



Department of Defense DIRECTIVE

NUMBER 4165.61

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Incorporating Change 1, July 19, 1988

ASD(*FM&P*)

SUBJECT: Intergovernmental Coordination of DoD Federal Development Programs and Activities

- References:
- (a) DoD Directive 4165.61, "Intergovernmental Coordination of Department of Defense Land and Facility Plans and Projects," December 16, 1976 (hereby canceled)
 - (b) Executive Order 12372, "Intergovernmental Review of Federal Programs," July 14, 1982, (as amended by Executive Order 12416, April 8, 1983)
 - (c) Section 6506 of title 31, United States Code
 - (d) through (n), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and under references (b) and (c) updates policies, assigns responsibilities, and prescribes procedures for an intergovernmental process to assist coordination of appropriate DoD Federal development programs and activities in the United States with State and local governments and Federal Agencies, and to encourage State and local governments and Federal Agencies to coordinate their programs and activities with the Department of Defense.

2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense, the Military Departments (excluding the civil works function of the U.S. Army Corps of Engineers) and the Defense Agencies (hereafter referred to collectively as the "DoD Components").

2.2. Neither reference (b) nor this Directive are intended to create any right or benefit enforceable at law by a party against the Department of Defense or its officials.

2.3. This Directive covers all programs and activities developed by the DoD Components for military construction (as defined in DoD Instruction 7040.4(reference (d)), acquisition of real property, substantial changes in existing use of military installations and real property, and disposal of real property that may affect State and local government or other Federal Agency community development programs and activities, and State, local, and other Federal Agency programs and activities that may affect DoD activities.

2.4. A list of the DoD programs and activities subject to E.O. 12372 (reference (b)) is at enclosure 2.

3. DEFINITION

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

4. POLICY

It is the policy of the Department of Defense to promote an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed DoD Federal development; and to encourage the opportunity to review other Agency programs and activities that may affect the Department of Defense.

5. RESPONSIBILITIES

5.1. The Executive Secretary of the Department of Defense, having been designated by the Secretary of Defense as the DoD intergovernmental coordination point of contact, shall act as the focal point for all matters relating to E.O. 12372 (reference (b)).

5.2. The Assistant Secretary of Defense (*Force Management and Personnel*) (ASD(*FM&P*)) shall develop policy, and shall:

5.2.1. Have overall management responsibility for intergovernmental coordination of DoD Federal development programs and activities;

5.2.2. Monitor the implementation of reference (b) within the Department of Defense.

5.3. The Assistant Secretary of Defense (Comptroller) (ASD(C)) shall review any proposed action involving intergovernmental programs and activities for potential funding implications affecting Defense appropriations.

5.4. The Heads of DoD Components shall:

5.4.1. Establish and maintain an intergovernmental coordination management process concerning DoD Federal development programs and activities described in enclosure 2.

5.4.2. Monitor the application of policies, responsibilities, and procedures contained in this Directive within their subordinate elements.

5.4.3. Designate an official to be the point of contact for intergovernmental coordination and review matters covered by this Directive and report his name, position, and office to the ASD(*FM&P*).

5.4.4. Develop procedures that will ensure that a record of State comments, reviews, determinations, recommendations, and the status of programs and activities are maintained.

5.4.5. Designate an official, in accordance with enclosure 3, who shall serve as a DoD liaison representative to the States in the respective Federal regions for all DoD intergovernmental coordination matters. The identification of the liaison representatives shall be provided to the ASD(*FM&P*) who shall publish a directory of liaison representatives in the Federal Register. The liaison function shall be in addition to the representatives' regular duties.

6. PROCEDURES

6.1. The DoD Components shall establish and maintain an intergovernmental coordination management process, reflected in a cooperative agreement when feasible, to achieve full consultation with State, regional, and local entities for those programs and activities covered by this Directive. The DoD Components shall encourage reciprocal actions with regard to the State, regional, and local programs and activities.

6.2. The DoD Components shall establish and maintain an inter-Agency coordination management process to ensure that their development programs and activities are consistent and compatible with the development actions of Federal Agencies operating at the local levels. The DoD Components shall encourage reciprocal actions by other Federal Agencies with regard to their programs and activities. Unresolved conflicts shall be brought to the attention of the ASD(*FM&P*).

6.3. The DoD Components that conduct activities or operate installations that may be affected by the programs and activities of Federal Agencies shall take part in the community planning process by providing information, policy, and position statements on those programs and activities to the Agencies concerned.

6.4. The degree of public interest in a proposed program or activity shall be considered when deciding whether the Congress and the public shall be notified before offering information for comment as prescribed in this Directive.

6.5. In an emergency, provisions of this Directive may be waived by the Secretary of the Military Department concerned. Such instances will be reported to the ASD(*FM&P*).

6.6. This Directive does not affect normal cooperative community planning or coordination relationships between DoD installations and surrounding communities.

6.7. Further procedures for DoD Federal development programs are prescribed at enclosure 4.

7. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective September 30, 1983. Forward one copy of implementing documents to the Assistant Secretary of Defense (*Force Management and Personnel*) within 120 days.



PAUL THAYER
Deputy Secretary of Defense

Enclosures - 4

- E1. References, continued
- E2. DoD Programs and Activities Included Under This Directive
- E3. DoD Liaison Representatives for Intergovernmental Coordination of DoD Federal Development Programs and Activities
- E4. Procedures for DoD Federal Development Programs and Activities

E1. ENCLOSURE 1

REFERENCES, continued

- (d) DoD Instruction 7040.4, "Military Construction Authorization and Appropriation," March 5, 1979
- (e) [DoD Directive 5400.7](#), "DoD Freedom of Information Act Program," March 24, 1980
- (f) [DoD Instruction 5400.10](#), "OSD Implementation of DoD Freedom of Information Act Program," August 20, 1981
- (g) Section 71d of title 40, United States Code
- (h) DoD 4270.1-M, "Construction Criteria," June 1, 1978 (Advance Edition)
- (i) [DoD Instruction 4165.57](#), "Air Installation Compatible Use Zones," November 8, 1977
- (j) Sections 4331, 4332 of title 42, United States Code
- (k) Section 1251 et seq. of title 33, United States Code
- (l) Commerce Business Daily (published by Superintendent of Documents, Government Printing Office, Washington, DC 20402)
- (m) DoD Directive 6015.17, "Planning and Acquisition of Military Health Facilities," March 17, 1983
- (n) Section 2662 of title 10, United States Code

E2. ENCLOSURE 2

DoD PROGRAMS AND ACTIVITIES INCLUDED UNDER THIS DIRECTIVE

- E2.1.1. Installation comprehensive master planning.
- E2.1.2. Military construction.
- E2.1.3. Family housing.
- E2.1.4. Real property acquisition and disposal.
- E2.1.5. Withdrawals of public domain land for military use.
- E2.1.6. Substantial changes in existing use of installations.
- E2.1.7. Notices of intent, findings of no significant impact, and draft and final environmental impact statements (EIS) (as part of the standard process).
- E2.1.8. Air installation compatible use zone (AICUZ) studies.
- E2.1.9. Natural resource plans.
- E2.1.10. Floodplain management and wetlands protection.
- E2.1.11. Appropriate information and data for regional plans, programs, and projects.

E3. ENCLOSURE 3DoD LIAISON REPRESENTATIVES FOR INTERGOVERNMENTAL COORDINATION
OF DoD FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES

<u>STANDARD Federal REGIONS</u>		<u>COMPONENT FURNISHING REPRESENTATIVE</u>
E3.1.1.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Air Force
E3.1.2.	New Jersey, New York, Puerto Rico, Virgin Islands	Army
E3.1.3.	Delaware, Maryland, Pennsylvania, Virginia, West Virginia	Navy
E3.1.4.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee	Navy
E3.1.5.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	Air Force
E3.1.6.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas	Air Force
E3.1.7.	Iowa, Kansas, Missouri, Nebraska	Army
E3.1.8.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	Air Force
E3.1.9.	American Samoa, Arizona, California, Northern Mariana Islands, Guam, Hawaii, Nevada, Trust Territory	Navy
E3.1.10.	Alaska, Idaho, Oregon, Washington	Army

E4. ENCLOSURE 4

PROCEDURES FOR DoD FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES

E4.1. GENERAL

E4.1.1. State Selection of Programs and Activities

E4.1.1.1. A State may select any program or activity listed in enclosure 2 of this Directive for intergovernmental review. Each State, before selecting programs and activities, will consult with local elected officials.

E4.1.1.2. Each State that adopts a process will notify the DoD liaison representative for the Federal region in which that State is located of DoD programs and activities selected for that process.

E4.1.1.3. A State may notify the liaison representative of changes in its selections at any time. For each change, the State will submit an assurance that the State has consulted with elected local officials regarding the change. The DoD Components may establish deadlines by which States are required to inform them of changes in their program selections.

E4.1.1.4. The DoD Components shall use a State's process as soon as feasible after notification of the State's selections.

E4.1.2. Communication with State and Local Officials

E4.1.2.1. For those programs and activities covered by a State process, the DoD Components shall:

E4.1.2.1.1. Use the official State process to determine views of State and local elected officials; and

E4.1.2.1.2. Communicate with State and local elected officials, through the official State process as early in a program planning cycle as is reasonably feasible, to explain specific plans and actions (see section E4.3., below).

E4.1.2.2. The DoD Components shall provide notice to directly affected State, areawide, regional, and local entities in a State of proposed DoD Federal development if the:

E4.1.2.2.1. State has not adopted an official process; or

E4.1.2.2.2. Development involves a program or activity not selected for the State process. This notice may be made by publication in the Federal Register or other appropriate means.

E4.1.3. Opportunity to Comment

E4.1.3.1. Except in unusual circumstances, the DoD Components shall give State processes 60 days from the date established by the DoD Component to comment on DoD Federal development programs and activities.

E4.1.3.2. This paragraph, E4.1.3., also applies to comments in cases in which the State has delegated the review, coordination, and communication

E4.1.4. Receipt of and Response to Comments

E4.1.4.1. The DoD Components shall follow procedures in paragraph E4.1.5., below, if:

E4.1.4.1.1. A State office or official is designated to act as a single point of contact (SPOC) between a State process and all Federal Agencies; and

E4.1.4.1.2. That office or official transmits a State process recommendation for a selected program.

E4.1.4.2. The SPOC is not obligated to transmit comments from State, areawide, regional, or local officials and entities when there is no State process recommendation.

E4.1.4.3. If a State process recommendation is transmitted by a SPOC, all comments from State, areawide, regional, and local officials and entities that differ from it will also be transmitted.

E4.1.4.4. If a State has not established a review process, or is unable to submit a State process recommendation, State, areawide, regional, and local officials and entities may submit comments directly to the DoD Component.

E4.1.4.5. If a program or activity is not selected for a State review process, State, areawide, regional, and local officials and entities may submit comments directly to the DoD Component. In addition, if a State process recommendation for a

nonselected program or activity is transmitted by the SPOC to the DoD Component, the DoD Component shall comply with paragraph E4.1.5., below.

E4.1.4.6. The DoD Components shall consider comments that do not constitute a State process recommendation and for which the DoD Component is not required to comply with paragraph E4.1.5., below, when such comments are provided by a SPOC or directly by a commenting party.

E4.1.5. Accommodation of Intergovernmental Concerns

E4.1.5.1. If a State process provides a State process recommendation to a DoD Component through its SPOC, the DoD Component either:

E4.1.5.1.1. Accepts the recommendation;

E4.1.5.1.2. Reaches a mutually agreeable solution with the State process;

or

E4.1.5.1.3. Provides the SPOC with a written explanation of the decision.

E4.1.5.2. In any explanation, the SPOC shall be informed that the:

E4.1.5.2.1. Decision will not be implemented for at least 10 days after the SPOC receives the explanation; or

E4.1.5.2.2. Secretary of the Military Department or Director of the Defense Agency concerned has reviewed the decision and determined that because of unusual circumstances the waiting period of at least 10 days is not feasible.

E4.1.5.3. For purposes of computing the waiting period, a SPOC is presumed to have received written notification 5 days after the date of mailing of such notification.

E4.1.1.6. Obligations in Interstate Situations. The DoD Components shall:

E4.1.6.1. Identify DoD Federal development that has an impact on interstate areas.

E4.1.6.2. Notify appropriate officials and entities in States that have adopted a process and selected the particular program or activity.

E4.1.6.3. Make efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process or selected the particular program or activity.

E4.1.6.4. Respond to paragraph E4.1.5., above, if a recommendation is received from a designated areawide agency transmitted by a SPOC when the State has delegated the review, coordination, and communication responsibilities.

E4.1.6.5. Use the procedures in paragraph E4.1.5., above, if a State process provides a State process recommendation through a SPOC.

E4.1.7. Memoranda of Understanding. The Department of Defense shall use cooperative agreements in the form of memoranda of understanding with States having a process to establish the information to be submitted to the SPOCs and the timing of the submittals. The DoD Components shall contact their DoD liaison representatives to identify the SPOCs with whom the agreements shall be made. When it is determined that an agreement is practical, all DoD Components that have a presence in the State shall become parties to the agreement whenever possible. When such agreements are used, the content shall be uniform and shall be consistent with the policies and procedures contained in this Directive. Cooperative agreements that predate this Directive may continue in force until revised and shall be the basis for new agreements.

E4.1.8. Records. The DoD Components shall maintain, as part of the records of each review, the comments received from all sources together with the status of the review.

E4.1.9. Information to be Provided. The specific information to be provided to the States or Federal Agencies depends on the particular plan or project and must be determined by each DoD Component. Information normally available for construction projects such as site location, scope of work, type of construction and description of work, together with necessary site plans shall be provided. Normally, justification or rationale for the project in question may not be furnished.

E4.1.10. Requests for Information. Requests for additional information from the public shall be handled in accordance with DoD Directive 5400.7 and DoD Instruction 5400.10 (references (e) and (f)). If a request for additional information is refused, the requestor shall be informed in writing, with appropriate explanation, and the response placed in the record.

E4.1.11. Classified Information. Classified information shall not be provided to any non-DoD entity that does not have the authority to receive it.

E4.1.12. Review of Other Programs and Activities. Even if a program or activity is not included in the scope of this Directive, the DoD Component may still provide the public the opportunity to have its views considered. Many statutes involving DoD activities have their own consultation requirements and the DoD Components shall comply with them.

E4.1.13. National Capital Region. The DoD Components responsible for Federal development in the National Capital Region (as defined in the National Capital Planning Act of 1952 (reference (g))) shall coordinate with the National Capital Planning Commission.

E4.2. SCOPE

E4.2.1. Programs and Activities to be Reviewed. There are no minimum quantitative levels that can be used to determine whether comments shall be sought on a specific program or activity. Repair, maintenance, and rehabilitation projects are excluded from the scope of this Directive unless they result in a substantially changed capacity or function of facilities that could affect non-DoD entities. The following types of programs and activities shall be considered for inclusion:

E4.2.1.1. Appropriate portions of the Military Department-approved installation master plans (such as land-use plans) developed in accordance with DoD 4270.1-M (reference (h)).

E4.2.1.2. Air Installation Compatible Use Zone (AICUZ) studies developed in accordance with DoD Instruction 4165.57 (reference (i)).

E4.2.1.3. Military construction included in the budget fiscal year DoD military construction program that may affect community development, especially as regard utilities, transportation, and schools.

E4.2.1.4. Real property acquisition projects approved by the Military Department concerned or included in the current fiscal year DoD military construction program that may affect community development plans.

E4.2.1.5. Military Department-approved programs and activities that change substantially the use of military installations and real property and may affect community development plans.

E4.2.1.6. Real property disposal projects that may affect community development plans.

E4.2.2. Responsibility for Community Impact Determination. The DoD Component concerned shall make the judgment whether a particular program or activity affects community development plans.

E4.2.3. Other Review Requirements. The procedures contained in this Directive are in addition to compliance with the requirements of the National Environmental Protection Act (reference (j)), and Federal Water Pollution Control Act (reference (k)).

E4.3. SCHEDULING OF NOTIFICATION

Subject to provisions of other statutory and regulatory requirements, the DoD Components shall offer their programs and activities for review at the planning stages indicated below:

E4.3.1. Installation Master Plans. The military installation master plan as described in DoD 4270.1-M (reference (h)) shall be offered upon approval by the Military Department concerned. Significant changes to the installation master plan shall also be submitted for review. The intent of the review is to allow local officials to evaluate the impact of land and facility use on their own development plans. It will also help the review of later annual construction and real property acquisition and disposal projects.

E4.3.2. Military Construction. Information on military construction shall be submitted after approval of a design planning directive for project development to be accomplished either in-house or by contract. In the latter case, the information normally shall be provided upon the architect-engineer selection for project development as announced in the Commerce Business Daily (reference (l)).

E4.3.2.1. Substantive changes in project development shall be considered for additional review. Information may be provided to the States before transmission of a project to the Congress, so care must be taken to ensure the year of funding and estimated project cost are not made public. On verification that a project is included in the budget fiscal year DoD military construction program submitted to Congress, additional information and documentation on the project (that is, DD Forms 1391) may be provided for review if they are consistent with the submission to the Congress.

E4.3.2.2. Proposed major military construction projects included in the Five-Year Defense Program may not be provided to the States individually or collectively except as described above.

E4.3.2.3. The DoD Components shall continue to comply with DoD Directive 6015.17 (reference (m)) for military health facility projects.

E4.3.2.4. Each DD Form 1391 for projects covered by this Directive shall include a statement explaining the status of the intergovernmental review.

E4.3.3. Real Property Acquisition. Real property acquisition projects shall be submitted only upon verification that the projects have been approved by the Secretary of the Military Department concerned, or, if congressional approval is required, only after the Congress has been notified of the projects. In exceptional cases, this provision may be waived by the ASD(*FM&P*). When real property acquisition is part of a military construction project, the acquisition may be coordinated as part of that project even though the above events have not occurred.

E4.3.4. Mission Realignments. Plans and projects that may change substantially the use of military installations and real property and may affect non-DoD facilities, services, and activities, shall be submitted only after approval by the Head of the DoD Component concerned and, if congressional notification of the plan or action is required, only after the Congress has been officially notified.

E4.3.5. Real Property Disposal. Real property disposal projects that require prior congressional approval shall be submitted only after required DoD screening has been completed and the disposal report required by 10 U.S.C. 2662 (reference (n)) has been cleared by the Congress. In exceptional cases, this procedure may be waived by the ASD(*FM&P*) to allow release for review at the time the disposal report is submitted to the Congress.

E4.4. DoD FEDERAL REGION LIAISON REPRESENTATIVES

The Federal Region Liaison Representatives shall:

E4.4.1. Serve as the ASD(*FM&P*)'s local representatives.

E4.4.2. Establish and maintain liaison with SPOCs in their regions to determine the State process for intergovernmental review, if one exists, and any special requirements or conditions.

E4.4.3. Pursue cooperative agreements with the States by means of memoranda of understanding that specify the programs to be included and the process for review consistent with the policies and procedures of this Directive.

E4.4.4. Keep the DoD Components within their regions informed of intergovernmental review activities.

E4.4.5. To the extent possible, resolve intergovernmental review issues among the DoD Components within their regions. If resolution is not possible at the regional level, submit the matter to the ASD(*FM&P*).

E4.4.6. Keep the ASD(*FM&P*) informed of events, experiences, and problem areas so that the DoD intergovernmental review process may be improved.