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Accessible Version

April 13, 2016

Congressional Committees

Defense Infrastructure: DOD Has Made Limited Progress in Assessing Foreign Encroachment Risks on Federally Managed Land

For many years, the Department of Defense (DOD) has reported that it faces growing challenges in carrying out realistic training at installations and training ranges because of the cumulative result of outside influences that inhibit military training and testing, which DOD refers to as encroachment. Traditionally, DOD has defined encroachment concerns as urban growth around the ranges; competition for radio frequencies or airspace; air pollution; noise pollution; unexploded ordnance and munitions components; endangered species habitat; and protected marine resources.¹ More recently, DOD stated in its 2014 *Sustainable Ranges Report* that it is concerned with security encroachment by foreign entities acquiring assets (such as mines or energy projects) or otherwise conducting business on federally managed lands near test and training ranges, which may provide an opportunity for persistent surveillance of DOD test and training activities.² According to DOD's 2015 *Sustainable Ranges Report*, the department remains focused on the issue of foreign investment in industries located in proximity to military training and testing areas because of potential surveillance and collection capabilities provided to foreign entities that invest in these assets.³ We use the term "foreign encroachment" to refer to this issue.⁴

A significant portion of DOD's mission-essential test and training activities are located adjacent to, on, above, or in other close proximity to federal lands, particularly in the western part of the United States. For example, the U.S. Air Force Nevada Test and Training Range at Nellis Air Force Base, Nevada; the U.S. Army National Training Center at Ft. Irwin, California; the U.S. Marine Corps Air Ground Combat Center at Twentynine Palms, California; and the U.S. Navy Fallon Range Complex at Naval Air Station Fallon, Nevada, are all surrounded by federally-owned land.

¹Unexploded ordnance are military munitions that (1) have been primed, fused, armed or otherwise prepared for action; (2) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and (3) remain unexploded either by malfunction, design or any other cause. Munitions components—which DOD calls "constituents"—include things such as propellants, explosives, pyrotechnics, chemical agents, metal parts, and other inert components that can pollute the soil or ground water.

²Under Secretary of Defense (Personnel and Readiness), *2014 Report to Congress on Sustainable Ranges*, (Washington, D.C.: Jan. 30, 2014).

³Under Secretary of Defense (Personnel and Readiness), *2015 Report to Congress on Sustainable Ranges* (Washington, D.C.: Feb. 12, 2015).

⁴DOD uses the terms "national security risk" and "foreign investment risk" to refer to this issue.

In December 2014, we reported on DOD's concerns about foreign encroachment from activities on federally managed lands. In that report, we noted that multiple federal agencies may be involved in identifying and approving potential business activities near DOD ranges, including the Department of the Interior's Bureau of Land Management and Bureau of Safety and Environmental Enforcement. These agencies administer federal lands—including those that are near DOD test and training ranges—and issue a wide variety of permits, licenses, or leases for the use of the land.⁵ For example, the Bureau of Land Management issues permits and leases for energy development and administers mining claims. This type of access to public land presents the opportunity for businesses, including foreign-owned or foreign-controlled entities, to acquire assets or otherwise conduct business near DOD facilities, which may provide an opportunity for persistent foreign surveillance of DOD activities. Because of this, DOD believes that foreign-controlled activities occurring on federal lands near its facilities pose a significant national security risk to DOD. Further, we found that DOD's ability to monitor and mitigate foreign-controlled transactions on federal lands is limited because it is outside the mission of the federal agencies that manage the land to monitor security issues. In our report, we found that, although DOD had expressed concerns about the risks of foreign encroachment on federal lands near DOD test and training ranges, it had not conducted a risk assessment on this issue and had not obtained sufficient information on commercial activity near test and training ranges to determine if specific transactions were foreign-controlled or posed a threat to the range. We made recommendations to address these issues, as discussed below.

House Report 113-446 accompanying a bill for the National Defense Authorization Act for Fiscal Year 2015 directed DOD to submit a report assessing the current statutory and regulatory framework governing real property transactions involving the federal government and foreign-controlled entities within the United States as they relate to military readiness and national security.⁶ The report further directed DOD to address four elements in its report: (1) the processes by which DOD and the military services assess national security risks posed by foreign investments in federal properties or facilities within proximity of DOD operating areas or installations; (2) actions that may be taken by DOD to mitigate such risks; (3) the manner in which DOD coordinates efforts with other federal agencies to monitor proposed real property transactions involving the federal government and foreign-controlled entities within the United States; and (4) procedures by which the Secretary of Defense could communicate concerns to other federal departments and agencies regarding a proposed real property transaction with a foreign-controlled entity due to proximity to DOD facilities, ranges, or operating areas. Finally, the report directed DOD to provide any recommendations that the Secretary of Defense may have for improving the current statutory and regulatory framework for monitoring real property transactions within the United States for possible national security implications. Additionally, the House Report includes a provision that we conduct a review of DOD's report and submit the results to the congressional defense committees within 90 days of DOD report submission.⁷

DOD submitted its report, *Security Risks Related to Foreign Investment in the United States*, to Congress on October 28, 2015. For our review, we evaluated the extent to which (1) the

⁵GAO, *Defense Infrastructure: Risk Assessment Needed to Identify If Foreign Encroachment Threatens Test and Training Ranges*, [GAO-15-149](#) (Washington, D.C.: Dec. 16, 2014).

⁶The House Report requested DOD's report by January 5, 2015, but DOD submitted an interim response on February 4, 2015 noting that additional interagency outreach was required before it could submit a final report, which it did on October 28, 2015. H.R. Rep. No. 113-446, at 215 (2014).

⁷We briefed House Armed Services Committee staff in February 2016 on our preliminary observations on DOD's report.

department has made progress in efforts to assess the national security risks and effects of foreign encroachment due to activities on federally managed lands since our December 2014 report and (2) DOD's report addressed the House Report provision.

To evaluate the extent to which DOD has made progress in its efforts to assess the national security risks and effects of foreign encroachment, we reviewed DOD's October 2015 report in light of the recommendations that we made in December 2014. We also met with an official from the Office of the Under Secretary of Defense for Personnel and Readiness who was responsible for overseeing the DOD report to discuss what actions DOD has taken on our recommendations. To determine the extent to which DOD's report addressed the House Report provision, we developed a scorecard methodology for comparing DOD's report with the House Report provision. Two analysts independently assessed DOD's report using the scorecard and assigned a rating to each of the elements from one of three potential ratings: "addressed," "partially addressed," or "not addressed." We considered an element to be "addressed" if DOD provided evidence that it addressed all aspects of the requirement in its report. We considered the element to be "partially addressed" if DOD provided evidence that it addressed some, but not all, aspects of the element, and "not addressed" if DOD did not address any aspect of the element in its report. If different initial ratings were given by the analysts, the analysts discussed and resolved differences in their respective scorecard analyses. On the basis of those discussions, a consolidated final scorecard was developed. In addition, we discussed the report's contents with an official from the Office of the Under Secretary of Defense for Personnel and Readiness who was responsible for overseeing the report.

We conducted this performance audit from November 2015 to April 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

DOD has made limited progress in addressing foreign encroachment on federally managed land since we last reported on this issue in December 2014. DOD has begun to take some steps toward assessing the national security risks and effects of foreign encroachment but has not yet fully implemented the recommendations in our prior report.

In regard to the House Report provision, we found that DOD's report partially addresses one of the four elements and addresses three of the four elements. In addition, the report provides recommendations that DOD believes would improve the current statutory and regulatory framework for monitoring real property transactions involving the federal government and foreign-controlled entities within the United States for possible national security implications.

We are not making new recommendations in this report. However, we believe that DOD should act on our 2014 recommendations, and we will continue to monitor DOD actions in this area.

DOD Has Not Implemented Prior Recommendations Aimed at Assessing the Risks and Effects of Foreign Encroachment

On the basis of DOD's report, *Security Risks Related to Foreign Investment in the United States*, and our discussions with DOD, we determined that DOD has made limited progress in addressing foreign encroachment on federally managed land since we last reported in December 2014. In our December 2014 report, we recommended that DOD develop and implement guidance for assessing risks to test and training ranges from foreign encroachment and collaborate with other federal agencies to obtain additional information on transactions near ranges. DOD concurred with both recommendations. Table 1 summarizes our findings and recommendations from the December 2014 report and DOD's progress in addressing them.

Table 1: Findings and Recommendations from Our December 2014 Report and DOD's Progress

GAO findings and recommendations	DOD's progress
<p>Risk assessment:</p> <ul style="list-style-type: none"> DOD had not conducted a risk assessment that includes prioritizing ranges based on mission criticality, determining their vulnerabilities to foreign encroachment, and assessing the degree to which foreign encroachment could pose a threat to the mission of the ranges. We recommended that DOD develop and implement guidance for assessing risks to test and training ranges from foreign encroachment. 	<p>As of February 2016, DOD had not conducted a risk assessment but had taken some initial positive steps. Specifically, a DOD official responsible for DOD's report stated that both DOD and the Navy have draft instructions on conducting risk assessments of training ranges and that these instructions are expected to be finalized sometime during 2016. DOD officials also stated that installation officials have expressed that foreign encroachment is an area of concern and therefore, DOD believes that action needs to be taken in this area.</p>
<p>Information on transactions:</p> <ul style="list-style-type: none"> DOD did not have information that officials said they need to determine if specific transactions on federally owned or managed land pose a threat to ranges, such as the ownership of companies conducting business on federally managed land near DOD's ranges. We recommended that the Secretary of Defense collaborate with the secretaries of relevant federal agencies to obtain additional information needed from federal agencies managing land and transactions adjacent to DOD's test and training ranges. 	<p>As of February 2016, DOD had not obtained information needed to assess specific transactions on federal land. However, according to the DOD official responsible for DOD's report, DOD has conducted some outreach to other relevant federal agencies, including the Department of the Interior and the Department of Agriculture, to obtain additional information of their statutory and regulatory framework for identifying real property transactions involving foreign-controlled entities.</p>

Source: GAO analysis. | GAO-16-381R

In addition to concurring with our previous recommendations, DOD officials stated that they would like other federal agencies to consider national security as a factor in making land management decisions. However, other land management agencies have stated that this is outside the scope of their mission and they may have insufficient legal authority or resources for this purpose. DOD concedes these challenges, noting in its report that the present regulatory framework prevents land management agencies from identifying evidence of foreign control in land transactions, thus limiting the possibility of consultation with DOD to evaluate national security implications, and preventing land managers from making land use decisions based on national security impact assessments. According to Office of the Secretary of Defense officials, DOD is currently drafting a legislative proposal that it believes would help DOD address this issue.

Our December 2014 report discussed several types of informal processes that DOD frequently leverages to assess national security risks, including relationships with the Bureau of Land

Management military liaisons, coordination with the Federal Aviation Administration through DOD's Siting Clearinghouse, and the use of Community Planning and Liaison Officers at Navy and Marine Corps installations. While these processes tend to be ad-hoc and relationship-driven, they lay important foundations from which DOD could begin to build more formalized processes. For example, in our previous report we found that, at Naval Air Station Fallon, the Navy and the Bureau of Land Management had established a military liaison position to provide further coordination on both Navy and Bureau of Land Management interests due to the large number of energy development and mining projects occurring near the Fallon Range Training Complex. We continue to believe that DOD should take the lead on this issue by first conducting a risk assessment of its installations on the threat of foreign encroachment and then by collaborating with the heads of relevant federal agencies to obtain additional information needed to address this issue, in addition to recommending such statutory or regulatory changes as the department deems helpful.

DOD's Report on Foreign Encroachment Addresses Most of the Elements of the House Report Provision

DOD's report, *Security Risks Related to Foreign Investment in the United States*, partially addresses one of the four elements in the congressional provision and addresses three elements. In addition, the report makes recommendations to improve the framework for monitoring real property transactions. Table 2 summarizes the elements specified by the House Report provision and our evaluation of the extent to which DOD's report addresses these elements.

Table 2: GAO Assessment of the Extent to Which DOD's Report on Security Risks Related to Foreign Investment in the United States Addressed Elements in the House Report^a

Report elements	GAO assessment
Processes by which DOD and the military services assess national security risks posed by foreign investment in federal properties or facilities within proximity of DOD operating areas or installations.	<p>◐ (Partially addresses the report element)</p> <ul style="list-style-type: none"> DOD's report discusses the Committee on Foreign Investment in the United States (CFIUS) as the primary process by which DOD can assess national security risks posed by foreign investments in federal properties or facilities within proximity of DOD operating areas or installations and as a way that DOD can mitigate risks of foreign encroachment.^b The report notes, however, that the CFIUS process is not designed to mitigate national security risks resulting from foreign-controlled transactions in the vicinity of military ranges and is not a DOD process. CFIUS is chaired by the Secretary of the Treasury and DOD is a participating agency. DOD's report also briefly mentions the informal coordination that exists between DOD and civilian federal land management agencies and states that if the informal coordination that exists between the agencies results in the discovery of foreign investment information and potential risks to national security, DOD could take action through existing methods of coordination. DOD's report does not mention any DOD mechanisms for assessing the potential risks of specific foreign investments near military test or training ranges and does not indicate whether or not DOD or the services have a process for assessing such risks.
Actions that may be taken by DOD to mitigate risks.	<p>● (Addresses the report element)</p> <ul style="list-style-type: none"> DOD's report states that if a transaction meets the requirements of a covered transaction under CFIUS, DOD participation in the CFIUS process can mitigate some national security risks. However, as the report states, the vast majority of federal land management transactions

Report elements	GAO assessment
	<p>are not covered under CFIUS and the actions available to mitigate national security risks in those cases are extremely limited.</p> <ul style="list-style-type: none"> DOD's report also states that DOD could take action to convey a national security issue to federal land managers, such as the Federal Aviation Administration or the Bureau of Ocean Energy Management (BOEM), based on informal, ad-hoc working relationships that exist between DOD and these agencies.
The manner in which DOD coordinates with other federal agencies to monitor proposed transactions.	<p>● (Addresses the report element)</p> <ul style="list-style-type: none"> DOD describes its role as a stakeholder in BOEM's review of permitting and leasing proposals related to energy development on the outer continental shelf. According to DOD's report, through this process, BOEM is generally aware of DOD's foreign investment and national security concerns, and the two agencies coordinate to share information and to monitor proposed transactions. DOD did not include any information about participation in other federal agencies' processes because, according to DOD, BOEM is the only land management agency that DOD has worked with on non-CFIUS transactions. According to DOD, other agencies, such as those that manage federal land around DOD's test and training ranges in the western United States, have told DOD that they do not have the authority or resources to work with DOD on these matters.
Procedures by which DOD could communicate concerns to other federal entities regarding proposed transactions involving the federal government and a foreign-controlled entity due to proximity to DOD facilities, ranges, or operating areas.	<p>● (Addresses the report element)</p> <ul style="list-style-type: none"> DOD's report states that DOD coordinates with federal land managers to review certain categories of transactions that could result in compatibility issues and adverse impacts on DOD test and training missions. The report further notes that none of the processes involve a requirement to identify the potential foreign ownership of businesses or to review national security risks. DOD's report provides several examples of coordination with federal land management agencies that DOD could use to communicate concerns to other federal departments and agencies regarding a proposed real property transaction with a foreign-controlled entity, including coordination between the Bureau of Land Management and DOD on the development of renewable energy infrastructure and DOD's role in the Federal Aviation Administration's obstruction evaluation review process.^c The report also states that these existing methods of coordination represent a potential procedure by which DOD could communicate foreign investment and national security risks to federal land management agencies.

Legend:

- = Addresses the report element
- ◐ = Partially addresses the report element
- = Does not address the report element

Source: GAO analysis of DOD information. | GAO-16-381R

Notes:

^aH.R. Rep. No. 113-446, at 214-215 (2014).

^bCFIUS is an interagency committee chaired by the Secretary of the Treasury that reviews certain mergers, acquisitions, or takeovers that could result in foreign control of any person (to include corporations and other business associations with legal personhood) engaged in interstate commerce in the United States. The purpose of this process is to assess the impact on national security of the transaction, such as by considering the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.

^cThe Federal Aviation Administration's obstruction evaluation review process evaluates projects over 200 feet in height or within certain distances of an airport or runway for obstruction concerns. As part of its evaluation process,

the Federal Aviation Administration's obstruction evaluation system automatically notifies interested agencies, including DOD and the individual military services, based on the agencies' preferences.

In addition to directing that DOD report on the four elements discussed above in table 2, the House Report provision directed DOD to provide any recommendations that the Secretary of Defense may have for improving the current statutory and regulatory framework for monitoring real property transactions involving the federal government and foreign-controlled entities within the United States for possible national security implications. DOD's report provides two recommendations, both of which are directed to federal land management agencies and focus on actions that DOD believes other agencies should take to assist DOD in identifying security risks due to foreign investment, rather than actions DOD could take to improve its visibility of foreign encroachment issues.

Agency Comments and Our Evaluation

We provided a draft of this report to DOD for review comment. DOD concurred, with comments, with our report and observations. The Department's comments are summarized below and reprinted in their entirety in the enclosure.

In its comments, DOD noted that, for one of the four elements that the department was directed to include in its report, we had assessed that DOD's report partially addresses the element. That element was a discussion of the process by which DOD assesses the potential risks of foreign investment within proximity of DOD operating areas. For that element, we found that DOD's report discusses CFIUS as the primary process by which DOD can assess the risks of foreign encroachment, and briefly mentions the informal coordination that exists between DOD and civilian federal land management agencies as another potential tool. However, we also found that DOD's report does not mention any DOD mechanisms for assessing the potential national security risks of foreign investments, and does not indicate whether either DOD or the services have a process for assessing such risks. DOD agreed that such a process was not mentioned in its report. DOD noted, though, that it believes that the process for addressing foreign encroachment exists within the department. In particular, DOD cited an integrated product team—led by the Under Secretary of Defense for Personnel and Readiness, under the direction of the Deputy Secretary of Defense, and operating in partnership with the Under Secretary of Defense (Acquisition, Test, and Logistics), the Director of Operational Test and Evaluation, and the military departments—which DOD said in its comments acts as the coordinating body on all issues of encroachment on DOD ranges, including those issues associated with foreign investment. DOD stated in its comments that it did not include this in its report responding to the House provision because it believed that the House provision was requesting that it assess the current statutory and regulatory framework governing real property transactions and not internal DOD processes. We believe, however, that a discussion of DOD's internal processes would have provided important information and context to DOD's report.

We are sending copies of this report to the appropriate congressional committees and the Secretary of Defense. In addition, the report is available at no charge on our website at <http://www.gao.gov>.

If you or your staff have questions concerning this report, please contact me at (202) 512-4523 or leporeb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to

this report include Harold Reich, Assistant Director (retired); Maria Storts, Assistant Director; Leslie Bharadwaja; Terry Richardson; Michael Willems; and Erik Wilkins-McKee.

A handwritten signature in black ink, appearing to read "Brian Lepore". The signature is fluid and cursive, with the first name "Brian" and last name "Lepore" clearly distinguishable.

Brian J. Lepore, Director
Defense Capabilities and Management

Enclosure

List of Committees

The Honorable John McCain
Chairman
The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Thad Cochran
Chairman
The Honorable Richard Durbin
Ranking Member
Subcommittee on Defense
Committee on Appropriations
United States Senate

The Honorable Mac Thornberry
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable Rodney Frelinghuysen
Chairman
The Honorable Pete Visclosky
Ranking Member
Subcommittee on Defense
Committee on Appropriations
House of Representatives

Enclosure: Comments from the Department of Defense



READINESS

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4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

MAR 31 2016

Mr. Brian Lepore
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G St. N.W.
Washington, DC 20548

Dear Mr. Lepore,

Thank you for your letter to Secretary Carter, dated February 29, 2016, and the opportunity to review and comment on the proposed report entitled *Defense Infrastructure: DOD Has Made Limited Progress in Assessing Foreign Encroachment Risks on Federally Managed Land* (GAO-16-381R). Given that my office prepared the *Secretary of Defense Report to the Congressional Defense Committees: Security Risks Related to Foreign Investment in the United States* (September 2015), I have been asked to respond to your letter on behalf of Secretary Carter.

We note that the content of the draft report, as transmitted, reflects the discussion that we had with you in February and we appreciate you taking the time to engage with us on the previous draft. DoD concurs, with comment, on this version of the report.

We would like to comment on the Government Accountability Office (GAO) assessment in Table 2 in your report that indicates DoD only partially addresses the DoD process for assessing potential risks of foreign investments within proximity of DoD operating areas. The GAO is correct that the DoD process is not mentioned in our report. However, the process for addressing foreign encroachment does exist within DoD and we have outlined it below.

The Under Secretary of Defense for Personnel and Readiness, under direction of the Deputy Secretary of Defense, leads an Integrated Product Team (IPT) that acts as the coordinating body on all issues of encroachment on our ranges, including those issues associated with foreign investment. The IPT is the formal venue where all instances and forms of encroachment are identified and addressed. The IPT operates in partnership with the Under Secretary of Defense (Acquisition, Test, and Logistics), the Director of Operational Test and Evaluation, and the Military Departments. DoD Directive 3200.15 establishes the policy and responsibilities carried out by the IPT partners, and DoD Instruction 3200.21 contains the procedures by which the coordination between the DoD Components and Military Departments takes place. The DoD was requested to assess the existing external statutory and regulatory framework that governs real property transactions, and so a discussion of this internal DoD body was not included within the report.

Assessing and addressing foreign encroachment risks, including those on federally managed land, continues to be a priority for my office and DoD appreciates the assessment of our progress as well as the ongoing coordination and open dialogue between our offices. As the point of contact on this report, the GAO may contact me for any further comment or input that may be required, (703) 695-2618 or frank.c.digiovanni.civ@mail.mil.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'F' followed by a horizontal line extending to the right.

Frank DiGiovanni
Director, Force Training

cc:

Ms. Maria Storts, Assistant Director, Defense Capabilities Management

Text of Enclosure: Comments from the Department of Defense

Page 1

Mr. Brian Lepore

Director, Defense Capabilities and Management

U.S. Government Accountability Office

441 G St. N.W.

Washington, DC 20548

Dear Mr. Lepore,

March 31 1016

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Frank DiGiovanni

Director, Force Training

cc:

Ms. Maria Sto1ts, Assistant Director, Defense Capabilities Management

GAO Job Code100440