

July 2008

# DEFENSE INFRASTRUCTURE

## Services' Use of Land Use Planning Authorities



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**GAO**  
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**Highlights**

Highlights of [GAO-08-850](#), a report to congressional committees

## Why GAO Did This Study

The Department of Defense (DOD) is one of the largest landholding agencies in the federal government with more than 577,500 facilities at 5,300 sites on over 32 million acres. GAO has previously reported that the management of DOD-held real property is a high-risk area, in part because of deteriorating facilities and problems with excess and underutilized property. To address these problems, DOD has developed a multipart strategy involving base realignment and closure, housing privatization, and demolition of facilities that are no longer needed. DOD is also leasing out underutilized real property to gain resources to repair or construct facilities. The House Armed Services Committee Report on the National Defense Authorization Act for Fiscal Year 2008 directed the Comptroller General to provide an analysis of DOD's use of its land use planning authorities. Specifically, GAO examined (1) how DOD has used its authorities; (2) the reasons why land, buildings, and facilities on DOD installations may appear to be underutilized or not utilized; and (3) the policies and procedures used by the services to respond to requests by other federal agencies for space at a DOD installation. GAO reviewed pertinent legislation and DOD and service policies, interviewed officials from DOD and all four services, and visited 10 installations from all four services.

## What GAO Found

Although many land use planning authorities currently exist that permit the Secretary of Defense, the secretaries of the military departments, or both to help make more efficient use of real property under their control, Section 2667 of Title 10, U.S. Code, leasing of nonexcess property of military departments, was used the most frequently—744 times from fiscal years 2005 through 2007. Under Section 2667 of Title 10, traditional short-term lease agreements are typically executed, but more financially complex, longer-term enhanced use leases are also executed. Section 2681 of Title 10, the authority to enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a major range and test facility installation, was also used frequently, with 601 uses during fiscal years 2005 through 2007. GAO's analysis indicates that there are more than 30 authorities in the U.S. Code pertaining to DOD's utilization of real property. Service officials indicated that they have used these other authorities much less often and only for a limited number of leases or other transactions.

Land, buildings, and facilities on DOD installations may appear to be underutilized or not utilized for several reasons. For example, land that appears empty or underutilized often has a variety of restrictions and constraints placed upon its use, including setbacks for antiterrorism protection, mission requirements, safety zones, and environmental concerns. The services identified several reasons why buildings and facilities might be classified as underutilized or not utilized but still remain unavailable for other uses, including historical considerations.

Each of the military departments has similar policies and procedures in place for responding to requests for space on an installation from other federal agencies. Service officials told us that requests for space are submitted directly to the installation and should include information on facilities and land requirements, justification for selecting the proposed installation, and a statement of environmental impact. An official request for space is reviewed at the installation level, and the installation commander makes a recommendation to the approving official, although the approving official differs depending on the service and the nature of the request.

### Enhanced Use Lease Site at Fort Sam Houston, Texas



Source: GAO.

To view the full product, including the scope and methodology, click on [GAO-08-850](#). For more information, contact Brian Lepore at (202) 512-4523 or [leporeb@gao.gov](mailto:leporeb@gao.gov).

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## Abbreviations

|      |                                           |
|------|-------------------------------------------|
| BRAC | base realignment and closure              |
| DOD  | Department of Defense                     |
| MHPI | Military Housing Privatization Initiative |
| OSD  | Office of the Secretary of Defense        |

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United States Government Accountability Office  
Washington, DC 20548

July 23, 2008

## Congressional Committees

The Department of Defense (DOD) is the one of the largest landholding agencies in the federal government, with more than 577,500 facilities at 5,300 sites on over 32 million acres. We have previously reported that the management of DOD-held real property<sup>1</sup> is a high-risk area, in part because of deteriorating facilities and problems with excess and underutilized property.<sup>2</sup> To address these problems, DOD has developed a multipart strategy involving base realignment and closure (BRAC), housing privatization, and demolition of facilities that are no longer needed. DOD is also leasing out its underutilized real property to gain additional resources for the maintenance and repair of existing facilities or the construction of new facilities.

Many land use authorities currently exist that permit the Secretary of Defense, the secretaries of the military departments, or both to make more efficient use of underutilized real property under their control or jurisdiction, such as authorities permitting outleasing or conveyance of DOD real property or the issuances of licenses, permits, or easements upon DOD real property. For example, under Section 2667 of Title 10 of U.S. Code, the secretaries of the military departments generally have the authority to lease nonexcess<sup>3</sup> real property under the control of the respective department in exchange for cash or in-kind consideration not less than the fair market value of the lease interest whenever a department

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<sup>1</sup>According to DOD, real property consists of land or land together with the improvements, structures, fixtures located on that land, and other buildings and permanent structures.

<sup>2</sup>See GAO, *High-Risk Series: Federal Real Property*, [GAO-03-122](#) (Washington, D.C.: Jan. 2003), and *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, [GAO-07-349](#) (Washington, D.C.: Apr. 13, 2007).

<sup>3</sup>Land that DOD classifies as underutilized or not utilized may not necessarily be considered “excess property” for the purposes of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 101 et seq.). Pursuant to Section 102 of Title 40, 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. Therefore, a parcel of DOD real property could potentially be underutilized yet still not be excess because it is required to meet certain DOD’s needs or responsibilities.

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secretary considers it advantageous to the United States. In-kind consideration accepted with respect to a lease under this section can include construction of new facilities or maintenance of existing facilities. Utilizing this authority, short-term leases of property have traditionally been granted to various groups, including farmers for cultivating crops, phone companies for cellular phone towers, and local school districts for building schools on the installations. Leases executed pursuant to Section 2667 of Title 10 generally may not be for more than 5 years; however, if the secretary concerned determines that a lease for a longer period would promote the national defense or be in the public interest, the authority under Section 2667 of Title 10 may be utilized to enter into longer-term leases. Under this same authority, longer and more complex leases have also been executed, which service officials commonly refer to as enhanced use leases. Such leases are usually for more than 30 years and typically involve in-kind payments.<sup>4</sup> Another authority under Section 2681 of Title 10 allows the Secretary of Defense to enter into contracts with commercial entities that desire to conduct test and evaluation activities at a major range and test facility installation. A third authority under Section 2869 of Title 10 gives the secretary concerned authority to enter into an agreement to convey real property that is either located on a military installation that is closed or realigned under a base closure law or located on a military installation that is not closed or realigned under a base closure law and is determined to be excess to the needs of DOD<sup>5</sup> to any person who agrees, in exchange for the real property, to carry out a military construction project to limit encroachment or to transfer military family housing, unaccompanied housing, or both, provided certain conditions are met.

The House Armed Services Committee Report on the National Defense Authorization Act for Fiscal Year 2008 directed the Comptroller General to provide an analysis of DOD's use of its land use planning authorities.<sup>6</sup>

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<sup>4</sup>Section 2667 of Title 10 does not use the term enhanced use lease to differentiate leases executed pursuant to this authority that are longer than 30 years and involve in-kind payments.

<sup>5</sup>The authority to convey excess property located on an installation not closed or realigned under base closure law pursuant to Section 2869 currently only applies from October 17, 2006, through September 30, 2008. (A conveyance for which the concerned secretary has provided advance public notice during this time period may be completed after September 30, 2008.)

<sup>6</sup>While the committee report directed us to "provide particular attention to the San Diego area" in conducting this analysis, we subsequently agreed, in consultation with committee staff, to analyze DOD's overall land planning without a special focus on a particular geographic region.

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Specifically, we examined (1) how DOD has used its land use planning authorities; (2) the reasons why land, buildings, and facilities on DOD installations may appear to be underutilized or not utilized; and (3) the policies and procedures used by the services to respond to requests by other federal agencies for space at a DOD installation. In addition, the committee report directed the Secretary of Defense to submit a report on DOD's land use planning and for the Comptroller General to review this report. However, because DOD's report had not been released as of July 1, 2008, we were unable to comment on it in this report.

In performing our work, we reviewed pertinent legislation and guidance from the Office of the Secretary of Defense (OSD) and the services on the use of specific authorities. We interviewed officials from OSD, the Army, the Navy, the Air Force, and the Marine Corps. We selected 10 installations across the four services to visit, based on size; proximity to other installations; and past, current, or future planned large real estate projects, such as enhanced use leases or conveyances. At these installations, we interviewed officials about their use of land use planning authorities, the reasons buildings and land may be underutilized or not utilized, and their processes for responding to requests from other federal agencies for space at the installation. After speaking with officials at several installations about the authorities they used most often, we selected several of those authorities and surveyed the services to determine how often they had been used servicewide from fiscal years 2005 through 2007. We did not analyze the contracts or other agreements entered into pursuant to these authorities. We conducted this performance audit from September 2007 to July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. A detailed description of our scope and methodology is presented in appendix I.

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## Results in Brief

Although many land use planning authorities currently exist that permit the Secretary of Defense, the secretaries of the military departments, or both to make more efficient use of real property under their control, such as authorities to outlease or convey certain real property, our analysis of service data showed that the most frequently used of these authorities is Section 2667 of Title 10, leasing of nonexcess property of military departments. The services reported that this authority was used a total of 744 times during fiscal years 2005 through 2007 and its use was spread



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among the real property controlled by the services. The services reported that Section 2667 of Title 10 was used for both traditional leases and longer-term, more financially complex enhanced use leases. The majority of agreements executed under Section 2667 of Title 10 are traditional non-enhanced use lease agreements. During fiscal year 2007, the services reported that 222 new agreements were signed pursuant to Section 2667 of Title 10 and that approximately \$51 million in revenue was earned. In addition, under the same authority, the services reported that more financially complex, longer-term enhanced use leases are being executed. These leases are usually for a term of longer than 30 years and payment is typically in in-kind services, such as new construction, rather than cash. The Army and the Air Force reported that 14 of these enhanced use leases were entered into on land under the control of the respective departments, and they project that the leases will bring in more than \$1.1 billion in value over their lives.<sup>7</sup> Furthermore, the Army, the Air Force, and the Navy are currently considering pursuing several additional enhanced use leases. The services also reported that the Secretary of Defense frequently used Section 2681 of Title 10, the authority to enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a major range and test facility installation. However, this authority was most frequently used on Army major range and test facility installations, with about 86 percent of the authority's reported 601 uses during fiscal years 2005 through 2007. Beyond Section 2667 and Section 2681 of Title 10, there are many other land use authorities that the Secretary of Defense, the secretaries of the military departments, or both may use under certain circumstances to better utilize existing real property, such as authorities permitting outleasing or conveyance of DOD real property or the issuance of licenses, permits, or easements upon DOD real property. Our analysis indicates that there are more than 30 available authorities of permanent and general applicability in the U.S. Code available to the Secretary of Defense, the secretaries of the military departments, or both under certain circumstances that pertain to the utilization of land under their control covering a wide range of real estate transactions; however, service officials indicated that the other authorities are utilized much less often. Further, in addition to these codified authorities of general and permanent applicability, special legislation is often enacted that grants authority to or requires the Secretary of Defense, the secretary of a military department, or both to conduct a particular land

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<sup>7</sup>We did not evaluate the validity of the services' lease proceeds estimates because it was outside the scope of our review.

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use activity at a specific installation or parcel of land controlled by DOD, typically within a specified period of time.

Land, buildings, and facilities on DOD installations may appear to be underutilized or not utilized for several reasons. Land that appears empty or underutilized, for example, often has a variety of restrictions and constraints placed upon its use. These restrictions and constraints include setbacks for antiterrorism protection, mission requirements, necessary safety zones, and environmental considerations. At Naval Base Coronado, California, for example, officials told us that a large parcel of vacant land at the center of the installation cannot be used because it is a nesting area for the California least tern, a federally listed endangered species. The attempt to relocate this nesting area could take as long as 5 years, if it is successful at all. In addition to underutilized land, the services identified several reasons why buildings and facilities might be classified as underutilized or not utilized but still remain unavailable for other uses. These reasons include historical considerations, the need to reserve space for incoming personnel, or the need for repair or demolition funding. Property may be classified as not utilized when it has been condemned and is waiting for funding for repairs or demolition. For example, Lackland Air Force Base has a 48-unit visiting officers' quarters and a student dormitory, both of which are condemned and not utilized for health reasons because mold is present. While these facilities remain not utilized, the Air Force has sought funding both to demolish the visiting officers' quarters and to repair the student dormitory.

Each of the military departments has similar policies and procedures in place for responding to requests for space on an installation from other federal agencies. Department-specific policies govern the procedures for allowing the use of space by other federal agencies. In general, service officials stated that requests for space are submitted directly to the installation and should include information on facilities and land requirements, justification for selecting the proposed installation, and a statement of environmental impact. The request is typically reviewed at the installation level, and the installation commander makes a recommendation to the approving official. The position or location of the approving official may differ, depending on the service and the nature of the request. For example, requests for space at Navy installations are generally approved by the regional commander and Commander, Navy Installations Command. We visited installations from each service and found that each installation we visited had multiple DOD and non-DOD federal tenants.

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## Background

Many land use authorities currently exist that permit the Secretary of Defense, the secretaries of the military departments, or both to make more efficient use of underutilized or not utilized real property under their jurisdiction or control, such as authorities permitting outleasing or conveyance of real property controlled by DOD or the issuance of licenses, permits, or easements upon real property controlled by DOD. The services reported that one of the most commonly used authorities is Section 2667 of Title 10. Under this authority, the secretaries of the military departments generally have the authority to lease nonexcess real property under the control of the respective department in exchange for cash or in-kind consideration not less than the fair market value of the lease interest. Leases executed pursuant to this authority must comply with several conditions; for example, a lease may not be for more than 5 years unless the secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest. Money received from leases entered into pursuant to Section 2667 must be deposited into special Treasury accounts, with some exceptions.<sup>8</sup> Further, to the extent provided in appropriations acts, at least half of the proceeds deposited into these special Treasury accounts must be returned to the installation where the proceeds were derived. Most recently, the National Defense Authorization Act for Fiscal Year 2008 further refined this leasing authority in several ways; for example, provision or payment of utility services was designated as an acceptable in-kind service, while facility operation support for the secretary concerned was eliminated as an acceptable form of consideration.

Leases executed pursuant to Section 2667 not only benefit the installation by leveraging underutilized land in exchange for rent money or in-kind consideration, such as new construction or maintenance of existing facilities, they also benefit the developer and the community. For example, according to DOD officials, these projects can establish long-term relationships between developers and private sector and government entities with specific real estate needs that are potential occupants of the space. In addition, developers receive market rate returns on their investments and access to new markets, such as federal government and military support contractors. These agreements benefit the community by

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<sup>8</sup>Amounts paid for utilities and services furnished to lessees by the secretary of a military department, money received directly from a lease for agricultural or grazing purposes, and money received from a lease at a military installation approved for closure or realignment under base closure law are not required to be deposited into these special Treasury accounts.

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providing additional jobs, a broader tax base, and renovation of deteriorated assets.

Another frequently used authority, Section 2681 of Title 10, authorizes the Secretary of Defense to enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a major range and test facility installation. Such contracts must contain various provisions pertaining to the Secretary's ability to terminate, prohibit, or suspend certain tests under the contracts, as well as requirements pertaining to the contract price. Section 2681 also contains rules on the retention of funds. Further, the Secretary of Defense is required to issue regulations to carry out this provision.

Under Section 2878 of Title 10, the secretary concerned may convey or lease property or facilities to eligible entities for the purpose of using the proceeds to carry out activities under the Military Housing Privatization Initiative (MHPI).<sup>9</sup> This authority cannot be used to convey or lease property or facilities located on or near military installations approved for closure under a base closure law. The conveyance or lease of property or facilities under this section must be for such terms and conditions as the secretary concerned considers appropriate for MHPI purposes while protecting the interests of the United States. As part or all of the consideration for a conveyance or lease under this section, the purchaser, or lessor, shall enter into an agreement with the secretary to ensure that a preference will be given to members of the armed forces and their dependents in the lease or sublease for a reasonable number of the housing units covered by the conveyance or lease. Property leased or conveyed using this authority is exempt from certain property management laws.

Another authority, Section 2869 of Title 10, allows the secretary concerned to enter into an agreement to convey real property (including any improvements) under the secretary's jurisdiction that is located on a military installation that is either closed or realigned under a base closure law or located on an installation not closed or realigned under base

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<sup>9</sup>In 1996, alternative authorities for construction and improvement of military housing were enacted (commonly referred to as the Military Housing Privatization Initiative, or MHPI), which provide DOD with a variety of authorities to attract private capital investments by using private developers to build, operate, and maintain homes primarily for military members and their families. National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, § 2801 (1996) (codified as amended at 10 U.S.C. §§ 2871-2885).

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closure law and determined to be excess to DOD needs. Such a conveyance may be made only to a person who agrees, in exchange for the real property, (1) to carry out a military construction project or land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of Title 10 to limit encroachments and other constraints on military training, testing, and operations, or (2) to transfer to the secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both. There are various rules and conditions regarding the use of this authority, including a requirement that advance notice be provided to Congress before use, certain limits on the deposit and use of funds, and annual reporting requirements to Congress.

Beyond the various real property authorities that may be utilized by DOD under certain circumstances, a framework of legal requirements and restrictions must be complied with in DOD's use of its land, buildings, and facilities, many of which relate to environmental and cultural preservation. For example, DOD guidance requires that all proposed outleasing actions (regardless of grantee or consideration) be subject to the appropriate level of analysis required by the National Environmental Policy Act of 1969<sup>10</sup> and its implementing regulations. Further, the National Historic Preservation Act<sup>11</sup> lays out the responsibilities of federal agencies related to certain cultural resources under their stewardship and authorizes the expansion and maintenance of a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in the history, architecture, archeology, engineering, and culture of the United States and worthy of preservation, among other things.

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<sup>10</sup> 42 U.S.C. § 4321 et seq.

<sup>11</sup> 16 U.S.C. § 470 et seq.

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## Many Land Use Planning Authorities Are Available, but Section 2667 and Section 2681 of Title 10 Are Predominantly Used

Although many land use planning authorities currently exist that permit the Secretary of Defense, the secretaries of the military departments, or both to help make more efficient use of real property under their jurisdiction or control under various circumstances, our analysis of service data showed that Section 2667 of Title 10 is most frequently used for both traditional leases as well as longer-term, more financially complex enhanced use leases. We further found that the second most frequently used authority is Section 2681 of Title 10, though this authority was most frequently used with respect to Army real property with about 86 percent of its reported usage during fiscal years 2005 through 2007. There are many other land use planning authorities that the Secretary of Defense, the secretaries of the military departments, or both may use under certain circumstances to better utilize existing real property under their control. Our analysis indicates that there are more than 30 available authorities of general and permanent applicability in the U.S. Code available to the Secretary of Defense, the secretaries of the military departments, or both pertaining to the utilization of existing real property controlled by DOD. The services reported that these other authorities have not been used as frequently as Section 2667 and Section 2681 of Title 10. In addition to these codified authorities of general and permanent applicability, special legislation is often enacted that grants authority to or requires the Secretary of Defense, the secretary of a military department, or both to execute particular land use activities at specific installations or parcels of land controlled by DOD.

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## The Services Reported That Section 2667 of Title 10 Was Most Frequently Used during Fiscal Years 2005 through 2007

The services reported using Section 2667 of Title 10 a total of 744 times during fiscal years 2005 through 2007 for both traditional leases as well as longer-term, more financially complex enhanced use leases. Table 1 shows the breakdown by the reported use of Section 2667 of Title 10 according to the service at which the real property was located during fiscal years 2005 through 2007.

**Table 1: Reported Use of 10 U.S.C. § 2667 by Service Location, Fiscal Years 2005 through 2007**

| Service                     | FY 2005    | FY 2006    | FY 2007    | Total by service | Percentage by service |
|-----------------------------|------------|------------|------------|------------------|-----------------------|
| Army                        | 165        | 153        | 112        | 430              | 58                    |
| Navy                        | 88         | 41         | 56         | 185              | 25                    |
| Marine Corps                | 10         | 8          | 27         | 45               | 6                     |
| Air Force                   | 32         | 25         | 27         | 84               | 11                    |
| <b>Total by fiscal year</b> | <b>295</b> | <b>227</b> | <b>222</b> | <b>744</b>       | <b>100</b>            |

Source: GAO analysis of service-reported data.

Note: Air Force numbers are estimates.

The majority of agreements that have been executed under Section 2667 of Title 10 over the past 3 years are traditional non-enhanced use lease agreements. During fiscal year 2007, the services reported that 222 new agreements were signed under Section 2667 of Title 10 and earned approximately \$51 million in revenue. For example, at Fort Meade, Maryland, installation officials provided data showing that the installation will receive \$5,600 monthly through November 2010 on two 5-year cellular phone tower leases and at Camp Pendleton, California, the Marine Corps earned over \$1 million from two agricultural leases during fiscal year 2007. Using Section 2667 of Title 10, the Army and Air Force<sup>12</sup> reported earning combined totals of approximately \$14 million in fiscal year 2005 and \$22 million in fiscal year 2006.

Under this same authority, the services also reported that more financially complex, longer-term enhanced use leases were executed. These leases are usually for a term of greater than 30 years and payment is typically in in-kind services, such as new construction or maintenance and repair, rather than cash. According to the Army's draft *Enhanced Use Leasing Handbook*, the longer lease terms are more in line with private real estate development standards, and therefore help satisfy financial lending requirements and help make the development worthwhile to all enhanced use lease project stakeholders.

During fiscal years 2005 through 2007, Army officials reported that 10 of these enhanced use leases were signed, and Air Force officials reported that 4 were signed. These leases are projected by the services to be worth

<sup>12</sup>The Navy and Marine Corps did not provide fiscal year 2005 and 2006 revenue data.

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more than \$1.1 billion over the life of the leases, with the Army estimating the bulk of the projected revenue. For example, the Army reported that a lease was signed with a motor vehicle company to provide land for it to install a hot weather vehicle test track at Yuma Proving Ground, Arizona. The track will be available for the Army's use for testing its vehicles, and the Army will obtain additional compensation to allow it to install an additional test track at a total net present value<sup>13</sup> estimated at \$26.8 million over the 50-year life of the lease. In addition, at Nellis Air Force Base, Nevada, Air Force officials reported that land was provided through a public-private partnership to install an electricity generating photo voltaic array whose net present value is estimated at \$10.9 million for electricity that will be provided to the installation over the 20-year life of the lease.

Furthermore, service officials reported that several more enhanced use leases are in process – 24 for the Army, 33 for the Air Force, and 14 for the Navy. For example, the Army is trying to lease land owned by Fort Meade, Maryland, to a contractor who will build a new office complex. This 50-year lease project is expected to provide office space for military and security-related defense contractor jobs coming to the area as a result of the 2005 BRAC round. The contractor is expected to move a golf course at the interior of the fort to the exterior of the fort to make room on the old golf course for BRAC and National Security Agency-related construction. The Air Force is negotiating for a 50-year ground lease of 180 acres of land along the western perimeter of Hill Air Force Base, Utah. Air Force officials told us that the lessee will construct an approximately 2.8 million square foot office park consisting of commercial office, retail, hotel, and restaurant space on the 180 acres of leased Air Force land. At least 600,000 square feet of the development will become Air Force owned and maintained office space, and Air Force officials expect to receive additional in-kind compensation over the life of the lease to be used for additional Air Force projects and maintenance. At the end of the lease period, the land and all improvements on both of the projects described above will revert back to the applicable service. At the time of our review, the Navy was considering an enhanced use lease of the former Portsmouth Naval Prison at Portsmouth Naval Shipyard in Kittery, Maine, for not more than 50 years. Marine Corps officials told us that an enhanced use lease has not yet been executed with regard to Marine Corps land, but that several potential projects are being considered.

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<sup>13</sup>Net present value allows the consideration of the time value of money by finding the present value in "today's dollars" of the future net cash flow of a project.



Service officials reported that Section 2681 of Title 10 was used 601 times during fiscal years 2005 through 2007, and about 86 percent of its use was with respect to Army major range and test facility installations. This authority was also used with respect to Navy and Air Force installations during this period but much less frequently than for the Army. This authority was not used with respect to Marine Corps real property during this period. Table 2 shows the breakdown of the reported use of 2681 of Title 10 during fiscal years 2005 through 2007 according to the service at which the installation was located.

**Table 2: Reported Use of 10 U.S.C. § 2681 by Service Location, Fiscal Years 2005 through 2007**

| Service                     | FY 2005    | FY 2006    | FY 2007    | Total by service |
|-----------------------------|------------|------------|------------|------------------|
| Army                        | 135        | 179        | 205        | 519              |
| Navy                        | 26         | 27         | 22         | 75               |
| Marine Corps                | 0          | 0          | 0          | 0                |
| Air Force                   | 6          | 1          | 0          | 7                |
| <b>Total by fiscal year</b> | <b>167</b> | <b>207</b> | <b>227</b> | <b>601</b>       |

Source: GAO analysis of service-reported data.

The authority was used on Army installations to allow defense contractors to test major weapons systems under development for the Army and the other services. This authority was used on Navy installations for several projects, including allowing an aviation company to evaluate noise reduction technology of a static engine. The authority was also used at an Air Force facility to allow a major automobile manufacturing company to test automobile antennas for radio frequency emissions.

**The Services Used Other  
Land Use Planning  
Authorities Less Often**

Our analysis shows that there are more than 30 authorities of general and permanent applicability in the U.S. Code available to the Secretary of Defense, the secretaries of the military departments, or both pertaining to the utilization of existing DOD real property, such as the authority to outlease, grant easement upon, permit special use of, or convey real property. Many of these authorities may only be used under various specified circumstances and contain unique requirements or limitations. For example, while Section 2878 of Title 10 gives the secretary concerned the authority to convey or lease certain DOD real property to an eligible entity, this authority may only be used for the specific purpose of using the proceeds to carry out activities under MHPI and contains limitations, including the kind of real property leased or conveyed and certain requirements for consideration. Service officials indicated that while some

of these other authorities were utilized with regard to their respective real property during fiscal years 2005 through 2007, they have been used much less often than Section 2667 and Section 2681 of Title 10. For example, the services reported the authority in Section 2878 of Title 10 was used 53 times during fiscal years 2005 through 2007. Table 3 shows examples of authorities other than Section 2667 and Section 2681 of Title 10 that the services reported using with respect to real property under their control over the 3-year period.

**Table 3: Examples of Other Land Use Planning Authorities Used by the Services by Service Location, Fiscal Years 2005 through 2007**

| Service      | 10 U.S.C. 2878—authority to convey or lease property for the purpose of using the proceeds for MHPI |      |      | 10 U.S.C. 2869—authority to convey property at military installations in order to support construction or limit encroachment |      |      |
|--------------|-----------------------------------------------------------------------------------------------------|------|------|------------------------------------------------------------------------------------------------------------------------------|------|------|
|              | 2005                                                                                                | 2006 | 2007 | 2005                                                                                                                         | 2006 | 2007 |
| Army         | 6                                                                                                   | 7    | 6    | 1                                                                                                                            | 1    | 0    |
| Navy         | 3                                                                                                   | 3    | 5    | 0                                                                                                                            | 0    | 0    |
| Marine Corps | 2                                                                                                   | 3    | 3    | 0                                                                                                                            | 0    | 0    |
| Air Force    | 3                                                                                                   | 5    | 7    | 0                                                                                                                            | 0    | 0    |
| Total        | 14                                                                                                  | 18   | 21   | 1                                                                                                                            | 1    | 0    |

Source: GAO analysis of service-reported data.

The services reported that Section 2869 of Title 10 was used only two times during fiscal years 2005 through 2007. DOD reported that in 2005, the Secretary of the Army signed an exchange agreement with a private developer, trading the 16.29-acre Bellmore, New York, property—closed during the 1995 BRAC process—for the construction of a covered fuel truck storage facility at Fort Drum, New York, and an additional \$6.65 million in cash. DOD also reported that in 2006, 13 acres of Army land at Devens Reserve Forces Training Area, Massachusetts, were transferred to the Massachusetts Development Finance Agency in exchange for over \$1 million in renovations to buildings and land at the same installation. Air Force officials stated that Section 2869 of Title 10 is currently being used to exchange land, previously used by the Defense Logistics Agency as a fuel supply depot, for military construction at March Air Reserve Base, California.

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## Special Legislation Is Regularly Enacted to Assist Installations with Land Use Planning

In addition to land use authorities of general and permanent applicability in the U.S. Code, special legislation pertaining to specific land use activities at particular installations or parcels of land is also regularly enacted. For example, the John Warner National Defense Authorization Act for Fiscal Year 2007 contained a provision prohibiting the Secretary of Defense and the Secretary of the Navy from entering into an agreement (or authorizing any other person to enter into an agreement) that would either (1) authorize civil aircraft to regularly use an airfield or any other property or (2) convey any real property at the installation for the purpose of permitting the use of the property by civil aircraft, at four Navy and Marine Corps bases in California—Naval Air Station North Island, Marine Corps Air Station Miramar, Marine Corps Air Station Camp Pendleton, and Marine Corps Base Camp Pendleton. Most of the nearly 50 pieces of special legislation included in the National Defense Authorization Acts for Fiscal Years 2005, 2006, and 2007 pertained to land conveyances or exchanges at specific bases or installations. For example, Section 2851 of the National Defense Authorization Act for Fiscal Year 2006 authorized the Secretary of the Navy to convey to the County of San Diego, California, approximately 230 acres along the eastern boundary of Marine Corps Air Station, Miramar, California, for the purpose of removing the property from the boundaries of the installation and permitting the county to preserve the entire property as a public park and recreational area known as the Stowe Trail. The legislation contained several terms and conditions on its use, such as a requirement to provide written notice to Congress related to its use.

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## Land, Buildings, and Facilities on DOD Installations May Appear Underutilized or Not Utilized for Several Reasons

Land, buildings, and facilities on DOD installations may appear underutilized or not utilized but are nonetheless unavailable for other uses for several reasons. Restrictions and constraints on DOD's use of lands under its control include setbacks for antiterrorism protection, mission requirements, necessary safety zones, and environmental considerations. In addition to underutilized land, buildings and facilities on DOD installations may appear underutilized or not utilized because of historical considerations, the need to make room for incoming personnel, or the need for repair or demolition funding.

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## Certain Restrictions and Constraints Often Limit Land Use

Antiterrorism requirements place constraints on the use of land. For example, antiterrorism concerns require standoff distances for inhabited buildings from the controlled perimeter of the base and from other adjacent buildings, parking areas, and trash containers, to minimize the extent of injury or death to occupants in the event of a terrorist incident.

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For example, officials at Marine Corps Base Camp Pendleton, California, told us that unutilized land between existing buildings could not be used to construct new buildings because of antiterrorism constraints and requirements.

Installation mission needs, including the need for open space to fulfill training requirements, also cause restrictions on the use of land. Maneuver training lands and ranges are strictly controlled areas that do not mix well with other land uses. For example, officials at Marine Corps Base Camp Pendleton stated that undeveloped land on the coast is the only space available to the Marines on the West Coast for amphibious assault training. Similarly, at Fort Sam Houston, Texas, a curving strip of land on the western side of the base, approximately 1 mile long and 800 feet wide, serves as a combination parade, drill, and training ground for the units headquartered along its length.

In addition, safety requirements, which necessitate that land be kept clear to perform the installation's mission, can place additional restrictions on the use of land. For instance, installations that have active runways require clear zones and accident potential zones that place constraints on land use because of air operations. These constraints include restrictions on development requiring a minimum separation distance from airfield pavements and height limitations on buildings. Structures that violate these criteria are generally not permitted to be built without a waiver. Randolph Air Force Base, Texas, for example, has clear zones and accident potential zones that extend off both ends of its dual parallel runways into the adjacent communities. These communities, base officials told us, have cooperated with the Air Force to limit development within the accident potential zones. Also, for safety reasons, live fire ranges and munitions storage bunkers require clear zones. Facilities are usually not sited within munitions clear zones unless they are part of the munitions operations.

Various environmental restrictions and constraints, which can affect the location of new facilities and even mission operations, place additional limits on land use. These restrictions and constraints can be caused by the presence of threatened or endangered species; critical habitats, such as seasonal breeding grounds, flood plains, wetlands, and sensitive plant communities; and the existence of hazardous materials. Further, a framework of legal requirements and restrictions must be complied with in DOD's use of its land use planning authorities. For example, DOD guidance requires that all proposed outleasing actions (regardless of grantee or consideration) be subject to the appropriate level of analysis

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required by the National Environmental Policy Act of 1969 and its implementing regulations.<sup>14</sup> Installations use various management tools, such as integrated natural resource management plans, to integrate their military missions and natural resources conservation. The construction of new facilities can damage critical habitats, and mission-related noise and light can affect the ability of some endangered species to successfully breed. For example, Navy officials told us that Naval Air Station North Island, California, an installation of Naval Base Coronado, has a vacant parcel of land that remains undeveloped because it is the nesting area for an endangered bird, the California least tern. As shown in figures 1 and 2, the nesting area borders maintenance facilities and is adjacent to the control tower. A base official told us that an attempt to transplant the nesting area to a more suitable location on the installation could take 5 years, if it is successful at all. Additionally, at Naval Base San Diego, a reclamation project on the largest parcel of open usable land on the base is removing the top 2 feet of soil from the location and disposing of the contaminated soil. Base officials told us that the reclaimed land will house the base transportation office and a Defense Logistics Agency facility.

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<sup>14</sup> 42 U.S.C. § 4321 et seq.

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**Figure 1: North Side of California Least Tern Nesting Area at Naval Air Station North Island, California, Adjacent to Maintenance Facilities**



Source: GAO.

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**Figure 2: South-Facing View of California Least Tern Nesting Area Near Hangars and Other Facilities**



Source: GAO.

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**Buildings and Structures  
May Be Classified as  
Underutilized or Not  
Utilized but Still Be  
Unavailable for Other Uses**

The historical significance of buildings and structures may contribute to buildings being underutilized or not utilized. Installations work with state-designated state historic preservation officers and their representatives to determine the cultural impact that actions such as construction, renovation, or demolition might have on a historic building. Because of the expense of meeting requirements for historic buildings, installation officials indicated that it often costs less to demolish a building and construct a new one than to renovate an existing historic building for reuse with a new or different mission. In fiscal year 2007, DOD reported more than 2,200 buildings as historically significant and more than 7,500 buildings eligible for historic designation. For example, Army officials stated that Fort Sam Houston has over 800 historical buildings, many of which are located in a designated national historic district. One group of these buildings, the Long Barracks, on the periphery of the historic district, consists of 11 buildings that have been largely unutilized for over 15 years. (See fig. 3.) One of these unutilized buildings is a 1,000-foot long, two-story former barracks listed as a contributing element to a national historic district. A base official told us that the prolonged nonutilization is both because of the Long Barracks' inclusion in a national historic district

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and because the associated buildings require extensive, costly renovations.

**Figure 3: Long Barracks at Fort Sam Houston**



Source: GAO.

In some cases, the services reported that the enhanced use leasing and housing privatization authorities have been used to creatively maintain and renovate historic buildings. For example, the old Brooke Army Medical Center at Fort Sam Houston went unutilized after the new Brooke Army Medical Center opened. Army officials stated that an enhanced use lease was negotiated with developers whereby the old Brooke Army Medical Center was renovated into usable office space that is currently fully leased to various Army tenants. Similarly, Air Force officials stated that Section 2878 of Title 10 was used on Randolph Air Force Base to successfully renovate, repair, and maintain 297 housing units designated as contributing elements to the national historic district located on the base.

Incoming and outgoing or reduced missions, units, or personnel can leave portions of buildings and structures temporarily underutilized or not utilized while the transition occurs. A building or facility may require renovation to accommodate incoming or changing missions. For example, officials at Naval Base Point Loma, California, described two buildings currently not utilized. The first, an empty warehouse, is under consideration to house the Navy Band, currently located at Naval Base



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Coronado. If this plan is approved, the warehouse would have to be modified to fit the Navy Band's mission requirements before the relocation could occur. The second unutilized building is a barracks that has been laid up, or mothballed, because of the reduced number of personnel on the base. In addition, at Naval Base San Diego, units have been consolidated into one building so that another building may be renovated prior to the arrival of a new shipping platform at the base. The Navy will be unable to utilize this building during the renovation.

In addition, property may be classified as not utilized when a service is waiting for funding for repairs or demolition.<sup>15</sup> For example, Lackland Air Force Base has a 48-unit visiting officers' quarters and a student dormitory, both of which are unused because of the presence of mold. The Air Force has sought funding both to demolish the visiting officers' quarters and to repair the student dormitory; meanwhile, both of these facilities remain not utilized. In addition, officials at Naval Base San Diego told us that a condemned maintenance repair building is occupied by tenants on the first floor only. The second and third floors have been condemned because of structural conditions and remain unoccupied while the building awaits demolition.

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## The Services Use Similar Policies and Procedures for Responding to Requests for Space at an Installation

The services use similar policies and procedures for responding to requests for space on an installation by other federal agencies and by organizations within DOD. DOD guidance requires the military departments to maintain a program monitoring the use of real property to ensure that all real property holdings under their control are being used to the maximum extent possible consistent with both peacetime and mobilization requirements, and establishes priorities that the military departments must use when assigning available space on their respective installations.<sup>16</sup> DOD guidance also provides that DOD activities should provide requested support to other DOD activities when support can be provided without jeopardizing the mission of the installation.<sup>17</sup> Further, the

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<sup>15</sup>We have previously reported that DOD frequently defers facility maintenance resulting in damaged facilities, shortened facility service lives, and increased future cost for facility restoration. See GAO, *Defense Infrastructure: Continued Management Attention Is Needed to Support Installation Facilities and Operations*, [GAO-08-502](#) (Washington, D.C.: Apr. 24, 2008).

<sup>16</sup>Department of Defense Instruction 4165.70, *Real Property Management*, April 6, 2005.

<sup>17</sup>Department of Defense Instruction 4000.19, *Interservice and Intergovernmental Support*, August 9, 1995.

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secretaries of the military departments have established programs and procedures to manage their real property, which encourage such space sharing. For example, a Navy instruction states that the outleasing of any underutilized real property that is judged necessary for mobilization/surge capacity to both ensure that the property is maintained and generate revenue for the installation should be pursued, and that in land planning, decision makers be presented with alternatives that analyze and develop recommendations for mutual land and facilities use with other DOD entities; federal, state, and local governments; and private entities, where appropriate.<sup>18</sup> An Army regulation states that when real property is underutilized, not used, or not put to optimum use but required to support DOD missions, the garrison commander should consider allowing its interim use by other federal agencies, state and local governments, or the private sector, among other things.<sup>19</sup> Finally, Air Force policy states that Air Force property should be made available for use by others as much as possible and that priority be given to other military departments and federal agencies over private organizations.<sup>20</sup>

Department-specific policies govern the procedures for allowing the use of space by other federal agencies, including both DOD and non-DOD tenants. In general, department officials told us that requests are received at the installation level and must include information on the requester's facilities and land requirements, justification for selecting the proposed installation, and a statement of environmental impact. After a request is received, it is reviewed by the installation. The process for reviewing these requests varies by installation. For example, officials at Camp Pendleton told us that at their installation the request is reviewed by the facilities directorate and any affected base activities. The facilities directorate and affected activities make a presentation to the base commander with their recommendations on the request. Navy Region Southwest has a Regional Space Allocation Committee that reviews all requests for space at Naval Base Point Loma, Naval Base Coronado, and Naval Base San Diego. The committee, with input from the base commanders, meets on an as-needed basis and reviews all requests and then makes recommendations to the Commander, Navy Region Southwest. Final approval authority varies by

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<sup>18</sup>Chief of Naval Operations Instruction 11000.16A, *Command Responsibility for Shore Activity Land and Facilities*, April 28, 1997.

<sup>19</sup>Army Regulation 405-70, *Utilization of Real Property*, May 12, 2006.

<sup>20</sup>Air Force Handbook 32-9007, *Managing Air Force Real Property*, May 1, 1999.

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military department and is specified in department guidance. In accordance with a Secretary of the Navy Instruction,<sup>21</sup> requests for space at Navy installations must be approved by the regional commander and Commander, Navy Installations Command, and requests for space at a Marine Corps installation are approved by either the installation commander/commanding officer and Commandant of the Marine Corps for Marine Corps property, while licenses of 1 year or less may be approved by the regional commander for Navy property or by the commander/commanding officer for Marine Corps property. An Air Force handbook states that the Secretary of the Air Force, under administrative powers, may authorize other federal government agencies, DOD agencies, or military departments to use Air Force real property by permit.<sup>22</sup> An Army regulation states that approval of requests for space by other federal agencies will be made by Headquarters, Department of the Army.<sup>23</sup>

We visited installations from each service and found that each installation we visited had multiple DOD and non-DOD federal tenants. For example, the Environmental Protection Agency, the Architect of the Capitol, and the National Guard use space at Fort Meade in Maryland. Installations in Navy Region Southwest are home to groups from the Coast Guard, the Army, the Air Force, the Department of the Interior, and the Department of Transportation. Finally, Hill Air Force Base, Utah, has several DOD tenants, including the Army Corps of Engineers and the Defense Logistics Agency, as well as non-DOD federal tenants, such as the Federal Aviation Administration and the Forest Service.

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## Agency Comments

We requested comments from DOD, but none were provided.

We are sending copies of this report to the Secretary of Defense and to interested congressional committees. We will make copies available to others upon request. This report will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

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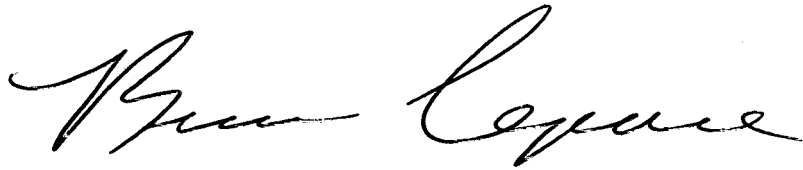
<sup>21</sup>Secretary of the Navy Instruction 11011.47A, *Acquisition, Management, and Disposal of Real Property and Real Property Interests by the Department of the Navy*, February 23, 2006.

<sup>22</sup>Air Force Handbook 32-9007.

<sup>23</sup>Army Regulation 5-10, *Stationing*, March 1, 2001.

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If you or your staff have any questions regarding this report, please contact me at (202) 512-4523 or [leporeb@gao.gov](mailto:leporeb@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

A handwritten signature in black ink, reading "Brian Lepore". The signature is fluid and cursive, with the first name "Brian" and last name "Lepore" clearly distinguishable.

Brian J. Lepore  
Director, Defense Capabilities and Management

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The Honorable John P. Murtha  
Chairman  
The Honorable C.W. Bill Young  
Ranking Member  
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# Appendix I: Scope and Methodology

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To determine how the Department of Defense (DOD) has used its land use planning authorities, we researched and developed a comprehensive list of many of the most relevant authorities in the U.S. Code that could potentially be utilized by the Secretary of Defense, the secretaries of the military departments, or both. After speaking with DOD and service officials about the authorities that they used most often, we provided a written request to each service inquiring which of a select list of authorities they used and what kind and amount of overall compensation they obtained from using these authorities during fiscal years 2005 through 2007. We also asked the services, in writing, about special land use planning legislation available to them during these same fiscal years. Service headquarters' officials provided this information to us. Specifically, we spoke with officials from the Air Force Real Property Agency, the Marine Corps' Land Use and Military Construction Branch, the Office of the Assistant Secretary of the Army for Installations and Environment, and the Office of the Assistant Secretary of the Navy for Installations and Environment. We cross referenced data where appropriate. Specifically, in our count of the number of pieces of special legislation pertaining to land use planning in the National Defense Authorization Acts for Fiscal Years 2005, 2006 and 2007, we included both new and modified authorities available to the Secretary of Defense or secretaries of the military departments pertaining to the utilization of a specific piece of real property, such as the authority to outlease, convey, or transfer that property, as well as requirements that the applicable secretary use a specific piece of real property in a particular manner. We did not include, for example, statements regarding the sense of congress with respect to land planning, or reports required regarding land planning. We analyzed their responses and followed up with questions on any areas of ambiguity. We visited selected installations and interviewed installation officials about their land use activities, discussed both traditional leases and enhanced use leases with them, and obtained documentation on specific leases, their terms, and compensation. We selected 10 installations to visit based on size; proximity to other installations; and past, current, or future planned large real estate projects, such as enhanced use leases or conveyances. Table 4 lists the installations that we visited, by service.

**Table 4: Installations Visited**

| <b>Army</b>          | <b>Air Force</b>               | <b>Navy</b>               | <b>Marine Corps</b> |
|----------------------|--------------------------------|---------------------------|---------------------|
| Fort Meade, MD       | Randolph Air Force Base, TX    | Naval Base San Diego, CA  | Camp Pendleton, CA  |
| Fort Sam Houston, TX | Lackland Air Force Base, TX    | Naval Base Coronado, CA   |                     |
|                      | Los Angeles Air Force Base, CA | Naval Base Point Loma, CA |                     |
|                      | Hill Air Force Base, UT        |                           |                     |

Source: GAO.

We also gathered additional information on each service's enhanced use lease program and analyzed data we obtained on existing leases and on those that are currently under consideration.

To determine the reasons why land, buildings, and facilities on DOD installations may appear underutilized or not utilized, we reviewed DOD and service guidance relevant to land use planning. We interviewed service officials to identify the available uses for land, buildings, and facilities that may be underutilized or not utilized yet still be unavailable for development or other use. We visited selected installations and interviewed installation officials about the restrictions and constraints placed on the utilization of land, buildings, and facilities. We also reviewed documentation from the installations relevant to land use planning and restrictions and constraints on the use of their lands, buildings, and facilities.

To determine the policies and procedures used by the services to respond to requests by other federal agencies for space at a DOD installation, we reviewed relevant DOD and service guidance. We also visited selected installations and interviewed installation officials about how they respond to requests for space by other federal agencies. We reviewed documentation from selected installations on the agreements that they currently have with other federal agencies.

We conducted this performance audit from September 2007 to July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Brian J. Lepore, (202) 512-4523 or leporeb@gao.gov

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## Acknowledgments

In addition to the individual named above, Harold Reich, Assistant Director; William Bates; Scott Behen; Leslie Bharadwaja; Joanne Landesman; Katherine Lenane; Richard Meeks; and Charles Perdue made key contributions to this report.



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