

ADC CONNECT

FOREIGN INVESTMENT NEAR MILITARY INSTALLATIONS
AND THE ROLE OF DEFENSE COMMUNITIES

ADC CONNECT EVENT SUMMARY

Next Steps in Addressing Foreign Investment Near Military Installations and the Role of Defense Communities

On June 22, 2023, the Association of Defense Communities (ADC) held ADC Connect, a one-day forum on the potential national security threat posed by foreign investment near our military installations. This issue has created a complex challenge for defense community leaders as they seek to balance economic development, national security and support for their military installation. The goal of this forum was to define specific challenges, explore current actions being undertaken by DOD, Congress and other federal agencies, and to begin to define the role defense communities must have in addressing this issue.



ASSOCIATION OF
**DEFENSE
COMMUNITIES**

SESSION 1:

UNDERSTANDING THE ISSUES AND IMPLICATIONS

How serious and widespread is foreign adversary investment in defense communities? And who is responsible and what is the process for monitoring and adjudicating potential community or industry investments by foreign powers? This discussion provided important context to this issue, identified the key federal agencies involved and looked to provide a common vocabulary.

Panelists:

- **Irmie “Ike” Blanton**, Division Director, Policy and Engagement, Global Investment and Economic Security Directorate
- **Jim Harris**, Senior Policy Advisor, U.S. Department of Treasury

Background on the Committee on Foreign Investment in the United States (CFIUS)

CFIUS is an interagency committee authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, to determine the effect of such transactions on the national security of the United States. The members of CFIUS include the heads of the following departments and offices:

- Department of Defense
- Department of the Treasury (chair)
- Department of Justice
- Department of Homeland Security
- Department of Commerce
- Department of State
- Department of Energy
- Office of the U.S. Trade Representative
- Office of Science & Technology Policy

When DOD looks at a case, they look at it from a risk-based analysis perspective:

- DOD sees risk as a totality of the threat, the vulnerability and the consequence.
- The threat either comes directly from acquiring the company itself or through third parties acting through the acquiring company.

On May 5, 2023, the Department of the Treasury issued a notice of proposed rulemaking in the Federal Register that would amend the definition of military installation at 31 C.F.R. § 802.227 and add eight military installations to the list at appendix A in the rule that implements the real estate provisions of Section 721 of the Defense Production Act of 1950, as amended. This discussion provided insight to these changes, including the process for determining which bases were added and discussed the plan and methodology going forward for keeping everything updated:

- All eight additions were Air Force Bases as part of an emergency update to add them to CFIUS coverage as soon as possible.
 - The bases themselves are added to ensure that transactions fall within CFIUS jurisdiction.
 - The installations were selected and added to the list to ensure the DOD has sufficient coverage from a CFIUS jurisdiction perspective.
- The idea and concept of how the program was set up was to provide clarity and predictability to real estate investors.
- All listings go through a national security review to assess their appropriateness for inclusion on the list.

If a community thinks they might be at risk, how might they engage DOD to address sensitive situations before they are added to the list?

- From a community perspective, it is important to collaborate with local contacts at the installation.
- Even if the real estate regulations do not cover a specific situation, there are other aspects of CFIUS that can cover it from the acquisition of a business to other means.
- In developing that relationship and working with the security at the local installation, there are other countermeasures and capabilities within the legal framework and general counterintelligence to ensure the security of the region.

Why has this become such an issue? How serious and prevalent is the problem of foreign investment, particularly from countries of concern? Why should we start having this conversation now?

From a Treasury point of view:

- CFIUS is country-agnostic, and foreign investment can be beneficial.
- CFIUS conducts a thorough interagency review process to assess national security concerns.
- Even if a case initially appears to have a high threat, analysis may determine it does not pose a significant risk.
- Conversely, sometimes what initially seems like a minor situation ends up undergoing months of review mitigation and becomes a big case.
 - The true nature of a case can only be determined through examination.
- Treasury has a non-notified transactions team at the Department of Treasury that tries to find cases of concern and bring them in for review.

From a DOD point of view:

- Like the Department of Treasury, DOD also has a team that seeks out cases to review.
- Real estate transactions can be more challenging due to limited access to records held at the county or state level.
- The focus of CFIUS is on cases where the investment, despite a positive economic impact, also has a negative effect on national security.
- CFIUS evaluates the totality of circumstances and risks, considering the national security interests of the United States.
- From a proximity perspective, CFIUS is going through risk analysis and understanding the threat, the threat actor, the vulnerabilities, and the consequences of that transaction.

How would a defense community get involved in the review process?

- CFIUS has a strong commitment to maintaining confidentiality. CFIUS considers it necessary for the voluntary nature of the process. It is mandated by Section 721 of the Defense Production Act of 1950 and there are steep penalties for any breaches of confidentiality.
- CFIUS is already aware of the economic benefits associated with foreign investment; their focus lies on the national security aspects.
- If there is a potential threat or concern, reaching out to the base commander and local officials is a suitable course of action.

SESSION 2:

DOD & FEDERAL STRATEGIES AND POLICIES

The services and other federal agencies are currently ramping up to confront this issue. During this discussion we heard from some of the key leaders in charge of these new efforts.

Panelists:

- **Dan Burke**, Foreign Investment Risk Review, Compliance and Monitoring, Department of the Air Force and Space Force
- **David Jividen**, CFIUS & Team Telecom Senior National Security Advisor, White & Case LLP
- **Steve Sample**, Executive Director, Military Aviation and Installation Assurance Siting Clearinghouse, Office of the Assistant Secretary of Defense (Energy, Installations and Environment)

Background on Military Aviation and Installation Assurance Siting Clearinghouse (The Clearinghouse):

- The Military Aviation and Installation Assurance Siting Clearinghouse works with industry to overcome risks to national security while promoting compatible domestic energy development.
- Three primary roles out of the Clearinghouse:
 1. Review projects
 2. Conduct studies for mitigation
 3. Lead outreach to other federal agencies, states, industry and Congress so the Clearinghouse can speak clearly about DOD's concerns on these issues

- The Clearinghouse addresses foreign investment concerns in two main ways if there is a specific threat identified or if they want to ensure that a developer does not unknowingly facilitate a bad actor:
 - If a specific threat is identified, they collaborate with other DOD entities and potentially object to the project publicly.
 - To ensure that a developer does not unknowingly facilitate a bad actor, they sign agreements with developers to set provisions and requirements to mitigate potential threats.

What is the dynamic between CFIUS and national security?

- CFIUS has evolved over time, and there are challenges in recognizing the national security implications of real estate transactions.
- It is significant for states to take action to address national security issues in the absence of federal intervention.
- There is a need for coordination between various stakeholders, such as OSD, installations, environmental experts and the Clearinghouse.
- The timely notification of different project phases is crucial, as it allows for simultaneous evaluations by different entities, such as the FAA and the Clearinghouse.
- There is a direct interplay between CFIUS mitigation agreements and the Clearinghouse.
 - Failure to comply with the mitigation agreement can result in penalties.
 - The use of the mitigation agreement provides a means to enforce compliance and ensure trustworthiness.
 - This approach forces developers to engage with the Clearinghouse and undergo evaluation.

How might a community engage with the Clearinghouse regarding solar projects, even if they are not mandatory or triggering the committee's involvement?

- The Clearinghouse has an informal review process for engaging with interested parties.
- Any interested parties can file an informal review through the Clearinghouse's website.
 - The purpose of the informal review is to determine if DOD participation in mitigation discussions is desired.
 - The DOD analysis at this stage is light, primarily identifying potentially affected missions.
- Solar projects typically do not pose significant threats to DOD, except for installations near airfields.

Discussing what state and local governments could consider implementing to help this process:

- The Clearinghouse is advocating for state protections and recognizes that there is no "one-size-fits-all" approach.
 - Examples of state protections exist in Oklahoma, Indiana, Wyoming, Alabama, North Carolina and Texas, with variations in notification and permitting requirements.
- Alternative approaches include seeking assessments from installation commanders, the Adjutant General or other relevant entities depending on the missions involved.
- It is recommended that protections are not overly specific and should consider all impacts on testing, training and operations.
- The panel proposes that states include a simple question in their permit and purchase processes to determine if the project is covered by CFIUS.
 - If the project is covered, the state can refer it to the federal government for further review.

- Early dialogue can help determine national security risks and find ways to adjudicate or mitigate issues, allowing foreign investment to proceed if possible or potentially prohibiting it if necessary.

SESSION 3:

IDENTIFYING THE KEY CHALLENGES AND COMMUNITY EXPERIENCES

This discussion allowed communities to share their experiences with this issue and begin to define the common challenges from the defense community and installation perspective.

Panelists:

- **Thomas Ford**, County Administrator, Grand Forks County, ND; Vice President, ADC Board of Directors
- **Sandy Person**, Executive Director/Travis Community Consortium, Solano County Economic Development Corp, CA; co-Chair, ADC Federal Outreach and Advisory Council
- **Brian Garrett**, Deputy Director for Military Affairs, Utah Department of Veterans and Military Affairs; ADC Board of Directors
- **Mike Gessel**, Vice President, Federal Government Programs, Dayton Development Coalition, OH
- **Keith Graf**, Executive Director, Texas Military Preparedness Commission, Office of the Governor

Tom Ford, Grand Forks County, ND, Grand Forks Air Force Base:

- Grand Forks Air Force Base, located 19 miles west of the city, plays a central role in the community.

- The city was presented with an \$800 million economic development opportunity, significant to a county of 70,000 people. The project, called Fufeng USA, was a significant opportunity for the city and involved a proposed corn mill.
- The project caused tension and disagreements among community members and government partners.
- The city had a development contract with specific criteria, including environmental and national security considerations.
- Fufeng USA voluntarily submitted to the CFIUS review.
 - The project underwent a CFIUS review, which determined that the base was not in CFIUS jurisdiction.
- The Air Force expressed concerns about national security risks associated with the project.
 - Following the Air Force's letter expressing concerns, the city council decided to walk away from the project.
- The project's cancellation led to state legislative reaction, resulting in bills that restrict foreign government involvement in North Dakota's agricultural land and development agreements.
- The current administration added Grand Forks Air Force Base to the highly sensitive base designation, expanding CFIUS jurisdiction.
- Lessons learned from this incident:
 - Work with the congressional delegation, work with your local installation, communicate with your service upfront before CFIUS has to be invoked.
 - Local governments should consider rezoning policy, creating amendments, and maintaining communication with installations and congressional delegations to address national security issues while avoiding litigation and unfair treatment of applicants.

Sandy Person, Solano County, CA, Travis Air Force Base:

- An unknown entity has been amassing land near Travis Air Force Base, raising concerns about their intentions and possible foreign investments.
- The lack of clear communication and guidance from the government has created frustration and a sense of urgency among local stakeholders.

Brian Garrett, Great Salt Lake Desert, Utah Test and Training Range:

- Foreign investors bought a racetrack near the Utah Test and Training Range, raising questions of potential threats.
- Immersion programs funded by a foreign government in Utah schools raised concerns about controlling narratives and limiting topics.
- The legislature passed bills prohibiting restricted foreign entities from owning property in Utah and requiring developers near installations to seek approval.

Mike Gessel, Dayton OH, Wright-Patterson Air Force Base:

- In 2014, Fuyao Glass America announced its intention to invest \$240 million in an auto glass production facility outside Dayton, Ohio, where it would create an estimated 800+ jobs.
 - The investment received widespread support, despite quiet concerns about national security implications.
 - The facility is located less than 10 miles from the gate of Wright-Patterson Air Force Base.
- The plant was hailed by government leaders and had near unanimous support.

- In 2022, SEMCOR Advanced Materials Group, another foreign operated company, announced that it will open a factory in Sydney, Ohio that makes parts for batteries, employing 1,200 people.
 - Sydney, is about 45 miles from Wright-Patterson Air Force Base
 - SEMCOR faced more vocal opposition but still received support from political leaders.
- The leaders of Wright-Patterson Air Force Base are aware of the espionage risks posed by local companies with ties to foreign adversaries.
- The Dayton Development Coalition has chosen not to actively pursue economic development opportunities with companies tied to foreign adversaries but will not turn them down.

Keith Graf, Del Rio, TX, Laughlin Air Force Base:

- A foreign adversary was buying land for wind turbines near Laughlin Air Force Base in Del Rio, Texas.
- Concerns were raised about potential surveillance and the impact on the grid, but the regulatory bodies did not object.
- The installation commander sought help, but the state lacked permitting authority.
- A bill prohibiting land purchase by foreign nationals or companies from China, Russia, North Korea and Iran was introduced but did not receive a hearing.
- Texas is working to address the challenge of protecting installations when federal government efforts may be insufficient.

Can the government establish alternative pathways or streamlined processes to support states, localities, and agencies addressing foreign investment concerns Should there be clear guidelines tailored to specific situations, along with collaboration and information sharing on relevant legislation to prevent duplication of efforts and enable all stakeholders, including state legislatures, counties, local governments and building departments, to benefit from collective initiatives and the assistance of DOD?

- Different paths and federal help are welcomed at the state level to address the lack of leadership and inconsistency in policies.
- The current system forces local leaders to make national security policy decisions, which is not their intended role.
 - Balancing commerce and national security has become a challenge for local leaders.
- Policies should not be “one-size-fits-all,” considering the diverse nature of projects like racetracks, wind turbine farms and value-added agricultural businesses.

SESSION 4:

OPEN DISCUSSION SESSION: DEFINING THE COMMUNITY ROLE

The issue of foreign investment adjacent to military installations is complex, but defense communities must have a seat at the table when it comes to how our nation will manage this evolving challenge. As we ended the day's discussions, we began to define the role for defense communities and what ADC's policy position must be to ensure the voices of defense communities are an integral part in any solution.

Panelists:

- **Jill McClune**, General Counsel, Avon Protection Systems; co-Chair, ADC Federal Outreach and Advisory Council
- **George Schlossberg**, Partner, Kutak Rock; ADC General Counsel
- **Matt Herrmann**, Senior Advisor, The Roosevelt Group; ADC Federal Policy Advisor

Panelist Suggestions:

- Work with DOD to get the Defense Counterintelligence and Security Agency to start preparing unclassified briefings for state and local governments.
- DOD has successfully used a model in the past to educate communities on rules and procedures after BRAC (Base Realignment and Closure Commission).
 - The model involved a training program or road show that provided educational programs to communities.
- A similar approach could be used to provide local cities, counties and governmental bodies with a non-classified briefing on the rules and expectations when dealing with national security issues.
 - The briefing would aim to inform and guide local entities on how to interact and work with DOD.

- The goal would be to help local communities understand their rights, responsibilities and how to navigate the process effectively.
- A tool, operated by someone at DOD, that would be available to communities that could be used when a real estate transaction is pending to identify potential concerns.
 - The purpose would be to determine whether the community or entities involved should utilize the existing voluntary process under CFIUS.
 - The tool would help assess if there are any national security implications associated with the transaction.

Community Participant Suggestions:

- There is a need to educate local policymakers and the general population about the importance of protecting against foreign intelligence collection.
- Create a public service announcement like those used during World War II to raise awareness and help people understand the risks.
- Include significant representation from the Department of Homeland Security, the FBI and the Department of Justice in future discussions to have the necessary authority to address the issue effectively.
- ADC should advocate for sufficient resources for the CFIUS team at Treasury and DOD.
- It is important to have a clear designation of responsibilities between local governments, counties, communities and the federal government.