlands, floodplains, and historic resources). Generally, the schedule for completing this work is based on the projected property disposal date. However, because leasing requires that many of the same environmental issues be addressed, the Military Departments are encouraged to accelerate the schedule for these activities to support the community's efforts for economic development through the use of leasing. Below is a summary of the types of surveys and reports needed to support leasing:

- NEPA requirements for environmental impact analysis, in accordance with Council on Environmental Quality regulations, must be met for all leases (e.g., by categorical exclusion, EA/FONSI, or EIS/ROD).
- Appropriate natural and cultural resources determinations and consultations (e.g., Secretarial findings regarding wetlands [E.O. 11990] and floodplains [E.O. 11988], Section 106 consultation under the National Historic Preservation Act), and air quality conformity determinations under the Clean Air Act will be completed when required. Appropriate use restrictions, to the extent required, will be included in the lease.
- Consistent with current DoD policy and procedures contained in the Deputy Secretary of Defense memorandum entitled, "Fast Track Cleanup at Closing

**Are there environmental requirements associated with leasing?**

Installations," dated May 18,1996, or most recent version (see Appendix F), an EBS and FOSL are required prior to executing a lease. Consistent with this policy, environmental regulators will be notified at the inception of the EBS and the FOSL, and provided with copies of workable draft documents as they are available and with the opportunity to review and comment. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved comments will be included as attachments to the EBS report or the FOSL.

- Restrictions and conditions identified in the EBS or FOSL shall be incorporated into leases.
- . A report documenting the environmental conditions identified in the EBS will be prepared and signed by both parties. This report will acknowledge all leasehold conditions identified in the EBS report, as well as any other environmental conditions that may not be specifically identified in the EBS.
- At the conclusion of the lease period, a similar report will be jointly prepared and signed by the Lessee and the Military Department.
- . The Military Department, as required by CERCLA § 120(h)(5), shall notify the State prior to entering into any lease that will encumber the property beyond the date of termination of DoD's operations. Content of the notification is specified in the Fast Track Cleanup Policy. For NPL sites, EPA is also to be notified.
- If applicable, an environmental justice analysis will be performed to determine whether the lease will disproportionately impact minority or low-income populations in accordance with E.O. 12898.

### 5.3 APPLYING FOR AN INTERIM LEASE

This subsection describes the process for expressing interest and applying for an interim lease. Prospective Lessees of BRAC installation real property should first review the model information included in this Manual as Appendix D.

*What is the procedure for applying for an Interim Lease?*

#### 5.3.1 Expression of interest

An expression of interest in an interim lease should be in writing and provided to the Military Department. This expression of interest maybe submitted to the Military Department (installation commander and the Military Department's real estate division, or other designated Military Department representative involved in closing the base) after the approval of closure or realignment.

Generally, the Military Departments will accept expressions of interest only from the LR4. Any prospective Lessee should direct an expression of interest, preferably in writing, to the LRA. The LRA will provide notice of such expressions of interest to the Military Department. If an interest is expressed to the Military Department, that interest shall be forwarded to the LRA.

### 5.3.2 Initial meeting/application package

**When the** Military Department (or installation) receives an expression of interest, it will first seek the installation commander's concurrence that the facility is available and that the interim use will be compatible with ongoing missions.

The Military Department should also request a meeting with the prospective Lessee, especially prior to the first lease at the BRAC installation. The BRAC Cleanup Team and BTC should participate in these meetings **to ensure** that environmental cleanup is closely coordinated with leasing needs and plans. The purpose of this **meeting** is to:

- Describe the leasing process to the prospective Lessee, including the application procedure, application and processing timetables, and any other pertinent information.
- Discuss regulatory requirements, the **timelines** for processing a lease, examples of allowable "offsets: and the cost of Government-furnished utilities.
- Informally examine the scope of the proposed interim use to determine which environmental and realty issues must be addressed.

A model Interim Lease Application Package can be found in Appendix D of this Manual. An accurate and complete application package must be submitted by the prospective Lessee. The application package will be reviewed by the Military Department, using the model internal review criteria also found in Appendix D of this Manual. The internal review process may result in a request from the Military Department to the prospective Lessee for additional or more accurate information. The prospective Lessee will be notified that the application has been accepted for **further** processing and of the anticipated schedule for lease approval **and** execution.

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