NASA Desk Guide for Enhanced Use Leasing of Real Property

I. Purpose

This EUL Desk Guide has been prepared to provide background and broader discussions related to NASA's authority to enter into Enhanced Use Leases (EULs). This document is not a requirements document. Rather this document supports the requirements found in NPR 8800.15. NPR 8800.15 establishes specific guidance and requirements for all out-grants of NASA real estate including EULs. NPR 8800.15 is the definitive document that the Centers must adhere to in developing EULs. The EUL Desk Guide is intended to increase understanding of EULs and provide guidance in their use as part of the management of NASA's assets.

A flowchart indicating the process for developing and submitting EUL proposal packages to Headquarters is shown in Appendix A.

II. NASA Real Estate Mission Focus

Federal law and policy require NASA to manage its physical assets in an appropriate and business-like manner. Additionally, real estate agreements should relate to and support the NASA mission of research, education, and exploration. Real estate agreements must not hinder the Center's ability to fulfill its mission. This "mission focus" requires that NASA retain only facilities required to support the NASA mission.

In 2008 and 2009, NASA reviewed its leasing program to better understand the relationship of its leases and how they supported NASA's mission. These reviews looked at NASA Enhanced Use Lease demonstration program, as well as NASA's overall leasing practices. The reviews, together with other Agency facilities studies, have led NASA to update its policies for out-leasing NASA facilities and land. Policies for real property now include a requirement to ensure lease agreements are mission focused.

The NASA Facility Program Board determined that the Agency's tenant policy should be guided by "Mission Focus", meaning any asset that will be out-granted to another entity should be less than fully utilized and the asset should also have a future mission requirement. If the asset does not have a known future mission requirement and the asset is also underutilized, the Center should first consider disposal of the facility through demolition or other means. However, this determination allows for exceptions based on legal requirements, executive orders, and other necessities as determined and promulgated in NASA policy documents.

III. Out-Lease of NASA Real Estate

In accordance with the Space Act, section 203, NASA is authorized to out-lease NASA held real property. The Space Act, also authorizes NASA to enter cooperative agreements with other entities, both private and public. NASA can commit to collaborative endeavors that may include the use of NASA facilities and land by the other entities during the terms of the agreement.

Public-Private Ventures (PPV) are out-grants/out-leases of NASA real estate to private entities for the use by the private entity for a specific term and for consideration by the entity to NASA. By entering into a partnership with a private-sector entity, a currently underutilized real property asset may be leveraged into a more productive asset, maximizing asset utilization and efficiency.

In these agreements NASA seldom commits funds for capital construction. NASA looks to the other entity to provide capital for construction either by self-financing or by borrowing from a third party lender. NASA's partners may deploy their capital to construct facilities on NASA property through facility and land "use-agreements" associated with the PPV. These use-agreements often entail long-term use of NASA-controlled land and other physical assets. These public-private ventures include Enhanced Use Lease (EUL) agreements.

IV. What is Enhanced Use Leasing?

The Enhanced Use Leasing (EUL) authority allows federal agencies to enter into real estate agreements that grant, by lease to others, the use of underutilized real property including land, buildings and other structures. EUL allows the agency to retain and use the proceeds derived from the lease.

There are benefits to the Agency in the appropriate use of the EUL authority. EULs benefits for NASA include establishing programmatic relationships and joint missions with external partners, as well as the potential for a revenue stream to support NASA facilities.

V. NASA Enhanced Use Lease Authority

In 2003, Congress enacted Public Law 108-7, which granted authority to the Administrator of NASA to enter into a demonstration project for Enhanced-Use Leases on property at two NASA Centers. Ames Research Center in California and the Kennedy Space Center in Florida were selected by NASA as the two demonstration Centers. In 2007 and 2008 Congress amended NASA's EUL authority. The amendments in 2007 allowed NASA to enter into enhanced use leases at all Centers. The amendments in 2008 clarified how the funds should be expended and established percentages of the revenue that were to remain at the Centers versus being placed in an Agency capital asset account. The current NASA EUL Authority may be found in Appendix B. (With modifications, required by The Consolidated Appropriations Act, 2010)

NASA sought the extension of its EUL authority so that the successes of the two Centers participating in the initial demonstration project could be enjoyed by the other NASA Centers. The initial demonstration project and the later expansion of the EUL authority establishes NASA's ability to pursue an asset management program that allowed NASA's Centers to out-lease its underutilized real property assets if such out-leases complied with the intent of the mission-focus policy. Centers could manage the underutilized real estate assets with future mission requirements as resources for potential revenue, as well as a means to attract outside interest and investment into areas of programmatic interest.

Under the current authority, all NASA Centers may enter EUL agreements. The authority states:

- Agreements may only be for cash consideration, at fair market value determined by the Administrator,
  - No in-kind consideration is allowed for leases under the expanded authority; leases executed before December 31, 2008 may continue to include in-kind consideration.

- The amounts of cash consideration received may be used to cover the full costs to NASA in connection with the lease;

The Consolidated Appropriations Act, 2010, changed the Agency's enhanced use lease authority. While the Consolidated Appropriations Act, 2010, did not provide specific language amending 42 U.S.C. 2459j, relevant language of the Act must be incorporated into the existing program. Based on the above requirements we have incorporated the following in the EUL Desk Guide:

- Proceeds from EULs shall be deposited into the CONSTRUCTION AND ENVIRONMENTAL COMPLIANCE AND REMEDIATION (CECR) account and shall be available for a period of 5 years for projects subject to approval and provided in annual appropriations Acts;
- Annual budget requests shall include an annual estimate of gross receipts and collections and proposed use of all funds collected under EUL authority; and
- Proceeds from EUL funds from the CECR for FY 2010 obligation cannot exceed $6,226,000.

- Of any amounts of cash consideration received that are not utilized to cover the full costs of the lease to NASA;
- 35 percent of funds collected under EUL authority in excess of the full costs of the EUL shall be deposited in the CECR Account and shall be available for maintenance, capital revitalization, and improvements of the real property assets and related personal property under the jurisdiction of the Administrator, and shall remain available for 5 years to the extent provided in annual appropriations Acts; and
- the remaining 65 percent shall be deposited in the CECR Account and shall be available to the respective center or facility of the Administration engaged in the

lease of non-excess real property, and shall remain available for 5 years to the extent provided in annual appropriations Acts for maintenance, capital revitalization, and improvements of the real property assets and related personal property at the respective center or facility subject to the concurrence of the Administrator.

- Funds may be used on any real property at the Centers including collateral equipment, and does not have to be spent on facilities or infrastructure that are leased out under EUL; and

- Funds may not be utilized for daily operations costs.

NASA policy allows the use of EUL to private and local/state government tenants. However, EUL is not an appropriate vehicle for federal tenants. Additionally, even though NASA's civil service account managers oversee day-to-day management of the existing leases, NASA has elected not to charge any of its civil service management activities to the EUL income. Civil Service management activities will remain as part of the Center Management and Operations costs.

Further, under the current EUL authority the Center shall certify that out-lease of the property will not have a negative impact on NASA's mission. Additionally, excess property may not be leased to others under the EUL. Excess property is turned over to the General Services Administration (GSA) for disposal. Information on the process for excessing property may be found in NPR 8800.15.

VI. Development of EUL Leases

NASA Centers are responsible for developing lease plans that incorporate a mission-focus. Each lease will be unique but all leases must support the NASA mission. Out-grants of NASA assets must directly or in-directly support the NASA missions to pioneer the future in space exploration, scientific discovery, and aeronautics research. EUL leases shall only be used for out-lease of non-excess property that has a future mission requirement but is currently underutilized by the Center.

Since each Center is in a unique location and is subject to local conditions, each Center must develop a local market analysis to understand its potential opportunities commiserate with the use of the NASA EUL authority that it is considering.

Additionally each Center must develop information and reports regarding the Center's priorities, market, cost structure and applicable state and local law. The Center should develop a team for the planning, development and management of its EULs. The team lead should have overall responsibility for Center EUL actions. The team should include representatives from business/account managers, OCFO office, legal office, safety and environmental, master planning/land use, Center Operations (including security), and facilities management and construction/approval. The makeup of the team may vary from Center to Center but the function of the team is to ensure that use of EUL fits within the mission and programs of the Center, and aligns with the Center's management structure and needs.

The Center shall inform the Headquarters Facilities Engineering and Real Property Division of the development of new EUL leases at the earliest opportunity. Early developmental discussions on potential EUL agreements with FERP, will ensure out-grants relate to NASA's mission and will allow FERP to provide recommendations and assistance in developing the EUL, or other out-grant.

The Center must ensure that consideration under the EUL is not less than the fair market value of the property. The fair market value should be developed through an appraisal using a certified appraiser, the US Army Corps of Engineers, or other appropriate means that can substantiate the fair market value of the rent determined.

If the EUL is a significant real estate agreement the Center must follow the established guidelines for submitting a preliminary abstract of the EUL to OPII. A significant real estate agreement is one that grants, by lease or other instrument, either of the following:

a. Use or control of NASA property for a period of greater than 5 years

b. Exclusive use of any facility designated as a major facility for a period of greater than 2 years.

The Center must ensure that each EUL lease complies with 14CFR1204.504. The CFR requires:

- the interest to be granted is not required for a NASA program;
- the lease will have no negative impact to NASA's mission;
- the grantee's exercise of rights granted will not interfere with NASA operations; and
- fair value is received by NASA on behalf of the Government as consideration.

The Center must include language in the lease that protects the interest of the government. This includes adequate termination language. Standard language for termination included in 14CFR1204.504 is restrictive and may be modified if a waiver is submitted to and approved by the Director, Facilities Engineering and Real Property Division (FERP).

VII. Fairness

NASA's intends to ensure fairness to all parties interested in entering EUL agreements for the use of NASA facilities or land. NASA also intends to ensure best value to the government for the allowance of the use of NASA's facilities and land. Both of these goals can be met through open competition for use of NASA land and facilities.

Centers shall ensure that all EUL opportunities, the out-lease of land or facilities, are made available to the widest possible competitive market. This may be accomplished through newspaper announcements or by posting information on the Center's e-commerce website or on FedBizOpps (www.fbo.gov). Alternatively this may be accomplished through coordination with the Air Force, Navy, or Army Corps of Engineers website for EUL opportunities.

A Center may seek a waiver from the open competition requirement. The request for a waiver shall be submitted to FERP at the same time the abstract of the lease is submitted to OPII for review.

- The waiver shall explain why competition for the specific EUL is not appropriate.
- The waiver shall explain how best value will be assured for the government and provide relevant background material.

If a Center receives and wants to enter an unsolicited proposal to enter an EUL, the Center shall submit a justification for other than full and open competition along with the EUL package when that package is submitted to FERP for approval.

VIII. Business Case

The Center is to develop a business case to support their concept for out-lease of NASA real property under EUL. Since the business case must precede the EUL, some development of the business case may require projections of what the Center's plans are for using the NASA EUL authority. A business case shall be developed by the Center when it plans to use NASA's EUL authority for real property under its control that:

1. Allows use or control of NASA property for a period of greater than 5 years,
2. The term of the lease/s exceeds 5 years including any options to extend or renew

Even if an EUL does not meet the above two requirements, Center must develop a life-cycle cost analysis for the EUL.

The business case is a tool for planning and decision-making. It is an analysis that links estimates of costs and benefits with stated requirements and expectations for projected outcomes. The overriding purpose of a business case is to make transparent to the various decision-making and operating groups the objectives to be met by an out-grant/out-lease, the underlying assumptions and alternatives, and the attendant costs and potential consequences of alternative actions.

The business case should provide an in-depth description of the project (including requirements, risks, mitigation and benefits) as well as the financial justification for the investment decision. To effectively provide this justification it is critical that the process, scope, assumptions and any biases of the business case developers be clearly understood and communicated. A business case analysis should be accurate, clear, and unbiased.

Accurate – An effective business case should reflect the best estimates of costs and future benefits for each analyzed alternative. All meaningful costs and all meaningful benefits should be included and validated against the best available data sources. Uncertainty and variances in estimated values should be consistently captured and reported. Intangible factors should be presented and analyzed consistently.

Clarity – Business cases should be easily understood by all project stakeholders. The project approach, the analysis of alternatives and the recommended decisions should all be clearly presented.

Unbiased – All meaningful alternatives should be presented and analyzed in a consistent manner. Where there are political considerations or where there exists a greater intrinsic benefit with a specific approach, these considerations or benefits should be made clear.

The business case is to be prepared and submitted to Headquarters Facilities Engineering and Real Property Division for review and concurrence before the EUL lease is developed.

The business case should support the lease as the "best economic value to the government" as recommended by the Government Accountability Office in their review of the NASA EUL program. The business case is to compare the Center's concept for use of NASA's EUL authority whether for a single lease or for multiple leases to other options including a status quo option of leaving the asset in its existing state. The Center is to ensure that the costs in personnel resources to develop, enter into and manage the lease are included in the business case. Also include rents, common service charges, and other costs charged to the tenant.

The business case is to include a life-cycle cost analysis to compare the use of Center's concept to other methods for managing the property. The comparison must include (1) status quo as an underutilized asset and (2) upgrade of the facility by modification or repair. The comparison should also address placing the facility in an in-active status including, standby/mothball the facility, abandon the facility, and demolition of the facility. Operations and maintenance costs should be included in all options as appropriate. Comparison of options should be made using ECONPACK as described in the NASA Business Case Guide for Facilities Projects. The guide is available at the FERP website, http://www.hq.nasa.gov/office/codej/codejx/jxstaff_planning.html.

If the entire facility or a portion of the facility is to be leased to multiple tenants a business case does not have to be developed for each tenant. A business case can be prepared for the entire facility or building or for that portion of the facility or building that will be available for lease.

To help manage the number of business cases, business cases for EUL leases may be tiered. If the EUL is part of a larger project for development of facilities and land at the Center, and the larger development is covered by an encompassing business case, a separate business case does not need to be developed for each EUL inside the larger project. This would be the case for a large research park. Any large project like a research park or large area of land for out-lease will require a business case and will require the appropriate level of environmental analysis and approvals.

If the Center is not planning on a large research park, but is planning on entering into several EUL leases, the Center may develop a business case that reflects all of their plans for EUL into the single document. This Center-wide EUL business case should incorporate all known facilities that the Center is considering putting under EUL leases. By having a comprehensive EUL business case the Center can present their plan for EUL to Headquarters as a package and not have to submit business cases for individual leases for review. EUL leases not covered by a Center-wide or large development business case will require a separate business case.

Terms of the lease are to be in compliance with federal and state law and in conformance with good business standards. Due to the capital contribution by the tenant, terms should be sufficient for the tenant to appropriately realize a fair return on their investment. The term of the lease will be a significant factor in the life-cycle cost analysis of the PPV. If the term of the lease is greater than 50 years, the question of the need to retain the asset arises. If a term of 50 years or more is envisioned by the Center, the retention of the asset must be discussed with FERP.

The Center's EUL business case should also discuss how the EUL lease or leases fits into the concept for overall Center development incorporated in the Center Master Plan. The description of the proposed EUL shall also address the disposition of personal property related to the real property being considered, the ownership of any property that will be constructed by the tenant, and the disposition primarily through demolition of property constructed by the tenant.

IX. Consideration

Under NASA's initial EUL authority, only Ames Research Center and Kennedy Space Center were allowed to receive consideration other than cash. This in-kind consideration included maintenance, construction, modification or improvement of facilities on NASA real property and provision of services to NASA. The ability to include in-kind consideration as part of a new EUL lease ended on December 31, 2008. EULs entered after December 31, 2008 shall be cash only .

The Center shall ensure that consideration under the EUL is not less than the fair market value of the property. The fair market value shall be developed through an appraisal using a certified appraiser, the US Army Corps of Engineers, or other appropriate means that can substantiate the fair market value of the rent determined.

NASA has determined that in some instances it may be appropriate to delay payment of rent by the tenant. This aspect of delayed payment may be considered by the Center but is subject to approval by the Headquarters Facilities Engineering and Real Property Division. This allows delayed payment by the tenant due to their up-front costs for developing or improving NASA real property. Payments over the term of the lease must fulfill the fair market value requirement.

The Centers EUL proposal submitted to Headquarter shall include the justification for delay of payment and a spreadsheet that shows how and when NASA will receive full fair market value for the lease. Delayed payments should not be "ballooned" at the end of the lease. Provision for delayed payments in an EUL lease must include an index adjusted for inflation so that delayed payments carry forward the full fair market value for all years delayed.

X. Use of Cash Proceeds

The use of cash proceeds from all EUL leases, no matter whether the lease was entered under the initial authority (ARC and KSC) or under the expanded authority for all Centers, will follow the requirements of the expanded authority for all Centers.

NASA's EUL authority requires cash in consideration for an EUL lease. NASA may retain these cash proceeds. The revenues received may be used (1) to cover the full costs to the Center in connection with the lease, and (2) available for maintenance, capital revitalization, and improvements of the real property assets and related personal property. This includes the revitalization, repair and replacement of collateral equipment as defined in NPR 9250.1, "Property, Plant, and Equipment and Operating Materials and Supplies".

EUL funds may be utilized to cover full costs of lease management and administration charges which may include, but not be limited to, personnel (but not civil service) and other expenses incurred by the Center for administrative, legal, and other services for EUL support activities (e.g., contract support, contract management, financial management). These contractor lease management and administration charges are a recurring charge and a part of the full cost of the lease. Full costs to NASA in connection with the lease are fully defined in NPR 9090.1. Briefly, these costs include those that reflect the indirect costs, general use of facilities services (e.g., shared charge for security services, procurement activities), and building maintenance (including both routine and major building repairs. Additionally the costs may include personnel cost (but not civil service) and other expenses incurred by the Center for administrative, legal, and other services for lease support activities. The costs to NASA may also include costs for site preparation specific to the leased property such as basic upgrades so that a property can be considered viable for leasing and building modifications or customizations in order to accommodate EUL leases. However these site preparation costs are to be billed to the tenant in addition to regular recurring lease payments.

Even though NASA's civil service account managers oversee day-to-day management of the existing leases, NASA has elected not to charge any of its civil service management activities to the EUL income, and to leave them as part of the Center Management and Operations costs.

NASA Headquarters reviews all EUL revenue and cost projections as part of the Agency budget process. This review consists of EUL revenue projections and proposed investment plans for EUL revenue. This information is used in the development of the budget that is submitted to Congress. If specific repair projects are not known at the time of the budget submission, NASA submits details for the specific projects as part of the initial Operating Plan.

Under NASA's EUL authority, the net proceeds are deposited in a capital asset account. Funds are then distributed from that account. Under the initial demonstration program for EUL, these accounts were locally held at the two Centers that had EUL authority. Under the revised EUL authority, NASA deposits the net proceeds into an Agency capital asset account managed by Headquarters.

Sixty-five percent of the revenue will then be distributed back to the Center managing the EUL, to be used to fund the approved facilities project list. This facilities project list will be submitted to Congress, as part of the budget development process discussed above, which will provide visibility into these projects as part of the normal NASA budget process. Projects will be prioritized and approved based on Agency-approved discriminating factors, which ensure support of NASA's primary missions, reduce NASA operating costs supporting those missions, and ensure a safe, reliable and adequate environment for NASA workers. Thirty-five percent of the revenue will be distributed to NASA Centers based upon projects approved and prioritized at the discretion of the Administrator. Preference will be given to construction and repair projects that reduce utility costs, increase NASA's use of renewable and alternative energy sources, and projects that facilitate reduction of NASA's future operating costs. This list of projects will also be submitted to Congress as described above.

XI. Lease Submssions to Headquarters

All EUL agreements, regardless of the scope, term in years, or amount of revenue, are to be submitted to Headquarters Facilities Engineering and Real Property Division (FERP) for review and approval before the Center may execute the lease. In 2005, after NASA processes were established, NASA Headquarters granted Kennedy Space Center and Ames Research Center authority to enter some EULs without prior review by Headquarters, that authority has been rescinded.

A. Initial Reviews

Centers shall forward preliminary abstracts that include key information of the proposed activities to Office of Program and Institutional Integration (OPII) in accordance with OPII requirements. The preliminary abstract process is implemented in NASA Policy Directive (NPD) 1050.1I, "Authority to Enter into Space Act Agreements" and is discussed in detail in NASA Implementing Instruction (NAII) 1050-1, "Space Act Agreements Guide."

B. Final Reviews

All proposed EULs must be submitted to the Facilities Engineering and Real Property Division (FERP) with the supporting information defined below for review and approval before execution. EULs will be submitted through NASA's Space Act Agreement Maker

(SAAM) system e-router tool. SAAM will automate the routing of the EUL through HQ. FERP will coordinate the review of the lease and aid in questions or discussions.

Centers should only submit leases for review that have been reviewed and concurred on by the Center's environmental office, safety office, security office, Center Office of the Chief Financial Officer, Center Chief Counsel's Office, and facilities office, including master planning and real estate. The business case for the lease should have been reviewed and concurred on by the same Center offices.

Leases submitted to HQ should include the following information:

1. Narrative. Centers should submit final EUL agreements by letter, signed by the Center Director or their designated representative. The letter may include a narrative of Summary, Security Analysis, Environmental Analysis, and Certification, or these may be included as an attachment to the letter or reference to the lease. If they are included as attachment, the certification described below should be included as part of the signed letter.

    a. Summary. Provide a summary of the EUL lease. The summary is to clearly describe the proposed conveyance, and describe how the proposed activity supports NASA's mission in both qualitative and quantitative terms. Also provide detailed facility plans with maps as appropriate. The summary is to state how the proposed lease fits into the concepts of the Center Master Plan. If the Center submitted an abstract of the agreement to OPII for review and concurrence, a copy of the abstract with OPII concurrence should be submitted as part of the lease summary.

    b. Security analysis. Describe the legislative jurisdiction of the subject property and discuss the law enforcement responsibilities required based on that jurisdiction. Describe how and what security services will be provided to or by the tenants. Determine if the tenants will possess any material that may affect security requirements; e.g., national security classified information, weapons or explosive materials, drugs, cash, etc.

    c. Environmental Analysis. Document Environmental Baseline Survey and provide completion certification for the National Environmental Policy Act process. Copies of these documents are to be held by the Center. Document compliance with the provisions of the Greening the Government Executive Orders (e.g., recycling, waste reduction, energy efficiency, water conservation, sustainable design, pollution prevention, etc.) where applicable.

    d. Certification. Centers are to submit a certification that out-leasing the stated property will not have a negative impact on NASA's mission. The Center Director or their designee must sign the certification.

2. Lease. Provide a final draft of the unsigned lease as agreed to by all parties. We recommended that Centers follow the general format of EUL leases developed by the Ames Research Center. Centers should also review and utilize as appropriate the style and clauses of the Ames leases.

3. Business case. The business case for the EUL shall have been submitted to and concurred on by Headquarters Facilities Engineering and Real Property Division before the final proposed lease is submitted for review and approval.

Headquarters' review of the EULs submitted by the Centers is to ensure that NASA's EUL authority is being used appropriately and effectively. These reviews allow the Office of the General Counsel, the Environmental Management Division, and Safety and Security Offices to provide additional guidance and direction. These reviews ensure that the leases are properly developed and coordinated, and that the government's interest and property are protected.

The Facilities Engineering and Real Property Division will coordinate the review of the submitted lease and submission package with the following Headquarters organizations:

1. Office of General Counsel (OGC) will review the lease for legal sufficiency.

2. Environmental Management Division (EMD) will review the lease to ensure environmental regulations are followed with respect to the tenants operations and potential liability. EMD's review will ensure environmental requirements are met as well as ensuring lease specifies environmental hazards present on the site.

3. Safety and Mission Assurance (SMA) will ensure that the lease conforms to NASA's policies for the safety of both NASA and tenant personnel as well as to ensure adherence in the lease to Agency-wide safety, reliability, maintainability, and quality assurance policies and procedures.

4. The following organizations will be requested to review certain leases of significant magnitude or potential outside interest.

    a. Office of Program Analysis and Evaluation (OPA&E) will provide objective, transparent, and multidisciplinary analysis of significant leases that may have noteworthy external interest in order to inform strategic decision-making relevant to the lease.

    b. Office of Program and Institutional Integration (OPII) will ensure the actions of significant leases that may have noteworthy external interest have been integrated across programmatic and/or institutional lines, and will provide an independent, "non-partisan" review for selected cross-cutting initiatives.

5. Facilities Engineering and Real Property Division will review to ensure:

- conformance with the Center business case,
- alignment with Center master plan,
- conformance to 14CFR1204.504, and
- necessary clauses are incorporated in the agreements.

XII. Tracking Leases and Consideration

The NASA Real Property Inventory (RPI) database will be used to record all approved and signed EUL leases. Centers will enter EUL leases into the RPI as “Enhanced Use Lease” under the “Type of Instrument” menu. Non-EUL leases will use the term “Lease” for “Type of Instrument”. Each lease whether for land, a building, for other structure or infrastructure, or part of a building will be entered as a separate lease. The Center shall enter this information for all EUL leases regardless of the size or the term.

The information in the RPI will be used for internal reporting, for annual reporting to GAO as part of the Federal Real Property Profile, and for the annual EUL report to Congress.

The Center shall enter the document number or name of the lease, the term of the lease in years or months, the effective date of the lease and the expiration date of the lease. Electronic copies of the final EUL and supporting documents may be attached to the facility record in the RPI.

The SAAM system is the official repository for approved SAA. The RPI has the capability to hold documents as attachments to the individual property record cards and may be used as storage for SAA and leases. Although all EULs are to be entered in the RPI as out-grant’s there is no requirement to attached the final version of the EUL to the RPI.

Financial data regarding the EUL leases will be maintained in the agency’s financial management system and will not need to be recorded in the RPI. Financial recording and accounting of proceeds from EUL leases will follow NPR 9090.1.

XIII. Center Reports for EUL

As part of the yearly Planning, Programming, Budgeting and Execution process, Centers shall provide FERP with their projections of EUL revenue and a proposed plan for spending the EUL revenue. Guidance for this reporting will be established by FERP annually. Projected revenue shall include cash rent and service pool payments, and for KSC and ARC leases entered under the demonstration authority, the anticipated value of in-kind consideration. Realistic forecasting of anticipated revenues and expenditures is critical in submission of the NASA budget and reports to Congress.

XIV. Measures of Effectiveness of EUL Program

The Headquarters Facilities Engineering and Real Property Division will measure the effectiveness of the EUL program using the information reported by the Centers as well as the information in the NASA Real Property Inventory (RPI). These measures will include:

- The amount of revenue received.
- The number of underutilized facilities leased under EUL.
- The amount of revenue spent on facilities repair as a percent of the funds spent on repair of the facilities at the Center.

XV. NASA Annual EUL Report to Congress

NASA submits an annual report to Congress each year on the status and activities of NASA's EUL program. The Headquarters Facilities Engineering and Real Property Division develops the annual report based on information provided by the Centers and data taken from the Agency's financial management system. The report includes a full list of all active leases with the amount of proceeds received from each lease in the preceding fiscal year. The report also provides information on proposed leases for the coming years.

The annual report will use information taken from the Agency's financial management system including:

- List of Active Leases,
- Cash consideration received in preceding year,
  Value of In-kind consideration received in preceding year (limited to KSC and ARC EULs entered prior to December 31, 2008),
- Expenditures to cover the full costs to NASA in connection with the lease, and
- Expenditures from the EUL capital account for maintenance, capital revitalization, and improvements of the real property assets and related personal property including collateral equipment.

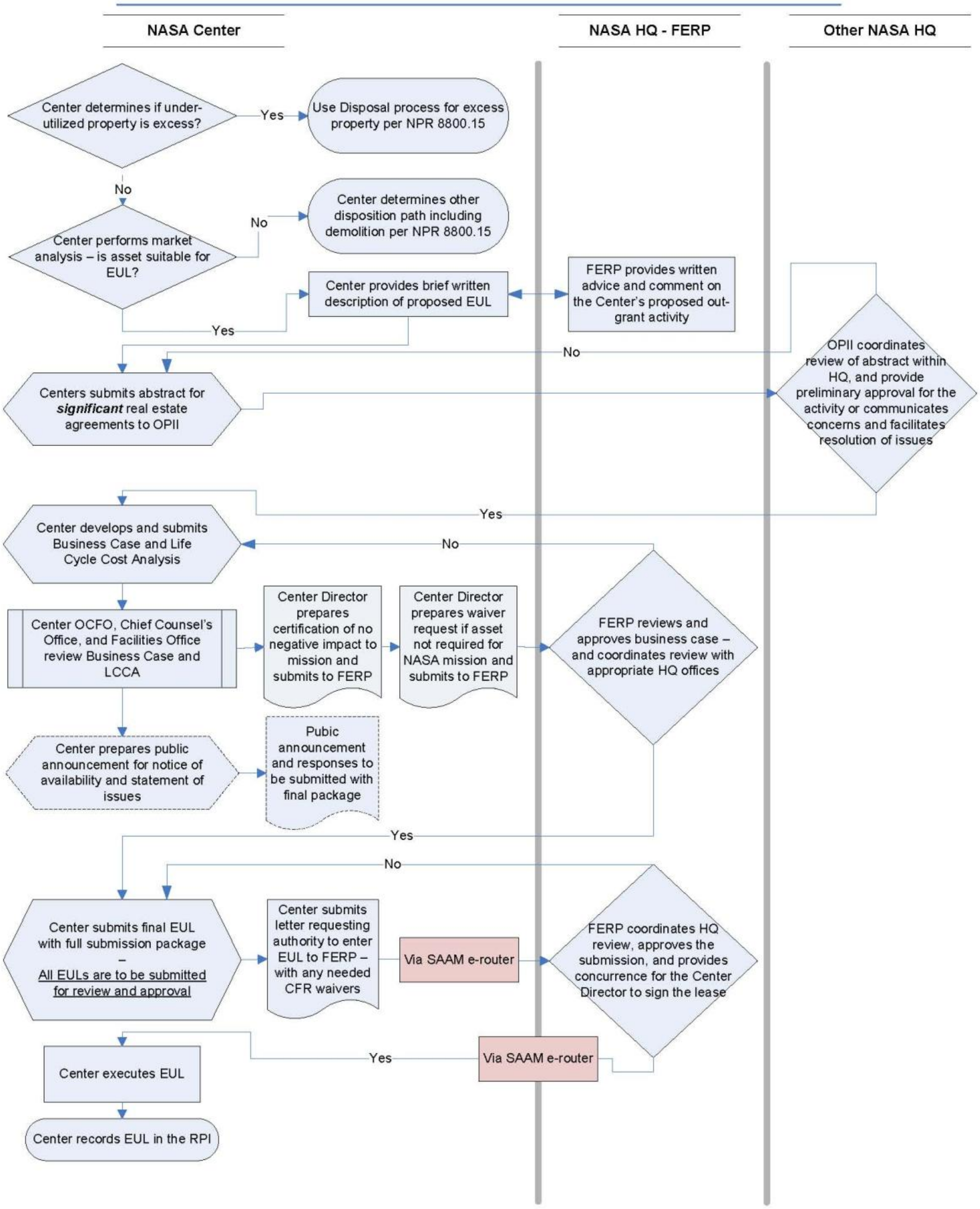
Additionally the report will include discussion on the NASA's EUL program including:

- Discussion of proposed leases for coming years, and
- Measure of the effectiveness of the EUL program.

Long-term leases with other Federal agencies will no longer be combined in the report of EUL income, as NASA only charges costs to Federal agencies; any services these agencies procure through NASA are funded through normal authorities.

Appendix A

NASA Enhanced Use Leasing



Appendix B

CURRENT EUL LAW as amended by PL 110-161, and FY 08 Auth Act w/conforming amendments

§ 2459j. Lease of non-excess property

(a) In general. The Administrator may enter into a lease under this section with any person or entity (including another department or agency of the Federal Government or an entity of a State or local government) with regard to any non-excess real property and related personal property under the jurisdiction of the Administrator.

(b) Consideration.
(1) A person or entity entering into a lease under this section shall provide cash consideration for the lease at fair market value as determined by the administrator.
(2) (A) The Administrator may utilize amounts of cash consideration received under this subsection for a lease entered into under this section to cover the full costs to NASA in connection with the lease. These funds shall remain available until expended.
(B) Of any amounts of cash consideration received under this subsection that are not utilized in accordance with subparagraph (A)--
(i) 35 percent shall be deposited in a capital asset account to be established by the Administrator, shall be available for maintenance, capital revitalization, and improvements of the real property assets and related personal property under the jurisdiction of the Administrator, and shall remain available until expended; and
(ii) the remaining 65 percent shall be available to the respective center or facility of the Administration engaged in the lease of nonexcess real property, and shall remain available until expended for maintenance, capital revitalization, and improvements of the real property assets and related personal property at the respective center or facility subject to the concurrence of the Administrator.
(C) Amounts utilized under subparagraph (B) may not be utilized for daily operational costs.

(c) Additional terms and conditions. The Administrator may require such terms and conditions in connection with a lease under this section, as the Administrator considers appropriate to protect the interests of the United States.

(d) Relationship to other lease authority. The authority under this section to lease property of NASA is in addition to any other authority to lease property of NASA under law.

(e) Lease restrictions. (1) NASA is not authorized to lease back property under this section during the term of the out-lease or enter into other contracts with the lessee respecting the property. (2) NASA is not authorized to enter into an out-lease under this section unless the Administrator certifies that such out-lease will not have a negative impact on NASA’s mission.

(f) Reporting Requirements. The Administrator shall submit an annual report by January 31st of each year. Such report shall include the following:
(1) Information that identifies and quantifies the value of the arrangements and expenditures of revenues received under this section.
(2) The availability and use of funds received under this section for the Agency's operating plan.

(g) Sunset- The authority to enter into leases under this section shall expire on the date that is ten years after the date of the enactment of the Commerce, Justice, Science, and Related Agencies Appropriations Act of 2008. The expiration under this subsection of authority to enter into leases under this section shall not affect the validity or term of leases or NASA's retention of proceeds from leases entered into under this section before the date of the expiration of such authority.

NOTE:
The Consolidated Appropriations Act, 2010, changed the Agency’s enhanced use lease authority with the following modifications:

- *Proceeds from EULs shall be deposited into the CONSTRUCTION AND ENVIRONMENTAL COMPLIANCE AND REMEDIATION (CECR) account and shall be available for a period of 5 years for projects subject to approval and provided in annual appropriations Acts;*
- *Annual budget requests shall include an annual estimate of gross receipts and collections and proposed use of all funds collected under EUL authority; and*
- *Proceeds from EUL funds from the CECR for FY 2010 obligation cannot exceed $6,226,000.*