



RCI, PAL and Army Housing Training

Real Estate Process / Actions

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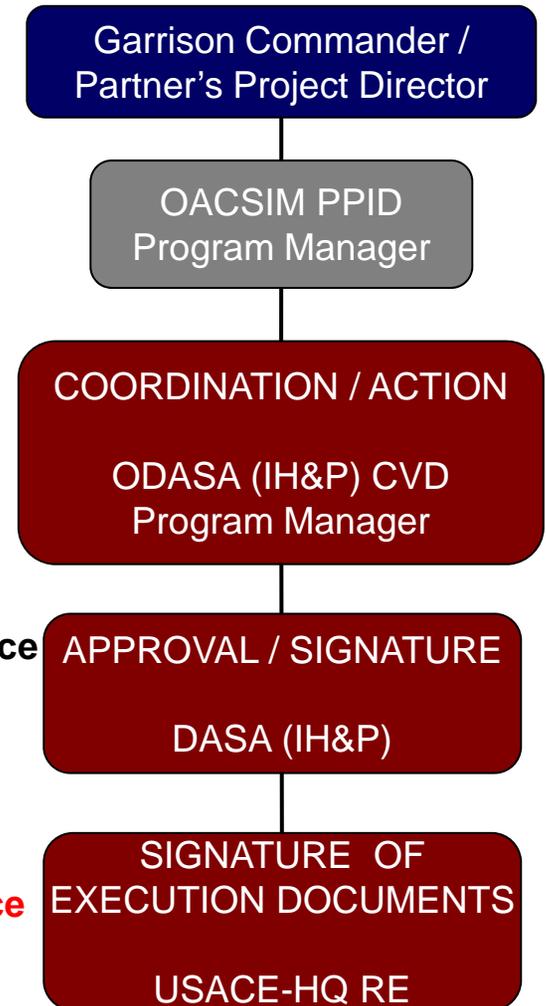
Agenda

- **RCI Major Decision Process**
- **PPID RE Specialist**
- **Example #1: Additional Leased Land**
- **Example #2: Return Land to Army**
- **Timelines for Due Diligence and Real Estate Packages**
- **Support Leases – New DASA (IH&P) Policy**
- **Real Estate Updates**
- **Ground Lease Compliance / Site Visits**
- **PAL Legal Structure Dictates Army Processes and Roles**
- **PAL Lease Administration Approach**
- **Real Estate Rights and Responsibilities**
- **Challenges**



RCI Major Decision Process for MDs requiring Real Estate Actions

- ODASA (IH&P) Capital Ventures Directorate (CVD) manages the review, coordination and approval of all Requests for Approval of Major Decisions (MDs)
- Garrison Commander (GC) and Partner send signed MD request (in Concept Paper format) through PPID PM to CVD PM
- CVD PM
 1. Reviews MD request and provides GREEN LIGHT to proceed
 2. Sends memo (“Green Light Letter”) to GC and Partner (CC: USACE-Norfolk)
 - Outlines milestones and execution timeline
 - Designates if Army or project pays for real estate due diligence and execution of Supplement to Ground Lease (\$\$\$\$)
 3. Coordinates MD concept refinement with Partner and Installation
 4. Tasks PPID RE to initiate RE due diligence (if required)
 - **PPID RE will obtain DASA (IH&P) approval of RE due diligence**
 5. Tasks USACE-Norfolk to draft RE instruments to execute
 - **USACE-Norfolk RE will obtain USACE-HQ execution of RE instruments**
 6. Provides copies of executed RE documents to PPID PM





PPID RE Specialist

- **Coordinates with installation, IMCOM real estate and USACE representatives to complete due diligence**
- **Prepares Report of Availability (ROA) amendment package for DASA (IH&P) approval (when adding land to Project footprint)**
- **Prepares real estate due diligence package for DASA (IH&P) approval (when returning land to Army)**
- **Distributes DASA (IH&P) approval to:**
 - CVD PM
 - PPID PM
 - USACE-Norfolk
 - Installation project team
 - IMCOM



Example #1: Additional Leased Land

- **GC and Partner representative forward a MD Request to PPID PM for change to Ground Lease). PPID PM endorses MD and forwards to CVD PM**
- **CVD PM**
 - Reviews request and coordinates with Partner and Installation Project Team
 - Provides Green Light Letter to GC and Partner that outlines milestones, execution, and identifies who funds cost of real estate due diligence and USACE-Norfolk tasks (Supplement to Ground Lease). It is Partner's responsibility to coordinate with Project lenders. Copies of Green Light Letter and Partner-coordinated documents are provided to USACE-Norfolk
 - Tasks the PPID RE to complete due diligence in coordination with USACE-Norfolk
- **PPID RE**
 - Coordinates with installation and IMCOM RE representatives to complete ROA amendment
 - Submits ROA amendment to DASA (IH&P) for approval and distributes DOA
- **CVD PM**
 - Prepares letters for Congressional Notification of additional leased land for DASA (IH&P) signature. Notification required for RE actions affecting greater than 1 acre
 - Once Congressional Notification period has elapsed (15 days for electronic notification), sends memo to GC and Partner with attached DASA (IH&P) signed DOA and approved MD to supplement Ground Lease
 - Notifies USACE-Norfolk to draft Supplement to Ground Lease
 - Coordinates with USACE, Partner and Lenders to finalize Supplement to Ground Lease and other RE instruments that are signed by USACE-HQ on behalf of Government



Example #2: Return Land/Buildings to Army* (New Requirement)

- **GC and Partner representative forward a MD Request to PPID PM for a change to Ground Lease. PPID PM endorses MD and forwards to CVD-PM**
- **CVD PM**
 - Reviews request and coordinates with Partner and Installation Project Team
 - Provides Green Light Letter to GC and Partner that outlines milestones, execution, and identifies who funds cost of real estate due diligence and USACE-Norfolk tasks (Supplement to Ground Lease). It is Partner's (Project's) cost and responsibility to obtain release from mortgage collateral. Copies of Green Light Letter and Partner-coordinated documents are provided to USACE-Norfolk
 - Tasks the PPID RE to complete due diligence in coordination with USACE-Norfolk
- **PPID RE**
 - Coordinates with installation and IMCOM RE representatives to prepare RE due diligence package
 - Submits to DASA (IH&P) for approval
 - Distributes DASA (IH&P) approval to CVD, PPID PMs and USACE-Norfolk
- **CVD PM**
 - Send memo to GC and Partner with attached DASA (IH&P) approved MD to supplement Ground Lease
 - Notifies USACE-Norfolk to draft Supplement to Ground Lease
 - Coordinates with USACE, Partner and Lenders to finalize Supplement to Ground Lease and other RE instruments that are signed by USACE-HQ on behalf of Government

* Return of Land to Army language NOT in original Ground Lease; NEW REQUIREMENT



Timelines for Due Diligence and Real Estate Packages

- **Adding land to RCI Project**

- Milestones allow over five months (164 days) for execution of Due Diligence Package which includes surveys and all environmental documentation
- A typical package sent up in the past two years took up to a year to complete
- The Real Estate package can take 2-6 months to execute while Milestones show 45 days for USACE-Norfolk to draft, negotiate docs and get Lessee and Lender approvals before sending to USACE-HQ
- Milestones give USACE-HQ 30 days to review and execute RE docs once package is received from USACE-Norfolk
- Causes for delay
 - Insufficient staff at DPW to process package
 - Change in scope of action requiring a new Major Decision Request
 - Discovery of environmental issue(s)



Timelines for Due Diligence and Real Estate Packages

- **Deleting land from RCI Project**
 - Milestones allow over four months (134 days) for execution of Due Diligence Package which includes surveys and all environmental documentation
 - A typical package takes 4-6 months to complete
 - The Real Estate package can take 2-4 months to execute while Milestones show 45 days for USACE-Norfolk to draft, negotiate docs and get Lessee and Lender approvals before sending to USACE-HQ
 - Milestones give USACE-HQ 30 days to review and execute RE docs after receiving package from USACE-Norfolk
 - Causes for delay
 - Insufficient staff at DPW to process package
 - Change in scope of action requiring a new Major Decision Request
 - Delay in getting Lender to sign the Release from Mortgage



Support Leases – New DASA (IH&P) Policy

- **Background**
 - Meant to provide short term (5 years or less) lease for administrative, maintenance and staging areas outside leased area
 - It was contemplated that Lessee would find long term solution, when needed, before end of initial development period (IDP)
- **New policy implements DASA (IH&P) vision for future support leases**
 - Existing leases will expire either in accordance with its termination date, or terminate in accordance with conditions identified in Support Lease
 - Both a new use or extension of the existing use will require a MD request signed by Partner and GC



Support Leases – New DASA (IH&P) Policy

- **OACSIM and ODASA (IH&P) will review MD request and provide Green Light Letter (GLL) specifying the following:**
 - Ancillary Supporting Facilities to be included
 - Approved uses and any limitations
 - Lease term
 - Authorization to spend funds for due diligence needed and USACE-Norfolk's transaction fee
 - Target Milestones



Support Leases – New DASA (IH&P) Policy

- **Due Diligence Package materials required for new leases**
 - ROA (RCI ROA will be used as directed by Support Lease Policy)
 - Accompanying documentation as noted in ROA
 - Accompanying NEPA documentation
 - Map, drawing or floor plan (no survey required)
 - Any package for a Support Lease with a term longer than 5 years goes to DASA (IH&P) for execution
- **Due Diligence Package materials required for renewal of existing lease**
 - Supplement to original ROA if the purpose, grantee and length of time remain the same; otherwise a new ROA is needed
 - Map, drawing or floor plan (no survey required)
 - Accompanying Supplement to original NEPA documentation
 - If none exists, must start with new NEPA package



Real Estate Updates

- **Model Documents – Ground Lease, Quitclaim Deed, Special Warranty Deed, Bill of Sale (2), Consent of Lessor (2), Support Lease, RCI ROA**
- **Updates to Model Ground Lease**
 - Bond language
 - New BAH language
 - Update to Excluded Improvement Exhibit
 - Two new conditions: “Interpretation of Lease” and “No Individual Liability of Government Officials”
- **Rights-of-Entry**
- **Amended and Restated Ground Leases**
- **Environmental Clauses in New Supplements**



Ground Lease Compliance / Site Visits

- **Purpose is for enforcement of lease and protection of the interests of Army, Soldiers and their Families**
- **Do not wait for site visits to report safety issues**
- **Site visit reveals true situation on the Project: encroachments, condition of property**
- **Non-compliance with GL requirement to keep Project in good order and safe and sanitary condition can lead to a formal Notice of Non-Compliance and even default**
- **Allows Realty Specialist to meet with Partner, Asset Manager and DPW personnel to discuss any real estate actions or issues**
- **Realty Specialist is provided copies of insurance certificates, any new outgrants affecting the leased area, and updates to the MSA and Environmental Management Plans, and Installation and State Inspection Reports**



Ground Lease Compliance / Site Visits

- **USACE-Norfolk**
 - Conducts annual Ground Lease Compliance (GLC) Inspection
 - Distributes inspection results to PPID PM that highlight required actions
 - Issues Notification of Non-Compliance to Lessee (CC: CVD and PPID PMs) or notifies PPID PM if Army is in non-compliance
- **PPID PM**
 - Reviews inspection results and discusses with Installation Project Team
 - Determines if approved MD is required
 - If approved MD is not required, implements steps to correct non-compliance issue
- **Examples of Ground Lease Compliance Issues (not all RE issues)**
 - Encroachment by Army: results in return of land to Army, or exclusion of above-ground improvements
 - Non-compliance with conditions of Ground Lease: is property maintained IAW GL (e.g. streets not maintained)
 - Project sub-leased a building / land without concurrence from USACE-Norfolk
 - Army vacated Project from Support Lease facility without notification to USACE-Norfolk (formal notification to terminate Support Lease should have been requested)



Example of GLC Issue: Support Lease

- **Ground Lease Compliance Inspection Checklist includes expiration dates for Support Leases**
- **USACE-Norfolk will notify PPID PM no later than 6 months before expiration of Support Lease**
- **PPID PM coordinates with Project team depending on desired action**
 - Terminate Support Lease (IAW original terms)
 - Partner submits acknowledgement memo (within 60 days of expiration date) to USACE-Norfolk and PPID PM
 - USACE-Norfolk issues Termination Letter outlining required process
 - OR**
 - Terminate Support Lease Early
 - Partner submits memo to USACE-Norfolk and PPID PM requesting early termination of Support Lease (must give 30 days notice); or
 - GC requests USACE-Norfolk issue official notice (90 days prior to termination) to Partner to vacate the premises.
 - USACE-Norfolk issues letter outlining required process to terminate Support Lease
 - OR**
 - Extend Support Lease
 - Follow process outlined in new Support Lease Policy



Execution of Ground Lease Original Language (GLOL)

- **Ground Lease Compliance Checklist includes list of future actions specified in GLOL, such as returning or adding land/improvements**
- **USACE-Norfolk will notify PPID PM no later than 9 months prior to Ground Lease trigger date for each future action**
- **PPID PM reviews and coordinates future actions with Installation Project Team**
- **Installation Project Team (Army and Partner)**
 - Sends acknowledgement memo to USACE-Norfolk (cc: PPID PM) to execute GLOL, including any required due diligence
 - Keeps IMCOM Region in the loop when requesting early execution of GLOL, making sure funds are available to support the action
 - A desire to delay returning land/improvements included in GLOL requires a Major Decision Request



PAL Specifics...



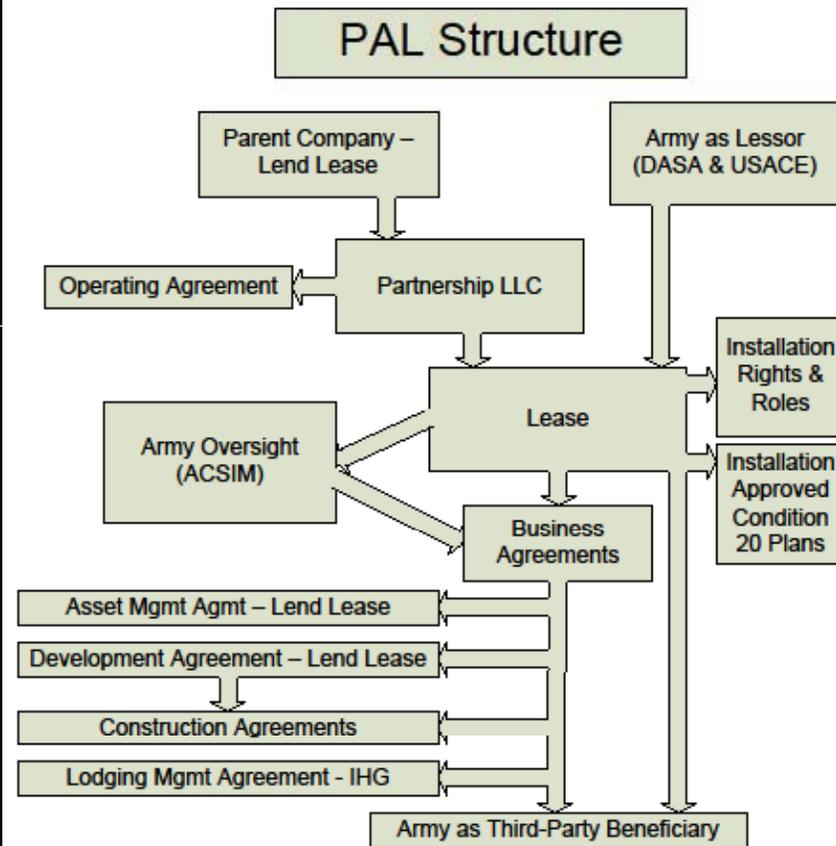
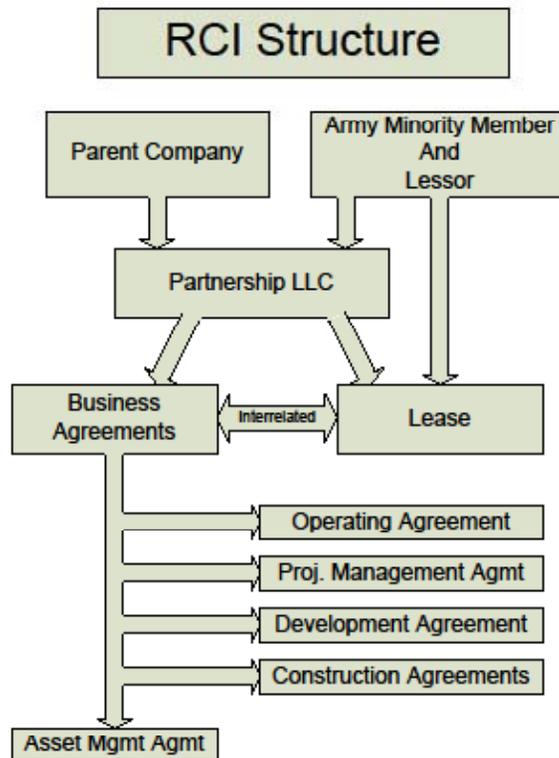


PAL Legal Structure Dictates Army Processes and Roles

- **Hierarchy of Responsibilities → Army PAL Team**
 - Program Management + Transaction RECO = **DASA(IH&P)**
 - ✓ Congressional Approvals, Program Requirements & PAL Policy
 - ✓ Transactional Authority & Delegation of Authority / Roles to ACSIM & USACE
 - Installation Policy & Project Management = **ACSIM**
 - ✓ Integration of Army Policy Issues (e.g. conflicts with Installation Regulations)
 - ✓ Operational Oversight (Construction, Occupancy, Budget, Award Fees, etc.)
 - Lease Administration & Enforcement = **USACE**
 - ✓ Compliance with Lease Documents & Performance of Administrative Functions
 - ✓ Preparation of Lease Enforcement Actions for DASA/ACSIM Decision Making
 - ✓ Coordination of Real Estate Issues with Installation & Local USACE Districts
 - Installation Rules, Regulations & Requirements = **GC, DPW & PAL POC**
 - ✓ Local Coordination and Approvals IAW Lease (See Handout)
 - ✓ Monitoring/Approvals of Compliance with Condition 20 Plans & SHPO PAs



PAL Legal Structure Dictates Army Processes and Roles





PAL Legal Structure Dictates Army Processes and Roles

- Lessee / Developer is Lend Lease (dba Rest Easy) and Hotel Operator is IHG
- PAL Specific Differences from RCI
 - **Army is NOT a Legal Partner, but a “Spirit” of Partnership Exists**
 - ✓ No Limited Partnership means no “Minority Member” Role
 - ✓ Army POCs (OACSIM and USACE-Norfolk) interact weekly with Lend Lease and IHG
 - ✓ Major Decisions Formulated at OACSIM and Corporate Lend Lease Level for review by USACE and approval by DASA (IH&P)
 - ✓ Installation concerns of a Portfolio-Wide, Budgetary or Policy Nature go to OACSIM for resolution; otherwise, local concerns are addressed locally
 - ✓ PAL Lease Provides Army Safeguards and Rights; Third Party Beneficiary Docs
 - **ONE Lease for 41 Locations !**
 - ✓ Consistent Rules Across the PAL Portfolio = Not Installation Concentric
 - ✓ Centralized Management and Oversight by ODASA (IH&P), OACSIM and USACE
 - ✓ Impacts Compliance Methods and Management
 - ✓ Installation Role strengthened in several ways to provide on-site oversight
 - **THREE MSAs for 41 Locations !**
 - ✓ JBSA; Groups A&B; Group C; Installation Specific Exhibits (PODs & Rates)



PAL Lease Administration Approach

- **Ground Lease Administration and Compliance**
 - Army centrally manages specific compliance functions (Insurance, Lessee Certifications, Reporting Requirements, Incentive Fees, etc.)
 - Administrative Responsibility is shared between USACE-Norfolk and OACSIM
 - Army has protected “Rights” in certain PAL Third Party Documents
- **USACE Real Estate Compliance Site Inspection**
 - Assess Condition of PAL Property – IAW PAL Lease requirements
 - Monitor Compliance with Lease Provisions wrt Hotel Operations
 - Interface with Installation Staff for Local Oversight Responsibilities
 - Report Condition Assessment Concerns to OACSIM and ODASA (IH&P)
- **Installation GC and DPW Rights and Responsibilities**
 - General Authority over the Installation including Privatized Property
 - Specific Rights, Roles and Responsibilities are Identified in the Lease
 - Includes Condition 20 Plans and ISDP approvals; (SHPO) PA enforcement
 - EMP, Crisis Management Plan, Sign Plan, etc.



Real Estate Rights & Responsibilities

- **General Real Estate Terminology**
 - ROE vs. License vs. Lease vs. Easement
 - See Handout Chart
- **PAL Support Leases (Material and Minor) and PAL Licenses**
 - PAL Minor Support Leases are Similar to RCI Support Leases (Ancillary Facilities)
 - PAL Material Support Leases are Recorded and Part of Lender Collateral
 - PAL Licenses typically allow for Hotel Parking and can not be easily Terminated
- **PAL Rights-of-Entry (for Demolition and Construction Easements)**
 - PAL Project Real Estate Transactions are very expensive, so ROEs are occasionally used to provide Lessee time before or after an event to Demolish or Construct specific facilities required under the PAL Lease
 - PAL Easements must be provided for communication lines between Hotels
 - DASA(IH&P) Policy Pending to expedite processes
- **Excluded Improvements and Retained Uses**
 - PAL Lease incorporates both Concepts in Lease Exhibit C



Challenges

- **Return of utility infrastructure from Project to Installation or to a third party provider**
- **Lack of early coordination between Installation and RCI project team for projects that will affect the Project footprint**
- **Authority for Government to use privatized spaces**
- **Procedure for returning buildings and land**
- **Resolution of title and easement issues upon return of improvements**
- **To spend development funds on “non-compliant” historic homes or build new homes**
- **Safety issues created by Lessee’s contractors (e.g. retaining wall)**
- **Old Army environmental issues coming to light (e.g. leaking tanks)**
- **Army policy implementation for issuance of MHPI easements as required by RCI and PAL Ground Leases**
- **Army policy interpretation and implementation for PAL on food service, pools and security**



Questions?

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