



September 13, 2019

## Department of Defense Outleasing and Enhanced Use Leases

Pursuant to 10 U.S.C. §2667, the Secretary of Defense and the Secretaries of the Military Departments are authorized to lease out (otherwise *outlease*) department-owned non-excess real or personal property (commonly called *outlease authority*). According to 40 U.S.C. §102(3), *excess property* is defined as “property under the control of a federal agency that the head of the agency determines is not required to meet the agency’s needs or responsibilities.” DOD’s outlease authority applies only to non-excess property, meaning that to some degree it meets a DOD need, and is not in a disposal process where it would be removed from DOD’s inventory. Other requirements are that the property must not for the time be needed for public use, and that it must be under the control of the Secretary concerned.

DOD exercises its outlease authority for real property generally through two types of contracts: short-term cash consideration leases (five years or less) for activities such as farming or grazing, or more complex ground leases called Enhanced Use Leases (EULs), which typically have longer leasing periods (e.g., 5-55 years) and may include unique development terms that can benefit military installations. DOD’s outlease authority also permits the collection of *in-kind consideration* in addition to, or in lieu of, cash payments, as long as the amount is generally not less than the fair market value of the lease interest.

Types of in-kind consideration named in 10 U.S.C. §2667 include the following:

- “Maintenance, protection, alteration, repair, improvement, or restoration (incl. environmental restoration) of property or facilities under the control of the Secretary concerned.
- Construction of new facilities for the Secretary concerned.
- Provision of facilities for use by the Secretary concerned.
- Provision or payment of utility services for the Secretary concerned, which shall prioritize energy resilience in the event of commercial grid outages.
- Provision of real property maintenance services for the Secretary concerned.
- Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.”

An EUL is not a legally defined partnership between DOD and a selected developer, since DOD does not contribute equity to a project or guarantee revenue to the developer. However, EULs may offer several benefits to each party involved and can encourage public-private partnerships and public-to-public partnerships through relationship building. DOD can also use an EUL to support additional federal contracting authorities, such as cooperative research and development agreements (CRADAs), intergovernmental support agreements (IGSAs), and power purchase agreements (PPAs).

DOD views EULs as a useful contracting tool that can help manage deteriorating and underused facilities (i.e., facilities that are vacant or partially vacant) and undeveloped land that a department does not seek to label excess, but also lacks the funding to improve or modernize. Thus, DOD has continued to use EULs for underutilized real property, to be able to repair and maintain existing facilities, or to construct new facilities that promote the national defense or are in the public interest. Payments received from outleasing are placed in a special account in the Treasury, where at least 50% of the proceeds are made available to the originating military installation or defense agency location.

### Congressional Involvement

Congress participates in the approval process for EULs and has oversight responsibilities to try to ensure DOD is adhering to its statutory requirements, such as those set forth in 10 U.S.C. §2667 (see GAO-11-574). Members of Congress may also play a role in the development of EULs by helping identify developers, facilitating government communications, and encouraging and promoting projects.

### DOD Management of EULs

The Deputy Assistant Secretary of Defense (DASD) for Infrastructure (INF) manages real property accountability and real estate policy in DOD, on behalf of the Secretary of Defense. However, because outleasing authority is granted to each of the Service Secretaries, and pertains to both real and personal property, each military department is responsible for establishing and managing leases under Section 2667 for property they own. EULs for DOD-owned property (i.e., the Defense Agencies, DOD Field Activities, and U.S. Special Operations Command) are authorized by the Secretary of Defense and managed by the Office of the Secretary of Defense. EULs are not governed by the Federal Acquisition Regulation System.

### Army Management

Within the Department of the Army, the Deputy Assistant Secretary of the Army for Installations, Housing, and Partnerships (DASA-IH&P) “provides worldwide policy, programming and oversight of the Secretary of the Army’s Title 10 U.S. Code responsibilities in the areas of real estate.” The DASA-IH&P must approve leases for any real property for more than five years, including EULs. The U.S. Army Corps of Engineers manages the Army EUL program and is responsible for EUL project development, execution, and management (see Army Regulation 700-90, *Army Industrial Base Process*).

### Air Force Management

Within the Department of the Air Force, the Deputy Assistant Secretary of the Air Force for Installations (SAF/IEI), “provides guidance, direction, and oversight of matters pertaining to the shaping and strengthening of Air Force installations,” and has responsibility for Air Force

real property and asset management. SAF/IEI approves real property leases, to include EULs. The Air Force Civil Engineer Center (AFCEC) “is responsible for the optimization of Air Force non-excess assets” using tools like EULs and carries out this duty through its Installations Directorate (AFCEC/CI). AFCEC/CI administers the Air Force EUL program and is responsible for EUL project development, execution, and management (see *Air Force Enhanced Use Lease (EUL) Playbook*).

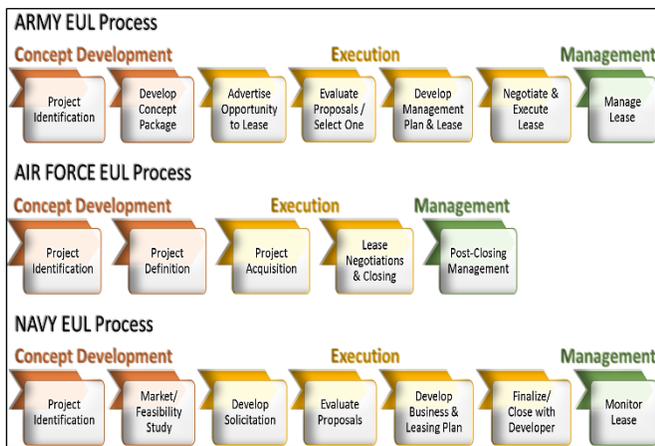
### Navy and Marine Corps Management

Within the Department of the Navy, the Deputy Assistant Secretary of the Navy for Installations and Facilities (DASN[I&F]) is responsible for the “use and disposal of real property and facilities” for the Navy and Marine Corps. The DASN(I&F) establishes and supervises policies and procedures relating to the use of real property and real estate contracting actions. The Naval Facilities Engineering Command administers the Navy EUL program and is responsible for EUL project development, execution, and management (see *SECNAV Instruction 11011.47D*).

### Establishing an EUL

Each DOD department internally determines its process for developing, executing, and managing EULs, but in general processes are similar (see **Figure 1**). The timeline for completing an EUL (i.e., project identification to closing a lease) varies, and is based on the complexity of the project, length of lease negotiations, and approval processes.

**Figure 1. EUL Processes by Military Department**



**Source:** CRS Graphics; U.S. Army Corps of Engineers; Air Force Civil Engineer Center; Naval Facilities Engineering Command.

Throughout the process of establishing an EUL, DOD and the Military Departments are required by 10 U.S.C. §2662 to provide certain official notifications to Congress and are required to wait a specified number of days before taking preferred actions.

### Benefits and Risks

EULs may provide several benefits to both the public and private sectors, including local communities. For example, private developers can benefit from market rate returns, long-term leases that foster government and community relationships, and access to tenant markets previously inaccessible. The government can benefit from a revival of aging or damaged facilities, new tenants whose mission and expertise are synergistic with the military’s mission, a new

funding source for needed and unfunded projects, a reduction in operation and maintenance costs, and/or an improvement in community relations. Local communities can benefit from general economic stimulus, potential tax revenues, job creation, and further community investment engendered by the EUL. Yet, each EUL project does run the risk of not seeing all benefits realized, and DOD could potentially receive less in consideration than expected. For example, following an economic downturn development could slow and reduce anticipated rental revenues.

### Selected EUL Projects

The following are selected EUL projects that demonstrate a range of outcomes in terms of generated benefits.

#### The Offices at Fort Sam

In 2001, the Army signed three 50-year EULs at Fort Sam Houston (now Joint Base San Antonio) to renovate three deteriorated and vacant buildings into new office space. As consideration, the Army would receive a share of the net rental income collected from private-sector tenants and realize maintenance cost savings. However, after 9/11 base access became restricted and the Army’s need for space at the base increased. As a result, most of the consideration received today is a return on a portion of the rent the Army pays to use the buildings (aka “The Offices at Fort Sam”).

#### Moanalua Shopping Center

In 2004, the Navy signed a 40-year EUL to redevelop its aging property at Joint Base Pearl Harbor-Hickam into a retail center and a new Navy administrative services center constructed as in-kind consideration. Today, the Moanalua Shopping Center consists of close to 30,000 square feet (ft<sup>2</sup>) of commercial space for over 30 retailers, and a 55,000 ft<sup>2</sup> Navy Administration Building, for which the service gained \$17 million in real property value and pays no rent.

#### Falcon Hill Aerospace Research Park

In 2008, the Air Force signed a 50-year EUL to redevelop 550 acres of underutilized property at Hill Air Force Base into an aerospace research park that would include office space, restaurants, retail establishments, an entrance control facility, an access road, and two hotels. Over 2 million ft<sup>2</sup> of commercial space was to be developed in Phase 1 of the project, infusing an estimated \$500 million into Utah’s economy. Currently, according to general contractor R&O Construction, 268,757 ft<sup>2</sup> of space has been developed (see **Figure 2**). Current tenants include Orbital ATK, The Boeing Company, BAE Systems, and Northrop Grumman.

**Figure 2. Falcon Hill Aerospace Research Park**



**Source:** R&O Construction.

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