



ACQUISITION,
TECHNOLOGY
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OFFICE OF THE UNDER SECRETARY OF DEFENSE

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MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS, ENVIRONMENT AND LOGISTICS)

SUBJECT: Working with State and Local Governments to Combat Encroachment

As each of you is keenly aware, the Department of Defense (DoD) faces the challenge of encroachment on military readiness activities. Encroachment occurs when the supply of resources needed to perform the mission (attributes of land, water and air-is restricted by market) based regulations or unavailable due to competing needs in the surrounding community. As part of our effort to prevent encroachment, we have actively pursued clarifications to existing federal law to assure our ability to train as we fight. However, legislative action at the national level is just one element of our encroachment strategy. In addition, we must focus at the regional, state and installations level to educate and advise local/state governments and communities on the safety and operational impact of decisions affecting resource use on and around installations and test and training areas.

Component staff has inquired whether active participation in local planning processes could be seen as a compensable "taking" of property by the United States if local authorities act in accordance with installation recommendations. DoD General Counsel has advised that the majority of judicial decisions addressing the issue dispel this concern. Specifically, most courts considering the issue (generally in the context of local zoning decisions) have determined that there is no federal liability for a taking where a federal agency uses its position as an influential landowner to persuade local governmental bodies to adopt a position compatible with an installation mission needs.

The Department of Defense and the Military Departments have a number of programs in place to develop and share information to assist local governments in making land use decisions that are compatible with operations at defense installations. For example, DoD Instruction 4165.57, Air Installation Compatible Use Zones (AICUZ) (32 CFR, Part 256), and similar instructions for ranges and ground installations, establish an approach for installations to analyze land use compatibility issues in the vicinity of military operations and propose potential solutions to local governing bodies and planning officials.



Similarly, DoD Directive 3030.1, Office of Economic Adjustment (OEA), authorizes grants to eligible state and local governments to conduct Joint Land Use Studies in cooperation with a military installation and DoD Directive 3200.15, Sustainment of Ranges and Operating Areas, requires multi-tiered (e.g., national, regional and local) coordination and outreach programs in support of sustaining ranges and operational areas. Each of these policies encourages active involvement and technical assistance in local land use planning processes to ensure concerns related to encroachment are shared and appropriately resolved. Of course, in developing our outreach strategies, we should take an interdisciplinary approach that includes our Regional Environmental Coordinators, installation representatives, legal representatives and other needed disciplines.

As we continue our efforts addressing the impact of encroachment on military readiness, it is imperative that we effectively use all the tools and resources available to us. In this regard, I recommend you direct more active involvement at the installation and Regional Environmental Coordinator level in all aspects of state and local planning that could impact readiness. I have also asked my staff to include this topic as a discussion item at an upcoming Range Sustainment Working Integrated Product Team meeting to discuss actions being taken in furtherance of this policy.



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(Installations and Environment)

cc: DoD/GC (E&I)