



Department of Defense INSTRUCTION

NUMBER 4165.67

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USD(AT&L)

SUBJECT: Revitalizing Base Closure Communities - Base Closure Community Assistance

- References:
- (a) DoD Instruction 4165.67, "Revitalizing Base Closure Communities - Base Closure Community Assistance," March 4, 1996 (hereby canceled)
 - (b) Title 32, Code of Federal Regulations, Part 174, "Revitalizing Base Closure Communities," current edition
 - (c) The President's Five-Part Plan, "A Program to Revitalize Base Closure Communities," July 2, 1993 ¹
 - (d) Title XXIX of Public Law 103-160, "National Defense Authorization Act for Fiscal Year 1994," November 30, 1993
 - (e) Public Law 103-421, "The Base Closure Community Redevelopment and Homeless Assistance Act of 1994," October 25, 1994
 - (f) through (y), see enclosure 1

1. REISSUANCE AND PURPOSE

This Instruction reissues reference (a) and prescribes procedures to implement references (b) and (c) and real and personal property disposal to assist the economic recovery of communities impacted by base closures and realignments. The expeditious disposal of real and personal property will help communities get started with reuse early and is, therefore, critical to timely economic recovery.

¹ Available from the Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "OEA@osd.mil"

2. APPLICABILITY AND SCOPE

This Instruction:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

2.2. Does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by references (d) and (e) and Pub. L. 104-106 (reference (f)).

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

4.1. It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases -- more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation.

4.2. The authority provided by Section 202 and 203 of the Federal Property and Administrative Services Act of 1949 (reference (g)), as amended, for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator of the General Services Administration (GSA) to the Secretary of Defense by delegations dated March 10, 1989; October 9, 1990; September 13, 1991; and September 1, 1995. Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

4.3. Authorities delegated to the Deputy Under Secretary of Defense (Industrial Affairs and Installations) ² by subsection 5.1. of DoD Directive 4165.66 (reference (i)) are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this Instruction or other DoD Directive, Instruction, Manual or Regulation. These authorities may be delegated further.

5. RESPONSIBILITIES

5.1. The Deputy Under Secretary of Defense (Installations), under the Under Secretary of Defense for Acquisition and Technology and Logistics, after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue guidance through the publication of a Manual or other such document necessary to implement laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

5.2. The Heads of the DoD Components shall ensure compliance with this Instruction and guidance issued by the Assistant Secretary of Defense for Economic Security, the Deputy Under Secretary of Defense (Industrial Affairs and Installations), and the Deputy Under Secretary of Defense (Installations) on revitalizing base closure communities.

6. PROCEDURES

6.1. Identification of Interest in Real Property

6.1.1. To speed the economic recovery of communities affected by closures and realignments, it is DoD policy to identify DoD and Federal interests in real property at closing and realigning military bases as quickly as possible. The Military Department having responsibility for the closing or realigning base shall identify such interests. The Military Department shall keep the Local Redevelopment Authority (LRA) informed of these interests. This subsection establishes a uniform process, with specified timelines, for identifying real property that is excess to the Military Departments for use by other DoD Components and Federal Agencies, and for the disposal of surplus property for various purposes.

² A Deputy Secretary of Defense Memorandum (reference (h)) disestablished the Office of the Assistant Secretary of Defense for Economic Security and established the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations). Copies may be obtained from the Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "OEA@osd.mil"

6.1.2. Upon the President's submission of the recommendations for base closures and realignments to the Congress in accordance with the Defense Base Closure and Realignment Act of 1990 (reference (j)), the Military Department shall send out a notice of potential availability to the other DoD Components, and other Federal Agencies. The notice of potential availability is a public document and should be made available in a timely manner, upon request. Federal Agencies are encouraged to review this list, and to evaluate whether they may have a requirement for the listed properties. The notice of potential availability should describe the property and buildings that may be available for transfer. Installations that wholly or in part are comprised of withdrawn and reserved public domain lands should implement subparagraph 6.1.12., below, at the same time.

6.1.3. Military Departments should consider LRA input in making determinations on the retention of property (size of cantonment area), if provided. Generally, determinations on the retention of property (or size of the cantonment area) should be completed before the date of approval of the closure or realignment.

6.1.4. Within one week of the date of approval of the closure or realignment, the Military Department shall issue a formal notice of availability to other DoD Components and Federal Agencies covering closing and realigning installation buildings and property available for transfer to other DoD Components and Federal Agencies. Withdrawn public domain lands, which the Secretary of the Interior has determined are suitable for return to his jurisdiction, will not be included in the notice of availability.

6.1.5. Within 30 days of date of the notice of availability, any DoD Component or Federal Agency is required to provide a written, firm expression of interest for buildings and property. An expression of interest must explain the intended use and the corresponding requirement for the buildings and property.

6.1.6. Within 60 days of the date of the notice of availability, the DoD Component or Federal Agency expressing interest in buildings or property must submit an application for transfer of such property to the Military Department or Federal Agency.

6.1.6.1. Within 90 days of the notice of availability, the Federal Aviation Administration (FAA) should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be governed by

subparagraph 6.1.9., below. Instead, such requests will be governed by the requirements of 41 CFR 101-47.308-2 (reference (k)) to determine the transfer of property necessary for control of the airspace being relinquished by the Military Department.

6.1.7. The Military Department shall keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact Federal Agencies that sponsor public benefit transfers for information and technical assistance. The Military Department shall provide points of contact at the Federal Agencies to the LRA.

6.1.8. Federal Agencies and the DoD Components are encouraged to discuss their plans and needs with the LRA, if an LRA exists. The DoD Components and Federal Agencies are encouraged to notify the Military Department of the results of this non-binding consultation. The Military Departments, the Base Transition Coordinator, and the Office of Economic Adjustment Project Manager are available to help facilitate communication between the Federal Agencies, the DoD Components, and the LRA.

6.1.9. A request for property from a DoD Component or Federal Agency must contain the following information:

6.1.9.1. A completed GSA Form 1334, "Request for Transfer" (a DD Form 1354 is required for requests from other DoD Components). The Head of the DoD Component requesting the property must sign the form. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form.

6.1.9.2. A statement from the Head of the requesting DoD Component or Agency that the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action).

6.1.9.3. A statement that the requesting DoD Component or Agency has reviewed its real property holdings and cannot satisfy this requirement with existing property. This review must include all property under the requester's accountability, including permits to other Federal Agencies and outleases to other organizations.

6.1.9.4. A statement that the requested property would provide greater long-term economic benefits than acquisition of a new facility or other property for the program.

6.1.9.5. A statement that the program for which the property is requested has long-term viability.

6.1.9.6. A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility.

6.1.9.7. A statement that the size of the property requested is consistent with the actual requirement.

6.1.9.8. A statement that fair market value reimbursement to the Military Department will be made within 2 years of the initial request for the property, unless this obligation is waived by the Office of Management and Budget (OMB) and the Secretary of the Military Department, or a public law specifically provides for a non-reimbursable transfer. However, requests from the Military Departments or the DoD Components do not need an OMB waiver.

6.1.9.9. A statement that the requesting DoD Component or Federal Agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Military Department.

6.1.10. The Military Department shall make its decision on a request from a Federal Agency, Military Department, or DoD Component based upon the following factors, from the Federal Property Management Regulations (reference (k)):

6.1.10.1. The paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based.

6.1.10.2. The proposed Federal use is consistent with the highest and best use of the property.

6.1.10.3. The requested transfer will not have an adverse impact on the transfer of any remaining portion of the base.

6.1.10.4. The proposed transfer will not establish a new program or substantially increase the level of an Agency's existing programs.

6.1.10.5. The application offers fair market value for the property, unless waived.

6.1.10.6. The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department.

6.1.10.7. The proposed transfer is in the best interest of the Government.

6.1.11. When there are more than one acceptable applications for the same building or property, the Military Department responsible for the installation should first consider the needs of the military to carry out its mission. The Military Department should then consider the proposal's economic development and job creation potential and the LRA's comments, as well as the other factors in the determination of highest and best use.

6.1.12. Closing or realigning installations may contain "public domain lands" that have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for the Defense Department's use. Lands deemed suitable for return to the public domain are not real property governed by the Federal Property and Administrative Services Act of 1949 (reference (g)) and are not governed by the property management and disposal provisions of the Base Closure and Realignment Act of 1988 (reference (i)) and Defense Base Closure and Realignment Act of 1990 (reference (j)). Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another Federal Agency's use.

6.1.12.1. The Military Department responsible for a closing or realigning installation shall provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closing.

6.1.12.2. The BLM shall review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure or realignment, the BLM shall review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved within this time period. The BLM shall notify the Military Departments as to the final agreed upon withdrawn and reserved public domain lands at installations.

6.1.12.3. Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM shall initiate a screening of Department of Interior Agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

6.1.12.4. Military Departments shall transmit a Notice of Intent to Relinquish (see 43 CFR Part 2372, reference (m)) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM shall complete the suitability determination screening process within 30 days of receipt of the Military Department's Notice of Intent to Relinquish. If a DoD Component is approved to reuse the public domain lands, the BLM will be notified and BLM shall determine if the current authority for military use of these lands needs to be modified and/or amended.

6.1.12.5. If BLM determines the land is suitable for return, they shall notify the Military Department that the intent of the Secretary of the Interior is to accept the relinquishment of the Military Department.

6.1.12.6. If BLM determines the land is not suitable, the lands should be disposed of pursuant to base closure law.

6.1.13. The Military Department should make its surplus determination within 100 days of the issuance of the notice of availability, and shall inform the LRA of the determination. If requested by the LRA, the Military Department may postpone the surplus determination for a period of no more than six months after the date of approval of the closure or realignment.

6.1.13.1. In unusual circumstances, extensions beyond six months can be granted by the DUSD(I).

6.1.13.2. Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.

6.1.14. Once the surplus determination has been made, the Military Department shall:

6.1.14.1. Follow the procedures outlined in paragraph 6.2., below, if applicable, or

6.1.14.2. Follow the procedures outlined in 32 CFR 176 (reference (n)) for:

6.1.14.2.1. Installations approved for closure or realignment after October 25, 1994, and

6.1.14.2.2. Installations approved for closure or realignment before October 25, 1994, that have elected, before December 24, 1994, to come under the process outlined in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (reference (e)).

6.1.15. Following the surplus determination, but before the disposal of property, the Military Department may, at its discretion, withdraw the surplus determination and evaluate a Federal Agency's late request for excess property.

6.1.15.1. Transfers under this subparagraph shall be limited to special cases, as determined by the Secretary of the Military Department.

6.1.15.2. Requests shall be made to the Military Department, as specified under subparagraphs 6.1.8. and 6.1.9., above, and the Military Department shall notify the LRA of such late request.

6.1.15.3. Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Military Department is reviewing a late request.

6.2. Homeless Screening for Properties Not Covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (reference (e)).

6.2.1. This subparagraph outlines the procedure created for the identification of real property to fulfill the needs of the homeless by Sec. 2905(b)(6) of Pub. L. 101-510 (reference (j)), as amended by Pub. L. 103-160 (reference (d)). It applies to Base Realignment and Closure (BRAC) 88, 91, and 93 bases if the LRA did not elect to be subject to the alternate homeless assistance screening procedure contained in reference (e).

6.2.2. The Military Department shall sponsor a workshop or seminar in the communities that have closing or realigning bases, unless such a workshop or seminar has already been held. These workshops or seminars will be conducted before HUD publishes the available property to assist the homeless in the Federal Register.

6.2.2.1. Not later than the date upon which the determination of surplus is made, the Military Department shall complete any determinations or surveys necessary to determine whether any building is available to assist the homeless. The Military Department shall then submit the list of properties available to assist the homeless to HUD.

6.2.2.2. HUD shall make a determination of the suitability of each property to assist the homeless in accordance with the Stewart B. McKinney Homeless Assistance Act, "the McKinney Act" (reference (o)). Within 60 days from the date of receipt of the information from the Department of Defense, HUD shall publish a list of suitable properties that shall become available when the base closes or realigns.

6.2.2.3. The listing of properties in the Federal Register under this procedure shall contain the following statement. (The listing of 1988 base closure properties that will be reported to HUD shall refer to Sec. 204(b)(6) of Pub. L. 100-526 instead of Sec. 2905(b)(6) of Pub. L. 101-510):

"The properties contained in this listing are closing and realigning military installations. This report is being accomplished pursuant to Sec. 2905(b)(6) of Pub. L. 101-510, as amended by Pub. L. 103-160. In accordance with Sec. 2905(b)(6), this property is subject to a one-time publication under the McKinney Act after which property not provided to homeless assistance providers will not be published again unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication."

6.2.3. Providers of assistance to the homeless shall then have 60 days in which to submit expressions of interest to HHS in any of the listed property. If a provider indicates an interest in a listed property, it shall have an additional 90 days after submission of its written expression of interest to submit a formal application to HHS, a period which HHS can extend. HHS shall then have 25 days after receipt of a completed application to review and complete all actions on such applications.

6.2.4. During this screening process (from 60 to 175 days following the Federal Register publication, as appropriate), disposal agencies shall take no final disposal action or allow reuse of property that HUD has determined suitable and that may become available for homeless assistance unless and until:

6.2.4.1. No timely expressions of interest from providers are received by HHS;

6.2.4.2. No timely applications from providers expressing interest are received by HHS;

6.2.4.3. HHS rejects all applications received for a specific property.

6.2.5. The Military Department should promptly inform the affected LRA, the Governor of the State, local governments, and agencies that support public benefit conveyances of the date the surplus property will be available for community reuse if:

6.2.5.1. No provider expresses an interest to HHS in a property with the allotted 60 days;

6.2.5.2. There are expressions of interest by homeless assistance providers, but no application is received by HHS from such a provider within the subsequent 90-day application period (or within the longer application period if HHS has granted an extension).

6.2.5.3. HHS rejects all applications for a specific property at any time during the 25-day HHS review period.

6.2.6. The LRA shall have 1 year from the date of notification under subparagraph 6.2.5., above, to submit a written expression of interest to incorporate the remainder of the property into a redevelopment plan.

6.2.7. During the allotted 1-year period for the LRA to submit a written expression of interest for the property, surplus properties not already approved for homeless reuse shall not be available for homeless assistance. The surplus properties will also not be advertised by HUD as suitable during these 1-year periods. The surplus property may be available for interim leases consistent with paragraph 6.6., below.

6.2.8. If the LRA does not express in writing its interest in a specific property during the allotted 1-year period or it notifies the Military Department it is not interested in the property, the disposal agency shall again notify HUD of the date of availability of the property for homeless assistance. HUD may then list the property in the Federal Register as suitable and available after the base closes following the procedures of the McKinney Act (reference (o)).

6.3. Local Redevelopment Authority and the Redevelopment Plan

6.3.1. The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Generally, there will be one recognized LRA per installation.

6.3.2. The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should

consider notices of interest received under the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (reference (e)). This paragraph shall not be construed to require a plan that is enforceable under State and local land use laws, nor is it intended to create any exemption from such laws.

6.3.3. The Military Department shall complete the appropriate environmental documentation no later than 12 months from receipt of the redevelopment plan. The local redevelopment plan will generally be used as the basis for the proposed action in conducting environmental analyses required by under the National Environmental Policy Act of 1969 (NEPA) (reference (p)). The environmental documentation will address the methods for disposal of property at the installation, including conveyances for homeless assistance, public benefit transfers, public sales, Economic Development Conveyances and other disposal methods.

In the event there is no LRA recognized by the Department of Defense and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under subparagraph 6.1.13., above, (unless an extension of time has been granted by the DUSD(I), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

6.4. Economic Development Conveyances

6.4.1. Section 2821 of National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65 (reference (x))) amended the Department's Economic Development Conveyance (EDC) authority to give the Secretary of Defense the authority to transfer property without consideration to local redevelopment authorities for job creation purposes. Section 2821 also give the Secretary of Defense the authority to modify previously approved EDC agreements if a change in economic circumstances necessitates such a modification. Section 2821 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398) (reference (y)) further clarifies that the seven-year period to account for proceeds from the sale, lease, or equivalent use of EDC property begins with the date of the initial transfer of property by lease in furtherance of conveyance or deed.

6.4.2. Eligibility Requirements

6.4.2.1. Applicants. A Local Redevelopment Authority (LRA), officially recognized by the Secretary of Defense through the Office of Economic Adjustment (OEA), is the only eligible applicant for an EDC.

6.4.2.2. Property Uses. Property transferred under an EDC must support the LRA's long-term job creation and economic redevelopment efforts. While the primary purpose of the EDC is to provide BRAC communities with the property necessary to stimulate direct job creation and economic redevelopment, the inclusion of other properties on the installation that facilitate this goal may be acceptable. For example, while the transfer of property for housing in and of itself does not qualify for an EDC, such property may be included in an EDC with those portions of the installation that are used for long-term job creation if the revenue it would generate is necessary to realize that job creation.

6.4.2.3. Relationship to Public Benefit Conveyances. EDC's should not be used to supplant existing public benefit conveyance authorities. These conveyances are established by the Federal Property and Administrative Services Act (FPASA) of 1949, as amended (40 U.S.C. 484(k), (p), and (q)) (reference (g)). General categories of public benefit conveyances under the FPASA include those for historic monuments, education, public health, parks and recreation, maritime commerce, and non-Federal correctional facilities. In addition, conveyances of property to support public airport uses under 49 U.S.C. 47151-47153 (reference (v)), and wildlife conservation under 16 U.S.C. 667b-d (reference (w)), are considered equivalent to public benefit conveyances for the purposes of this Instruction. Before entering into an EDC agreement, the Military Department must find that these public benefit conveyance authorities cannot be used to accomplish the long-term job creation and economic redevelopment goals. However, the Military Departments do not need to show why the property is not being transferred by public bid or negotiated sale.

6.4.3. Application Procedures and Contents

6.4.3.1. The LRA must prepare an application as its format request for property and submit it by October 29, 2000. The Secretary of the Military Department may extend this deadline at the request of the LRA provided the LRA demonstrates a good faith effort to complete its application. If the LRA does not submit an application within this timeframe and an extension has not been granted, or if the LRA no longer desires to apply for an EDC, the Military Department may proceed with disposal under alternative methods including a negotiated or public bid sale of the property.

6.4.3.2. If an LRA has already submitted an application for an EDC prior to October 29, 1999, it does not need to submit a new application, although the Military Department may request that the LRA submit additional information, as needed, to satisfy the elements discussed in subparagraph 6.4.3.3., below.

6.4.3.3. The LRA's application should generally contain the following elements:

6.4.3.3.1. A copy of the most current redevelopment plan approved by the LRA.

6.4.3.3.2. A project narrative including the following:

6.4.3.3.2.1. A description of the property requested using generally recognized boundaries.

6.4.3.3.2.2. A description of the intended uses focusing on long-term job creation and economic redevelopment of the installation.

6.4.3.3.3. A business/operational plan for the EDC parcel designed to help the LRA plan for and manage redevelopment of the property. The plan should include such elements as:

6.4.3.3.3.1. A development timetable, phasing schedule, and cash flow analysis.

6.4.3.3.3.2. A market and financial feasibility analysis describing the economic viability of the project, including a cost estimate and justification for infrastructure and other investments needed for the redevelopment of the EDC parcel and an estimate of net proceeds over at least a seven-year time period.

6.4.3.3.3.3. Local investment and proposed financing strategies for the redevelopment.

6.4.3.3.3.4. A description of how the LRA plans to use any proceeds, including those from a sale, lease, or equivalent use of the property, and a description of the mechanism the LRA will use to track the reinvestment of proceeds. This description should represent how any proceeds will be reinvested and how these expenditures will support the proposed long-term job creation and economic redevelopment.

6.4.3.3.4. A description of how and when the LRA plans to assume control of the property, including its legal authority to do so.

6.4.3.3.5. A statement describing why Federal public benefit conveyance authorities cannot be used to accomplish the LRA's long-term creation and economic redevelopment goals.

6.4.4. Military Department Review and Approval

6.4.4.1. The Military Departments shall conduct their review of the LRA's application in an expeditious manner. In reviewing the application, the Military Department shall determine whether the business plan reasonably accomplishes the proposed long-term job creation and economic redevelopment activities. The Military Department shall not substitute its judgment for the LRA's investment needs, provided a rational relationship exists between the LRA's business plan and its job creation and economic redevelopment activities at or related to the installation. An appraisal is not necessary for an EDC and there is no requirement for the Military Department to conduct an appraisal of the EDC property. The Military Departments should consider the following factors in evaluating an LRA's application:

6.4.4.1.1. The extent of long-term job generation.

6.4.4.1.2. The reasonableness of the LRA's plan for long-term job generation and economic redevelopment.

6.4.4.1.3. The extent of State and local investment and the LRA's ability to implement the plan.

6.4.4.1.4. The consistency with the redevelopment plan.

6.4.4.1.5. The applicability of Federal public benefit transfer authorities.

6.4.4.1.6. The LRA's timetable for assuming control of the property.

6.4.4.1.7. Compliance with applicable Federal, State and local laws and regulations.

6.4.4.2. A representative from OEA shall be included in each Military Department's EDC review.

6.4.5. Terms and Conditions

6.4.5.1. The Secretary of the Military Department is responsible for negotiating the terms and conditions of the EDC agreement with the LRA. Although the Military Departments have the discretion and flexibility to enter into agreements that meet site-specific circumstances, all EDC agreements under Section 2821 must comport with the following requirements:

6.4.5.1.1. Any proceeds from a sale, lease, or equivalent use of the EDC property (i.e., any mechanism that serves to accomplish the same purposes of a sale or lease such as licenses, permits, concession agreements, etc.), received by the LRA for the EDC property, including personal property, during the first 7 years after the initial execution of a deed or lease in furtherance of conveyance must be used to support long-term job creation and the economic redevelopment of, or related to, the installation. The Military Departments shall make every effort to expedite execution of deeds and leases in furtherance of conveyance in a collaborative effort with the LRA to support job creation and economic development. LRAs should make every effort to reinvest such proceeds as quickly as practicable. Allowable uses of proceeds include the following categories:

- 6.4.5.1.1.1. Road construction.
- 6.4.5.1.1.2. Transportation management facilities.
- 6.4.5.1.1.3. Storm and sanitary sewer construction.
- 6.4.5.1.1.4. Police and fire protection facilities and other public facilities.
- 6.4.5.1.1.5. Utility construction.
- 6.4.5.1.1.6. Building rehabilitation.
- 6.4.5.1.1.7. Historic property preservation.
- 6.4.5.1.1.8. Pollution prevention equipment or facilities.
- 6.4.5.1.1.9. Demolition.
- 6.4.5.1.1.10. Disposal of hazardous materials generated by demolition.

6.4.5.1.1.11. Landscaping, grading, and other site or public improvements.

6.4.5.1.1.12. Planning for or the marketing of the redevelopment and reuse of the installation.

6.4.5.1.2. Other activities on the installation that are related to those listed in subparagraph 6.4.5.1.1., above (for example, new construction related to job creation and economic redevelopment, capital improvements, and operation and maintenance of the facility needed to market the redevelopment and reuse of the installation), would also be considered an appropriate, allowable use of proceeds. In order for investments made off the installation to be considered allowable uses of proceeds, the LRA must demonstrate that they are related to those listed above and directly benefit the LRA's economic redevelopment and long-term job generation efforts on the installation.

6.4.5.1.3. EDC agreements must require the LRA to submit an annual financial statement certified by an independent Certified Public Accountant (CPA). This statement should cover the LRA's use of proceeds from a sale, lease, or equivalent use of the EDC property. The agreement also must provide that the Military Department may recoup all proceeds that are not appropriately reinvested.

6.4.5.1.4. The LRA must agree to accept possession of the property and assume operation and maintenance responsibilities within a reasonable time frame after the date of execution of the EDC.

6.4.5.1.5. The Military Departments have no authority to waive lease payments. As a result, parties to existing leases that require payment in excess of protection and maintenance costs are encouraged to enter into new leases, where allowable under law, that are consistent with the no-cost policy.

6.4.5.1.6. New leases and lease renewals must state that upon execution of the EDC agreement the lease between the Military Department and the LRA shall be for no more than the Government's cost of protection and maintenance of the property in accordance with 10 U.S.C. 2667 (reference (q)).

6.4.5.2. Because of the unique economic redevelopment challenges faced by rural communities, the Military Departments are encouraged to ensure that conveyance does not burden rural recipients of property in a manner greater than under the Department's previous EDC authority. Therefore, for rural recipients, the Military Departments may modify the requirement for the annual financial statement and/or the

requirement for the financial statement to be certified by an independent CPA as identified in subparagraph 6.4.5.1.3.

6.4.6. Congressional Notification. The Secretary of the Military Department must notify the House and the Senate Armed Services Committees and the House and Senate Appropriations Committees after the execution of an EDC under Section 2821 (reference (x)), a copy of which must be provided to the Deputy Under Secretary of Defense (Installations). This notification must include a report on the terms and conditions of the conveyance.

6.5. Modifications of EDC Agreements

6.5.1. Modification of EDC Agreements Concluded Between April 21, 1999 and October 5, 1999. At the request of the LRA, the Military Departments shall modify any agreement concluded between April 21, 1999 and October 5, 1999 so that it conforms to the terms of Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) (reference (x)) and the policies on EDCs outlined above. The Military Department should limit its review to only those aspects of the LRA's application that require evaluation due to differences between the EDC requirements under Section 2821 and the requirements of the Department's previous EDC authority. If the Military Department finds that the LRA's application is inadequate for addressing any of the review factors listed in subparagraph 6.4.4., above, it should request that the LRA submit any necessary information to assist its review. The review criteria and terms and conditions listed in subparagraphs 6.4.4. and 6.4.5., above, shall apply to the modification of all such agreements.

6.5.2. Modifications to EDC Agreements Concluded Prior to April 21, 1999

6.5.2.1. In the case of an EDC agreement entered into prior to April 21, 1999, the Military Department is authorized to modify the amount and/or terms of the agreement under the circumstances specified below. The LRA may request a modification when it can demonstrate that changed economic circumstances adversely affect the long-term job creation and rapid economic redevelopment of the installation.

6.5.2.2. Eligibility Requirements. In order for an EDC agreement to be eligible for modification, the LRA must submit a letter containing supplemental information that addresses the changed economic circumstances necessitating a modification to the original EDC agreement. The supplemental information shall contain a comparison between the original business plan and/or other assumptions upon which the agreement was premised, and a revised projection reflecting the changed economic circumstances. The LRA may demonstrate changed economic circumstances

either by identifying specific economic assumptions underlying the original EDC agreement that have changed (such as increased cost of obtaining capital, making infrastructure improvements, or carrying the property, changes in absorption rates, decreases in installation revenue receipts, and the related need for increased capital) or by otherwise demonstrating that the LRA cannot sustain the current or originally projected level of economic redevelopment or jobs (such as the adoption of new industry technical standards that will phase out particular jobs or business areas), even if it cannot identify a specific economic assumption that has changed. The supplemental information must demonstrate that as a result of the changed economic circumstances the LRA has been hindered in achieving rapid economic redevelopment and long-term job creation on the installation or that it will be unable to sustain the current or originally projected level of economic development or jobs. The supplemental information shall also include a reinvestment plan showing how a modification of the EDC will facilitate rapid economic redevelopment and long-term job creation or will permit the LRA to sustain the current or originally projected level of economic development or jobs.

6.5.2.3. Military Department Review and Approval

6.5.2.3.1. The Military Department must determine whether a change in economic circumstances has occurred, and if so, to what extent a modification of the terms and conditions of the existing EDC is necessary to address such changed economic circumstances. If the LRA's submission shows that it cannot sustain the current or originally projected level of economic development or jobs, the Military Department shall conclude that there have been changed economic circumstances, even if the LRA cannot identify a particular assumption underlying the original agreement or business plan that has changed. In conducting this review, the Military Department shall focus primarily upon the LRA's plan to reinvest the money made available from reduction of the EDC price to redress the effects of the changed economic circumstances. The Military Department shall reduce the amount of outstanding consideration to the absolute minimum consistent with the extent to which the reduction is needed to redress the effects of the changed economic circumstances, and subject to the limitations listed below.

6.5.2.3.2. In reviewing requests for modifications, the Military Department shall give substantial deference to the LRA's expertise in matters of local economic redevelopment and job creation, and the Military Department shall not substitute its judgment as to the priority of LRA reinvestment needs nor the amount required to redress the effects of the changed economic circumstances, provided a rational relationship exists between the LRA's reinvestment plan and the extent to which

the reinvestment is needed to redress the effects of the changed economic circumstances.

6.5.2.3.3. A modified agreement:

6.5.2.3.3.1. Cannot require the return of any payments that have been made by the LRA to the Military Department or that come due prior to execution of the modification.

6.5.2.3.3.2. Cannot compromise the agreed upon in-kind consideration that has been or will be provided by the LRA to the Military Department.

6.5.2.3.3.3. Must ensure that the cash consideration under the modified agreement, when combined with other cash proceeds generated from the disposal of other assets at the installation, are as sufficient as they were under the original agreement to fund the reserve account for the depreciated value of the commissary surcharge fund and/or nonappropriated fund investment in facilities within the EDC footprint.

6.5.2.3.3.4. Must require that any proceeds from a sale, lease, or equivalent use of the EDC property, received by the LRA during the first 7 years after the date of execution of the modification or the initial transfer (whichever is later), of the property by lease in furtherance of conveyance or deed, must be used to support the economic redevelopment of the installation, or economic redevelopment related to the installation. LRAs should make every effort to reinvest such proceeds as quickly as practicable. To ensure compliance with this requirement, the LRA must comply with the reporting requirements described in subparagraph 6.4.5.1.3., above, for new EDCs.

6.5.2.3.3.5. Must provide that the Military Department may recoup all proceeds that are not appropriately reinvested.

6.5.2.3.4. The Department does not have the authority to forgive any payments that are due prior to the execution of a modified EDC agreement. Accordingly, the Military Departments shall make every effort to expeditiously process requests for modifications.

6.5.2.3.5. A representative from OEA shall be included in each Military Department's EDC modification review process. Additionally, the terms and conditions of a proposed modification shall be presented to the Deputy Under Secretary of Defense (Installations), through OEA, for coordination prior to an announcement of its approval.

6.6. Leasing of Real Property

6.6.1. Leasing of real property before the final disposition of closing and realigning bases may facilitate State and local economic adjustment efforts and encourage economic redevelopment.

6.6.2. In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretaries of the Military Departments may also lease real and personal property located at a military installation to be closed or realigned under a base closure law, pending final disposition, for less than fair market value if the Secretary concerned determines that:

6.6.2.1. A public interest will be served as a result of the lease.

6.6.2.2. The fair market value of the lease is unobtainable, or not compatible with such public benefit.

6.6.3. Pending final disposition of an installation, the Military Departments may grant interim leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Military Department will generally lease to the LRA but can lease property directly to other entities.

6.6.4. If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases will be applied by the lessee to the protection, maintenance, repair, improvement and costs related to the property at the installation consistent with 10 U.S.C. 2667 (reference (q)).

6.7. Personal Property

6.7.1. This subparagraph outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a community reuse plan.

6.7.2. Each Military Department and DoD Component, as appropriate, shall take an inventory of the personal property, including its condition, within 6 months after the date of approval of closure or realignment. This inventory will be limited to the personal property located on the real property to be disposed of by the Military Department or DoD Component. The inventory will be taken in consultation with LRA officials. If there is no LRA, the Military Department shall offer to provide a consultation for the local government in whose jurisdiction the installation is wholly located or for a local government agency or a State government agency designated for

that purpose by the chief executive officer of the State. Based on these consultations, the base commander shall determine the items or category of items that have the potential to enhance the reuse of the real property.

6.7.3. Except for property subject to the exemptions in subparagraph 6.7.5., below, personal property with potential to enhance the reuse of the real estate shall remain at a base being closed or realigned until disposition is otherwise determined by the Military Department. This determination will be made no earlier than 90 days after the Military Department receives an adopted redevelopment plan or when notified by the LRA that there will be no redevelopment plan.

6.7.4. National Guard property demonstrably identified as being purchased with State funds is not available for reuse planning or subject to transfer for redevelopment purposes, unless so identified by the State property officer. National Guard property purchased with Federal funds is subject to inventory and may be made available for redevelopment planning purposes.

6.7.5. Personal property may be removed upon approval of the base commander or higher authority, within and as prescribed by the Military Department, after the inventory required in subparagraph 6.7.2., above, has been sent to the redevelopment authority, when:

6.7.5.1. The property, other than ordinary fixtures, is required for the operation of a transferring unit, function, component, weapon, or weapons system;

6.7.5.2. The property is required for the operation of a unit, function, component, weapon, or weapon system at another installation within the Military Department, subject to the following conditions:

6.7.5.2.1. Ordinary fixtures, including but not limited to such items as blackboards, sprinklers, lighting fixtures, and electrical and plumbing systems, shall not be removed under subparagraph 6.7.5.2., above.

6.7.5.2.2. Other personal property may be removed under subparagraph 6.7.5.2., above, only after the Military Department has consulted with the LRA and, with respect to disputed items, upon the approval of an Assistant Secretary of the Military Department.

6.7.5.3. The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, chemical

items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items;

6.7.5.4. The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Military Department concerned and the redevelopment authority);

6.7.5.5. The property is stored at the installation for distribution (including spare parts or stock items). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;

6.7.5.6. The property meets known requirements of an authorized program of another Federal Department or Agency that would have to purchase similar items, and the property is the subject of a written request received from the Head of the other Department or Agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. In this context, "purchase" means the Federal Department or Agency intends to obligate funds in the current quarter or next six fiscal quarters. The Federal Department or Agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;

6.7.5.7. The property belongs to nonappropriated fund instrumentalities (NAFI) and other non-Defense Department activities. Such property may be removed at the Military Departments' discretion because it does not belong to the Defense Department and, therefore, it may not be transferred to the redevelopment authority under this section. For NAFI property, separate arrangements for communities to purchase such property are possible and may be negotiated with the Military Department concerned; or,

6.7.5.8. The property is needed elsewhere in the national security interest of the United States as determined by the Secretary of the Military Department concerned. This authority may not be redelegated below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any entity of the Department of Defense or other Federal Agency.

6.7.6. In addition to the exemptions in subparagraph 6.7.5., above, the Military Department or DoD Component is authorized to substitute an item similar to one requested by the redevelopment authority.

6.7.7. Personal property not subject to the exemptions in subparagraph 6.7.5., above, may be conveyed to the redevelopment authority as part of an economic development conveyance for the real property if the Military Department makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan. Personal property may also be conveyed separately to the LRA under an economic development conveyance for personal property in accordance with paragraph 6.4., above. There is no holding period for personal property conveyed under an economic development conveyance.

6.7.8. Personal property that is not needed by the Military Department or a Federal Agency or conveyed to a redevelopment authority (or a State or local jurisdiction instead of a local redevelopment authority) will be transferred to the Defense Reutilization and Marketing Office for processing in accordance with 41 CFR 101-43 through 101-45 (reference (k)) and DoD 4160.21-M (reference (r)).³

6.7.9. Useful personal property determined to be surplus to the needs of the Federal Government by the Defense Reutilization and Marketing Office and not qualifying for transfer to the redevelopment authority under an economic conveyance may be donated to the community or redevelopment authority through the appropriate State Agency for Surplus Property (SASP). Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP. Property subsequently not needed by the community or redevelopment authority shall be disposed of as required by its SASP.

6.8. Maintenance, Utilities, and Services

6.8.1. Facilities and equipment located on bases being closed are often important to the eventual reuse of the base. This paragraph provides maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates base redevelopment.

³ Copies may be obtained from the Defense Logistics Agency, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060-6221

6.8.2. To ensure quick reuse, the Military Department, in consultation with the LRA, shall establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth in this paragraph. Where agreement between the Military Department and the LRA cannot be reached, the Secretary of the Military Department shall determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

6.8.2.1. Exceed the standard of maintenance and repair in effect on the date of closure or realignment approval.

6.8.2.2. Be less than maintenance and repair required to be consistent with Federal Government standards for excess and surplus properties (i.e., 41 CFR 101-47.402 and 41 CFR 101-47.4913) (reference (k)).

6.8.2.3. Require any property improvements, including construction, alteration, or demolition, except when the demolition is required for health, safety, or environmental purposes, or is economically justified instead of continued maintenance expenditures.

6.8.3. The initial levels of maintenance and repair shall be tailored to the redevelopment plan, and shall include the following provisions:

6.8.3.1. The facilities and equipment that are likely to be used in the near term will be maintained at levels that shall prevent undue deterioration and allow transfer to the LRA.

6.8.3.2. The scheduled closure or realignment date of the installation will not be delayed.

6.8.4. The Military Department shall not reduce the agreed upon initial maintenance and repair levels unless it establishes a new arrangement (e.g., termination of caretaking upon leasing of property) in consultation with the LRA.

6.8.5. The Military Department shall determine the length of time it will maintain the initial levels of maintenance and repair for each closing or realigning base. This determination will be based on factors such as the closure and/or realignment date and the timing of the completion of the National Environmental Policy Act (NEPA) (reference (p)) documentation on the proposed disposal (such as a finding of no significant impact and disposal decision following an environmental assessment or the record decision following an environmental impact statement).

6.8.5.1. For a base that was not closed before July 20, 1995, and where the Military Department has completed the NEPA analysis on the proposed disposal before the operational closure of that base, the time period for the initial levels of maintenance and repair normally will extend no longer than one year after operational closure of the base.

6.8.5.2. For a base that did not close before July 20, 1995, and where the base's operational closure precedes the completion of the NEPA analysis on the proposed disposal, the time period for the initial levels of maintenance and repair will normally extend no longer than one year after operational closure or 180 days after the Secretary of the Military Department approves the NEPA analysis.

6.8.5.3. For a base that closed before July 20, 1995, the time period for the existing levels of maintenance will normally extend no longer than one year from July 20, 1995.

6.8.6. The Military Department may extend the time period for the initial levels of maintenance and repair for property still under its control for an additional period, if the Secretary of the Military Department determines that the Local Redevelopment Authority is actively implementing its redevelopment plan, and such levels of maintenance are justified.

6.8.7. Once the time period for the initial or extended levels of maintenance and repair elapses, the Military Department will reduce the levels of maintenance and repair to levels consistent with Federal Government standards for excess and surplus properties (i.e., 41 CFR 10147.402 and 41 CFR 101-47.4913) (reference (k)).

6.9. Leaseback of Property at Base Closure and Realignment Sites

6.9.1. Section 2905(b)(4)(C) of Pub. L. 101-510 (BRAC 1990) (reference (j)), as added by Section 2837 of Pub. L. 104-106 (reference (f)), gives the Secretary of Defense the authority to transfer real property that is needed by a Federal Department or Agency to an LRA, if the LRA agrees to lease the property back to the Federal Department or Agency in accordance with all statutory and regulatory guidance. The purpose of this authority, hereinafter referred to as a "leaseback," is to enable the LRA to obtain ownership of the property pursuant to the BRAC process, while still ensuring that the Federal need for use of the property is accommodated.

6.9.2. Subject to Section 2905(b)(4)(C) of reference (j) and this Instruction, the decision whether to transfer property pursuant to a leaseback rests with the relevant Military Department. However, a Military Department may only transfer property via a

leaseback if the Federal entity that needs the property agrees to the leaseback arrangement.

6.9.3. If for any reason property cannot be transferred pursuant to a leaseback (e.g., the relevant Federal Department or Agency prefers ownership, the LRA and the Federal entity cannot agree on terms of the lease, or the Military Department determines that a leaseback would not be in the Federal interest), such property shall remain in Federal ownership unless and until the relevant landholding entity determines that it is surplus pursuant to the Federal Property Management Regulations (reference (k)).

6.9.4. If a building or structure is proposed for transfer under this authority, that which is leased back to the Federal Department or Agency may be all or a portion of that building or structure.

6.9.5. The leaseback authority may be used at all installations approved for closure or realignment under Pub. L. 101-510 (reference (j)).

6.9.6. Transfers under this authority must be to an LRA.

6.9.7. Transfers under this authority may be by lease in furtherance of conveyance or deed. A lease in furtherance of conveyance is appropriate only in those circumstances where deed transfer cannot be accomplished because the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.) (reference (s)) for such transfer have not been met. The lease in furtherance of conveyance or accompanying contract shall include a provision stating that the LRA agrees to take title to the property when requirements for the transfer have been satisfied.

6.9.8. The leaseback authority can be used to transfer property that is needed either by existing Federal tenants or by Federal Departments or Agencies desiring to locate onto the property after operational closure. The Military Department that is closing or realigning the installation may not transfer property to an LRA under this authority and lease it back unless:

6.9.8.1. The Military Department is acting in an Executive Agent capacity on behalf of a Defense Agency that certifies that a leaseback is in the interest of that Defense Agency.

6.9.8.2. The Secretary of the Military Department certifies that a leaseback is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the

installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

6.9.9. Property eligible for a leaseback is not surplus because it is still needed by a Federal entity. However, notwithstanding that the property is not surplus and that the LRA would not otherwise have to include such property in its redevelopment plan, the LRA should include property to be transferred by a leaseback in its redevelopment plan, taking into account the planned Federal use of such property.

6.9.10. The terms of the LRA's lease to the Federal entity should afford the Federal Department or Agency rights as close to those associated with ownership of the property as is practicable. The requirements of the General Services Acquisition Regulation (GSAR) (48 CFR Part 570) (reference (t)) are not applicable to the lease, but provisions in the GSAR may be used to the extent they are consistent with this Part. The terms of the lease are negotiable subject to the following:

6.9.10.1. The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Department or Agency concerned. The lease term should be based on the needs of the Federal entity.

6.9.10.2. The lease, or any renewals or extensions thereof, shall not require rental payments.

6.9.10.3. The lease shall not require the Federal Government to pay the LRA or other local government entity for municipal services including fire and police protection.

6.9.10.4. The Federal Department or Agency concerned may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal Department or Agency is to be accomplished through the use of Federal Acquisition Regulation (reference (u)) procedures or otherwise in accordance with applicable statutory and regulatory requirements.

6.9.10.5. The lease shall include a provision prohibiting the LRA from transferring fee title to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal Department or Agency occupying the leaseback property.

6.9.10.6. The lease shall include a provision specifying that if the Federal Department or Agency concerned no longer needs the property before the expiration of

the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal Department or Agency that needs property for a similar use.

6.9.10.6.1. Before exercising that option, the Federal tenant shall consult with the LRA concerned or other property owner if the property has been conveyed by the LRA to another entity, in accordance with subparagraph 6.9.10.5., above.

6.9.10.6.2. If the Federal tenant decides to exercise this option after consulting with the LRA or other property owner, it shall notify the applicable GSA regional office that the property is available for use by a Federal Department or Agency. The GSA regional office shall have 60 days from the date of notification in which to identify a Federal Department or Agency to serve out the term of the lease and to notify the LRA or other property owner of the new tenant. If the regional office does not notify the LRA or other property owner of a new tenant within 60 days from the date of notification, the property is available for use by the LRA or other property owner.

6.9.10.6.3. If the Federal tenant decides not to exercise that option after consulting with the LRA or other property owner, the property is available for use by the LRA or other property owner.

6.9.10.7. The terms of the lease shall provide that the Federal Department or Agency may repair and improve the property at its expense after consultation with the LRA.

6.9.11. Conveyance to an LRA under this authority shall be in one of the following ways:

6.9.11.1. Leaseback property that will be conveyed under an Economic Development Conveyance (EDC) shall be conveyed as part of the EDC in accordance with the EDC procedures outlined in paragraph 6.4., above. The LRA shall submit the following in addition to the EDC application requirements outlined in subparagraph 6.4.3., above:

6.9.11.1.1. A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

6.9.11.1.2. A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property.

6.9.11.1.3. A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

6.9.11.2. Leaseback property not associated with property to be conveyed under an EDC shall be conveyed in accordance with the following procedures:

6.9.11.2.1. As soon as possible after the LRA's submission of its redevelopment plan to the Department of Defense and HUD, the LRA shall submit a request for a leaseback to the Military Department. The Military Department may impose additional requirements as necessary but, at a minimum, the request shall contain the following:

6.9.11.2.1.1. A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency.

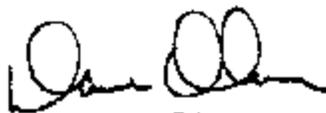
6.9.11.2.1.2. A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property.

6.9.11.2.1.3. A statement explaining why a leaseback is necessary for the long-term redevelopment of the installation property.

6.9.11.2.2. The transfer shall be for no consideration.

7. EFFECTIVE DATE

This Instruction is effective immediately.



Dave Oliver
Principal Deputy Under
Secretary of Defense for
Acquisition, Technology,
and Logistics

Enclosures - 2

- E1. References, continued
- E2. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

- (f) Public Law 104-106, "The National Authorization Act for Fiscal Year 1996," February 10, 1996
- (g) Sections 202, 203 and 472 of title 40, United States Code, "The Federal Property and Administrative Services Act," as amended
- (h) Deputy Secretary of Defense Memorandum, "OUSD (Acquisition and Technology) Reorganization," May 15, 1996
- (i) [DoD Directive 4165.66](#), "Revitalizing Base Closure Communities and Community Assistance," February 12, 1996
- (j) Public Law 101-510, "The Defense Base Closure and Realignment Act of 1990," November 5, 1990
- (k) Title 41, Code of Federal Regulations, Part 101-47, "Federal Property Management Regulations," current edition
- (l) Public Law 100-526, "The Base Closure and Realignment Act of 1988," October 24, 1988
- (m) Title 43, Code of Federal Regulations, Part 2372, "Procedures," current edition
- (n) Title 32, Code of Federal Regulations, Part 176, "Revitalizing Base Closure Communities and Community Assistance - Community Redevelopment and Homeless Assistance," current edition
- (o) Section 11411 of title 42, United States Code, "The Stewart B. McKinney Homeless Assistance Act," as amended
- (p) Section 4332 et seq., of title 42, United States Code, "The National Environmental Policy Act of 1969," as amended
- (q) Section 2667 of title 10, United States Code, "Leases: non-excess property," as amended
- (r) DoD 4160.21-M, "Defense Reutilization and Marketing Manual," March 1990
- (s) Section 9601 et seq., of title 42, United States Code, "Comprehensive Environmental Response, Compensation and Liability Act," as amended
- (t) Title 48, Code of Federal Regulations, Part 570, "General Services Acquisition Regulation," current edition
- (u) Title 48, Code of Federal Regulations, Parts 1-99, "Federal Acquisition Regulations," current edition
- (v) Sections 47151-47153 of title 49, United States Code, "Authority to Transfer an Interest in Surplus Property; Terms of Gifts; Waiving and Adding Terms," as amended

- (w) Sections 667b-667d of title 16, United States Code, "Transfer of Certain Real Property for Wildlife Conservation Purposes--Reservation of Rights; Publication of Designating Order; Reports to Congress," as amended
- (x) Public Law 106-65, "The National Defense Authorization Act for Fiscal Year 2000," October 5, 1999
- (y) Public Law 106-398, "The National Defense Authorization Act for Fiscal Year 2001," October 30, 2000

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Base Closure Law. The provisions of Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526, 102 Stat. 2623, 10 U.S.C. 2687 note), or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. 2687 note) (references (l) and (j)).

E2.1.2. Closure. All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian, and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

E2.1.3. Communities in the Vicinity of the Installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

E2.1.4. Consultation. Explaining and discussing an issue, considering objections, modifications, and alternatives, but without a requirement to reach agreement.

E2.1.5. Date of Approval. The date on which the authority of Congress to disapprove Defense Base Closure and Realignment Commission recommendations for closures or realignments of installations expires under Title XXIX of 104 Stat. 1808, as amended (reference (j)).

E2.1.6. Excess Property. Any property under the control of a Military Department that the Secretary concerned determines is not required for the needs of the Department of Defense.

E2.1.7. Installation. A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

E2.1.8. Local Redevelopment Authority (LRA). Any authority or instrumentality established by State or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing

the redevelopment plan with respect to the installation or for directing implementation of the plan.

E2.1.9. Realignment. Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as "closed" for this document.

E2.1.10. Rural. An area outside a Metropolitan Statistical Area.

E2.1.11. Similar Use. A use that is comparable to or essentially the same as the use under the original lease.

E2.1.12. Surplus Property. Any excess property not required for the needs and the discharge of the responsibilities of Federal Agencies. Authority to make this determination, after screening with all Federal Agencies, rests with the Military Departments.