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OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

November 13, 2014

MEMORANDUM FOR: MITIGATION OVERSIGHT COMMITTEE MEMBERS

FROM: Michael A. Aimone, P.E., Executive Director, DoD Siting Clearinghouse

SUBJECT: Procedures Memo #6: Mission Compatibility Evaluation Review Process

- REFERENCE: (a) Procedures Memo #2: *DoD Project Review in support of the Federal Aviation Administration (FAA) Obstruction Evaluation OE Process* (rescinded)
- (b) 32 C.F.R. Part 211, *The Mission Compatibility Evaluation Process*, December 5, 2013
- (c) Acting DUSD/I&E Memo, *Scope of Projects Reviewed by the Mission Compatibility Evaluation Process*, November 12, 2014

This Procedures Memo (PM) rescinds Reference (a), and defines the procedures for making a division response in FAA's OE process. Further, this PM transmits Reference (c) regarding DoD's response to non-energy projects filed in FAA's OE process.

When reviewing applications submitted via the FAA's OE process, a Military Department (MILDEP) is authorized to place, in the Service Evaluation data field, an "N" when it does not object to a project or a "P" when it has provisional comments or concerns. Placing an "O" in the FAA OE tool for all projects is strictly reserved for use by the Deputy Secretary of Defense.

Regarding the use of provisional comments, the MILDEPs will attempt to standardize inputs to the FAA OE tool for use when a project indicates it may have an adverse impact on military operations and readiness. This is usually flagged by inputting a "P" tool in the Service Evaluation date field. The following provisional language should be used:

"This application may present an adverse impact on military operations and readiness. The DoD requests that the developer contact the Executive Director, Department of Defense Siting Clearinghouse, by email at osd.dod-siting-clearinghouse@mail.mil or by phone at (703)-571-0076."

From time to time, the MILDEPs may need to deviate from this language, although those instances should rarely occur. They should inform the Mitigation Oversight Committee (MOC) before such a deviation.

Aimone
13 Nov 2014

Should a MILDEP believe that an energy-related project is likely to rise to the level of an unacceptable risk to the national security of the United States, a Mitigation Response Team (MRT) will be established to investigate reasonable and affordable mitigation with the developer. Should mitigation discussions fail, and the project is still deemed to rise to the level of an unacceptable risk to national security of the United States, then the MOC will brief the Board of Directors who will make a recommendation to the USD/AT&L under provisions identified in Reference (b).

Reference (c) prohibits the MILDEPs from filing objections for non-energy projects, but rather to follow the processes outlined Reference (b). However, it is understood that the requirement for establishment of an MRT under the oversight of the MOC may not be necessary for many of these non-energy project in order to achieve effective mitigation solutions. Reference (c) commits to establishing an expedited process for these non-energy projects that may be considered an adverse impact to test, training and mission operations. The Clearinghouse will expedite staffing of objections for non-energy related projects consistent with Reference (b).

If you have any questions please contact Mr. Steven Sample at steven.j.sample4.civ@mail.mil or (703) 571-0076.

Attachment:
Acting DUSD/I&E Memo, November 12, 2014



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MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Scope of Projects Reviewed by the Mission Compatibility Evaluation Process

I am writing to clarify current procedures with regard to the Department of Defense (DoD) review of non-energy projects for the Federal Aviation Administration's (FAA) obstruction evaluation process. There has been some confusion over this, and after consulting with the Office of General Counsel of the Department of Defense, I concluded that the law leaves no room for discretion.

Specifically, section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 applies to all applications filed under the procedures of the FAA's obstruction evaluation process. While section 358(a) establishes a goal specifically addressing energy-related projects, the remainder of the section does not limit its application to just energy-related projects, but to all projects filed with the FAA pursuant to its authority in section 44718 of title 49, United States Code.

To put this more bluntly, no DoD objection may be posted with the FAA's Obstruction Evaluation process unless signed out by the Deputy Secretary of Defense. This includes non-energy projects. I recognize this is desired neither by the Components nor by my office. We are pursuing a legislative proposal to limit section 358 to energy and energy-related projects. Until and unless section 358 is amended, the Department must adhere to section 358 as written.

In the interim, I request you direct your Department's composite Mission Compatibility Evaluation (MCE) teams to evaluate all structures through the MCE process overseen by the DoD Siting Clearinghouse. No objection will be posted with the FAA's Obstruction Evaluation process except in accordance with the procedures in Part 211 of title 32, Code of Federal Regulations. Should any project rise to the level of presenting an unacceptable risk to national security to the United States, then the proposed objection must be processed for a determination by the Deputy Secretary of Defense, who in turn will notify the Secretary of Transportation and the Defense Committees of the risk.

I realize that this is an arduous process for many non-energy projects. The Clearinghouse is directed to issue procedures to expedite the process associated with non-energy projects, consistent with 32 C.F.R. Part 211.

My point of contact for this matter is Mr. Mike Aimone, at 571-372-6745, Michael.a.aimone.civ@mail.mil.

John Conger
Acting Deputy Under Secretary of Defense
(Installations and Environment)

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