

Pages 1 – 2

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Exemption (b)(5)

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**A**

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Exemption (b)(5)

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**B**

CARL LEVIN, MICHIGAN, CHAIRMAN

JOSEPH I. LIEBERMAN, CONNECTICUT  
JACK REED, RHODE ISLAND  
DANIEL K. AKAKA, HAWAII  
E. BENJAMIN NELSON, NEBRASKA  
JIM WEBB, VIRGINIA  
CLAIRE MCCASKILL, MISSOURI  
MARK UDALL, COLORADO  
KAY H. HAGAN, NORTH CAROLINA  
MARK WEGICH, ALASKA  
JOE MANCHIN II, WEST VIRGINIA  
JEANNE SHAMMEL, NEW HAMPSHIRE  
KIRSTEN E. GILLIBRAND, NEW YORK  
RICHARD BLUMENTHAL, CONNECTICUT

JOHN MCCAIN, ARIZONA  
JAMES M. INHOFE, OKLAHOMA  
JEFF SESSIONS, ALABAMA  
SAXBY CHAMBLISS, GEORGIA  
ROGER F. WICKER, MISSISSIPPI  
SCOTT P. BROWN, MASSACHUSETTS  
ROB PORTMAN, OHIO  
KELLY AYOTTE, NEW HAMPSHIRE  
SUSAN M. COLLINS, MAINE  
LINDSEY GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
DAVID VITTER, LOUISIANA

# United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-6050

July 26, 2011

RICHARD O. DEBOBES, STAFF DIRECTOR  
DAVID M. MORRIS, MINORITY STAFF DIRECTOR

The Honorable Leon Panetta  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Panetta:

I write to seek your position on your commitment on the Administration's efforts to restrict defense spending on pork barrel earmarks. In addition, I want to understand your intent as it pertains to notifying congressional defense committees and resolving any committee concerns before proceeding with proposed actions by your Department.

On August 12, 2010, this committee was notified of the Department's intent to carry out a project to construct a commissary at Coraopolis, Pennsylvania. The process of notifying the defense committees of such construction efforts and awaiting a positive response has been the Department's practice for decades. This project is of particular concern to me because all funding for the construction project was directed through congressional earmarks in various DOD Appropriations Bills which transferred funds from other vital Defense accounts. The Department correctly pointed out in its report that the project was included in the submission as an exception to the Department's policy on the use of surcharge funds in lieu of appropriations, because of the congressional mandate to transfer funds to the surcharge trust account.

The Committee's staff has met with DOD representatives on numerous occasions in the past few months in an attempt to gain a better understanding of the legal justification for carrying out this project, since the use of Army operation and maintenance funds for military construction activities is inconsistent with Chapter 169 of title 10, United States Code, which restricts the use of operation and maintenance funds for new construction projects. I also believe that the standing construction authorization contained in section 2484(h) of title 10 specifically applies to the use of surcharge proceeds and does not include other appropriations transferred into the surcharge account. In addition, the Department of Defense's guidance on the use of proceeds from commissary surcharge proceeds does not support the establishment of new commissaries.

While this committee has been deliberating on these significant policy issues, I was informed that the Assistant Secretary of Defense for Legislative Affairs, Ms. Elizabeth King, notified Chairman Levin on July 21, 2011 of the Department's intent to carry out the construction of the Coraopolis project without the formal approval from this committee. Ms. King's letter acknowledges that the Coraopolis project was submitted as part of the FY2011 commissary surcharge program that was approved by the House Armed Services Committee in November 2010, but that the Coraopolis project along with all the remaining major construction projects for the FY11 commissary and Non-Appropriated Fund construction program remain.

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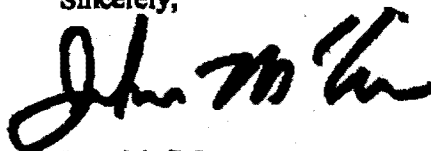


under consideration by the Senate Armed Services Committee. Indeed, at the staff level it is well known that the entire FY11 commissary funding proposal has been held by the Senate Armed Services Committee for weeks as a result of inclusion of the Coraopolis project, to which I vehemently object.

I would like to know whether you are aware of this decision to support pork barrel spending in a way that disregards the tradition of cooperation with this committee? If so, is this decision indicative of the direction you plan to take the Department as it pertains to reining in defense spending on non-essential activities as well as interacting with the congressional defense committees? Please let me know of your decision to move forward on this project in direct contradiction of the precedent of decades of awaiting the approval of the defense committees before proceeding with construction.

Thank you for your prompt attention on this matter.

Sincerely,

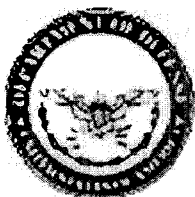
A handwritten signature in black ink, appearing to read "John McCain", written in a cursive style.

John McCain  
Ranking Member

cc:  
The Honorable Elizabeth King  
Assistant Secretary of Defense for Legislative Affairs

**TAB**

**C**



LEGISLATIVE  
AFFAIRS

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

The Honorable Carl Levin  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

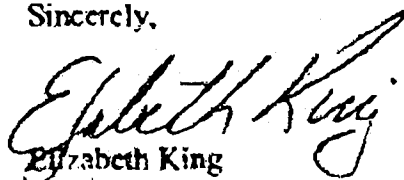
I write in regards to the Coraopolis commissary project in Coraopolis, Pennsylvania. Since the C.E. Kelly support facility will close in September, a new commissary is required to provide service to the 30,762 military, dependent and retired persons in the area. Without C.E. Kelly or Coraopolis, the nearest commissary is located 204 miles away.

The Coraopolis commissary project is part of the FY2011 commissary surcharge program. The House Armed Services Committee approved this and other major construction projects in November of 2010. The Coraopolis project is funded with a directed transfer of appropriations to the commissary surcharge account and local redevelopment authority funds.

As you know, \$17.2 million was appropriated for the construction of a commissary at Coraopolis, Pennsylvania in the FY2008 and FY2009 appropriations bills. The Department of Defense is carrying out this project in accordance with Public Laws 110-116, 110-329, and 111-118. Pursuant to Section 8006 of these laws, the Department transferred the amounts appropriated in Public Laws 110-329 and 111-118 to the Defense Commissary Agency (DeCA) for construction of the Coraopolis Commissary Project.

In upholding the laws passed in previous fiscal years, the Department will continue to carry out construction of the Coraopolis project. Therefore, the Department requests expeditious committee consideration of the remaining FY11 Major Construction Projects as submitted for approval.

Sincerely,

  
Elizabeth King



**TAB**

**D**



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

MAY 20 2009

PERSONNEL AND  
READINESS

MEMORANDUM FOR CHAIRMAN, DEFENSE COMMISSARY AGENCY  
(DeCA) BOARD OF DIRECTORS  
ASSISTANT SECRETARY OF THE ARMY  
(INSTALLATIONS & ENVIRONMENT)

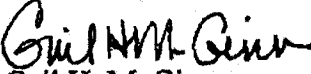
SUBJECT: Commissary Establishment at Coraopolis, Pennsylvania

I am approving your request, dated January 21, 2009, to establish a commissary at the 99<sup>th</sup> Regional Readiness Command (RRC), Coraopolis, Pennsylvania. This approval of the establishment requirement does not approve the construction of the 99<sup>th</sup> RRC, Coraopolis commissary project nor the funding sources, except for planning purposes.

Based upon the information provided by the DeCA Board of Directors in the above-referenced request, I agree that the 99<sup>th</sup> RRC, Coraopolis satisfies the establishment criteria, both general and economic, delineated in DoD Instruction 1330.17, "Armed Services Commissary Operations." Specifically, RRC Coraopolis has an active duty mission; there is a sufficient active duty population to support establishment; upon the closure of the commissary at C.E. Kelly Support Center as required by BRAC 2005, there will be no commissary within a 20 mile radius or 30-minute drive (one way) from the installation; and the commissary operation is economically supportable.

Within 30 days from the date of this memorandum, a detailed financial execution plan must be developed and submitted to this office. The plan shall include a preliminary DD 1391 that identifies line item funding estimates for the construction project (including architectural and engineering design) and non-installed furniture, fixtures, and equipment. The plan shall specify the source of funding for each line item from: (1) the \$8.2 million FY 2009 Appropriations Act directed transfer to the Surcharge Collections Trust Revolving Fund; (2) the commissary portion of the Allegheny County Redevelopment Authority grant funds; and (3) Army Operations and Maintenance for non-installed furniture, fixtures, and equipment. The plan shall describe how Allegheny County Redevelopment Authority grant funds will be executed. Finally, the plan shall separately identify the amounts of the Allegheny County Redevelopment Authority grant funds that are proposed to fund the commissary and the exchange projects.

My point of contact is Ms. Robin Schmidt, Resale Activities & NAF Policy Office, at 703-602-4601.

  
Gail H. McGinn

Performing the Duties of  
the Under Secretary of Defense  
(Personnel and Readiness)

cc:  
Director, DeCA  
Commander, AAFES

**TAB**

**E**

(h) Use of Surcharge for Construction, Repair, Improvement, and Maintenance. - (1) (A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) only -

(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

(B) In subparagraph (A), the term "physical infrastructure" includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

Sec. 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

-STATUTE-

(a) Adjustment or Surcharge Authorized. - Notwithstanding any other provision of law, the Secretary of Defense may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

(b) Use for Construction, Repair, Improvement, and Maintenance. -

(1) The Secretary of Defense may use the proceeds from the adjustments or surcharges authorized by subsection (a) only -

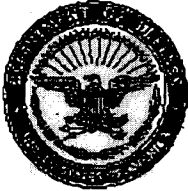
(A) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(B) to cover environmental evaluation and construction costs related to activities described in paragraph (1), including costs for surveys, administration, overhead, planning, and design.

(2) In paragraph (1), the term "physical infrastructure" includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

**TAB**

**F**



Department of Defense  
**INSTRUCTION**

NUMBER 7700.18

December 15, 2004

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USD(P&R)

**SUBJECT: Commissary Surcharge, Nonappropriated Fund (NAF), and Privately Financed Construction Reporting Procedures**

- References:
- (a) DoD Instruction 7700.18, "Commissary Surcharge, Nonappropriated Fund (NAF), and Privately Financed Construction Reporting Procedures," July 16, 2003 (hereby canceled)
  - (b) DoD Directive 7700.20, "Commissary Surcharge, Nonappropriated Fund, and Privately Financed Construction Policy," September 3, 2004
  - (c) DoD Instruction 1015.13, "DoD Procedures for Implementing Public-Private Ventures (PPVs) for Morale, Welfare and Recreation (MWR), and Armed Services Exchange Category C Revenue-Generating Activities," March 11, 2004
  - (d) DoD Directive 5124.2, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," October 31, 1994
  - (e) through (w), see enclosure 1

**1. REISSUANCE AND PURPOSE**

This Instruction reissues reference (a), implements policy, assigns responsibilities, and prescribes reporting procedures under reference (b) for commissary surcharge, nonappropriated fund (NAF), and privately financed construction and reporting of capital investment programs.

**2. APPLICABILITY AND SCOPE**

This Instruction:

- 2.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense



Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as "the DoD Components").

2.2. Does not apply to construction projects that are authorized and funded in the annual military construction authorization and appropriation acts to support the DoD Components.

### 3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

### 4. POLICY

It is DoD policy that:

4.1. Commissary surcharge, NAF, and privately financed construction programs shall be developed to enhance the comfort, pleasure, contentment, and mental and physical well being of authorized DoD personnel and their families.

4.2. Commissary surcharge, NAF, and privately financed construction projects shall not be placed under contract unless reviewed and approved in accordance with the requirements of this Instruction. General guidance for commissary surcharge, NAF, and privately financed construction programs is contained at enclosure 3.

### 5. PROCEDURES

5.1. The annual DoD Commissary Surcharge, NAF, and Privately Financed Construction Report shall contain the proposed construction programs of the DoD Components for the upcoming fiscal year and shall include the following information. Requests for policy waivers and supporting rationale shall also accompany the report.

5.1.1. An executive summary of the construction program, enclosure 4.

5.1.2. Proposed major construction projects for the next fiscal year (October 1 through September 30), to include privately financed banking facilities and projects financed from donations, that require the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) approval, enclosure 5.

5.1.3. Minor projects approved since the previous annual report, enclosure 6.

5.1.4. Status of previously approved major construction projects, enclosure 7, to include:

5.1.4.1. Projects canceled since the previous annual report.

5.1.4.2. Projects that were not placed under contract within one fiscal year following the fiscal year of approval.

5.1.4.3. Projects that exceed the approved construction cost by more than 25 percent or change the approved scope by more than 10 percent. Previously reported minor construction projects with a construction cost that exceeds \$750,000, based on bids received or revised cost estimates.

5.1.4.4. Projects completed since the previous annual report.

5.1.5. A summary of military morale, welfare, and recreation (MWR) (including child development, libraries, and physical fitness), civilian MWR, exchange, commissary and lodging construction projects submitted in the President's Budget Request for Military Construction appropriations, enclosure 8.

5.1.6. A summary listing of proposed Public-Private Venture (PPV) projects anticipated for contract award in the upcoming fiscal year, enclosure 9.

5.2. Commissary surcharge fund capital asset obligations and NAF and privately financed expenditures for tangible fixed assets shall be summarized and reported to the USD(P&R), as required in enclosure 10.

5.3. Notification to the Congress of intent to award PPV contracts that result in major construction projects is required. DoD Instruction 1015.13 (reference (c)) provides the procedures for executing PPV projects. Supporting documentation is specified at enclosure 11.

## 6. RESPONSIBILITIES

6.1. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall:

6.1.1. Comply with the responsibilities delineated in DoD Directive 5124.2 and 10 U.S.C. 136 (references (d) and (e)).

6.1.2. Serve as the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for total force management as it relates to readiness, to include quality of life, MWR, exchange, commissary, and NAF activities.

6.1.3. Prescribe commissary surcharge, NAF, and privately financed construction policy and reporting procedures and approve those programs.

6.2. The Heads of the DoD Components shall issue policies and procedures to implement this Instruction.

6.3. The Directors of MWR, Commanders of Armed Service Exchanges, and the Installation Commanders shall be subordinate to the Military Department concerned for purposes of compliance with DoD Directives and DoD Instructions as implemented by the regulations of that Department.

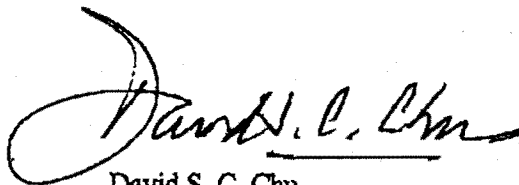
## 7. INFORMATION REQUIREMENTS

7.1. The annual report shall be submitted by May 15th of each year to the USD(P&R) for approval and congressional notification. The report shall be submitted in hard copy and on a formatted 3.5-inch floppy disk or CD ROM in Microsoft Word and Excel formats. The Report Control Symbol is DD-P&R(A)1167 in accordance with DoD 8910.1-M (reference (f)).

7.2. The project certification required by enclosure 5, paragraph E5.2.2. is exempt from licensing in accordance with paragraph C4.4.2. of reference (f).

8. EFFECTIVE DATE

This Instruction is effective immediately.



David S. C. Chu  
Under Secretary of Defense  
(Personnel and Readiness)

Enclosures - 11

- E1. References, continued
- E2. Definitions
- E3. Guidance
- E4. Executive Summary
- E5. Major Construction Reporting Requirements
- E6. Minor Construction Reporting Requirements
- E7. Status of Previously Approved Projects
- E8. Military Construction Appropriation (MILCON) Program
- E9. Proposed Public-Private Venture (PPV) Program Summary Data
- E10. Capital Investment Programs
- E11. Notification to the Congress of Intent to Award PPV Construction Projects

**E1. ENCLOSURE 1**

**REFERENCES, continued**

- (e) Section 136 of title 10, United States Code
- (f) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," June 30, 1998
- (g) DoD 7000-14-R, "DoD Financial Management Regulations," current edition
- (h) Section 2685(d) of title 10, United States Code
- (i) DoD Instruction 1015.15, "Procedures for Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources," July 16, 2003
- (j) DoD Directive 1015.2, "Military Morale, Welfare, and Recreation (MWR)," June 14, 1995
- (k) DoD Directive 1015.8, "DoD Civilian Employee Morale, Welfare, and Recreation (MWR) Activities and Supporting Nonappropriated Fund Instrumentalities (NAFIs)," October 22, 1985
- (l) DoD Directive 1330.9, "Armed Services Exchange Policy," November 27, 2002
- (m) DoD Directive 1330.17, "Military Commissaries," March 13, 1987
- (n) DoD Directive 1015.11, "Lodging Resource Policy," December 9, 1996
- (o) MIL-STD-3007, "Department of Defense Standard Practice for Unified Facilities Criteria and Unified Facilities Guide Specifications," current edition
- (p) Section 71 of title 40, United States Code
- (q) Section 104 of title 40, United States Code
- (r) DoD Directive 1015.14, "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources," July 16, 2003
- (s) DoD Directive 1000.11, "Financial Institutions on DoD Installations," June 9, 2000
- (t) DoD Directive 4165.6, "Real Property Acquisition, Management, and Disposal," September 1, 1987
- (u) DoD Directive 4105.67, "Nonappropriated Fund (NAF) Procurement Policy," May 2, 2001
- (v) Federal Acquisition Regulations, current edition
- (w) Section 2482 of title 10, United States Code

## E2. ENCLOSURE 2

### DEFINITIONS

E2.1.1. Appropriated Funds (APF). Monies made available to the Department of Defense by the Congress for a specific purpose.

E2.1.2. Collateral Equipment (NAF). Non-consumable items and equipment as defined in Volume 13, Chapter 3 of DoD 7000-14-R (reference (g)). Examples include furniture, fixtures and furnishings.

E2.1.3. Collateral Equipment (Surcharge). Equipment as defined in Volume 1, Appendix A of reference (g). Examples include furniture and fixtures, machinery, automated data processing and telecommunication equipment.

E2.1.4. Commissary Surcharge Funds. In accordance with section 2685(d) of 10 U.S.C. (reference (h)), funds originating from the adjustment of sales prices of goods and services sold in commissary store facilities. These funds shall be used only to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and to cover environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design, related to activities described in this definition. The term "physical infrastructure" includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

E2.1.5. Commissary Surcharge Fund Capital Assets. Includes capital assets acquired with commissary surcharge funds. Volume 1, Appendix A of reference (g) defines capital assets as obligations for the purchase of equipment (furniture and fixtures, machinery, automated data processing and telecommunication equipment), land, and structures.

E2.1.6. Construction Cost. The direct cost for labor, material, installed equipment integral to the facility, supervision, inspection and overhead, and profit required in order to construct a facility. It includes design costs when part of a Design/Build construction contract. It does not include design costs prior to construction contract award or the cost of collateral equipment.

E2.1.7. Design. Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project to include material qualities and properties.

E2.1.8. Design/Build. A contracting method in which the design and construction are combined in a single contract with one contractor.

E2.1.9. Estimate Useful Life. The economic life (for depreciation purposes) of a facility as expressed by a term of years.

E2.1.10. Fifteen Percent (15%) Design. That point in the design process where the site and utilities plans, schematic floor plan, and all major building systems are identified in sufficient detail to provide a reasonable estimate of the cost of the project.

E2.1.11. Hurdle Rate. The required rate of return in a discounted cash flow analysis. It is used as the benchmark to rank, compare, and select construction projects based upon the IRR calculations.

E2.1.12. Joint Project. A collaborative construction agreement between two or more parties that results in a new facility subject to joint control.

E2.1.13. Major Construction Project. A construction project with a construction component cost that exceeds \$750,000.

E2.1.14. Military Construction (MILCON). Any construction, development, conversion, or extension of any kind carried out with respect to a military installation authorized by, and financed with appropriations made available by the Congress.

E2.1.15. Minor Construction project. A construction project with a construction component cost between \$200,000 and \$750,000.

E2.1.16. Modernization. Alterations of a facility solely to implement new or higher standards (including regulatory changes), to accommodate new functions, or to replace building components that typically last more than 50 years (foundations, structural members).

E2.1.17. Nonappropriated Funds (NAF). Monies derived from sources other than congressional appropriations and commissary surcharge funds, primarily from the sale of goods and services to DoD military and civilian personnel and their family members.

E2.1.18. Post Construction Award Services (PCAS). Optional work generally performed by the architect-engineering firm that may include drawing review/approval, consultation during construction, preparation of record drawings, and construction inspection.

E2.1.19. Privately Financed. Funding provided from a non-Federal entity. May include public-private ventures, donations, private funds, and commercial borrowing.

E2.1.20. Project Validation Assessment (PVA). An independent or commercial review that certifies the need for a project based on consumer demand, market competition, cost estimates, and financial viability.

E2.1.21. Public-Private Venture (PPV). As defined in reference (c), an agreement between a DoD nonappropriated fund instrumentality and a non-Federal entity under which the non-Federal entity provides goods, services, or facilities to authorized MWR and exchange patrons. A non-Federal entity may, through the public-private venture, provide a portion or all of the financing, design, construction, collateral equipment, staffing and operation of a program for goods, services, or facilities.

E2.1.22. Recapitalization. The process used to regenerate a facility completely. This may be accomplished through a combination of restoration and modernization investment to an existing facility or the complete replacement of the facility on an existing or new site.

E2.1.23. Replacement. The construction of a new facility that serves the same or similar function as the facility that it replaces.

E2.1.24. Restoration. Repair of a facility damaged by inadequate sustainment, excessive age, natural disaster, fire, accident, or other cause.

E2.1.25. Scope. Defines the boundaries of the project by specifying in metric units, the project's measurable size either in the form of its dimensions or other quantifying unit of measure.

E2.1.26. Supervision, Inspection, and Overhead (SIOH). Support associated with the administration of contracts for facility projects. This may include contract award, payments, inspections, material testing, and other actions taken during contract execution.



E2.1.27. Sustainment. The maintenance and repair activities necessary to keep a facility in good working order. It includes regularly scheduled adjustments and inspections, preventative maintenance tasks, and emergency response and service calls for minor repairs.

E2.1.28. Thirty-Five Percent (35%) Design. The point in the design stage that provides ample detail to define scope and detailed cost estimates for consideration in the budgeting process.

E2.1.29. Total Investment. The sum of all design, construction, SIOH, PCAS, and collateral equipment costs paid with NAF or commissary surcharge funds.

E2.1.30. Turnkey Contracting. A procurement method whereby a single contractor is responsible for the design and construction, of the facility under one or multiple contracts.

**TAB**

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Pages 28-29

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Exemption (b)(5)



LEGISLATIVE  
AFFAIRS

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

The Honorable Carl Levin  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

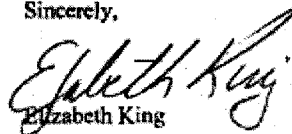
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Sincerely,

  
Elizabeth King

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RICHARD BLUMENTHAL, CONNECTICUT	

## United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-6050

July 26, 2011

RICHARD D. DEBOBES, STAFF DIRECTOR  
DAVID M. MORRIS, MINORITY STAFF DIRECTOR

The Honorable Leon Panetta  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Panetta:

I write to seek your position on your commitment on the Administration's efforts to restrict defense spending on pork barrel earmarks. In addition, I want to understand your intent as it pertains to notifying congressional defense committees and resolving any committee concerns before proceeding with proposed actions by your Department.

On August 12, 2010, this committee was notified of the Department's intent to carry out a project to construct a commissary at Coraopolis, Pennsylvania. The process of notifying the defense committees of such construction efforts and awaiting a positive response has been the Department's practice for decades. This project is of particular concern to me because all funding for the construction project was directed through congressional earmarks in various DOD Appropriations Bills which transferred funds from other vital Defense accounts. The Department correctly pointed out in its report that the project was included in the submission as an exception to the Department's policy on the use of surcharge funds in lieu of appropriations, because of the congressional mandate to transfer funds to the surcharge trust account.

The Committee's staff has met with DOD representatives on numerous occasions in the past few months in an attempt to gain a better understanding of the legal justification for carrying out this project, since the use of Army operation and maintenance funds for military construction activities is inconsistent with Chapter 169 of title 10, United States Code, which restricts the use of operation and maintenance funds for new construction projects. I also believe that the standing construction authorization contained in section 2484(h) of title 10 specifically applies to the use of surcharge proceeds and does not include other appropriations transferred into the surcharge account. In addition, the Department of Defense's guidance on the use of proceeds from commissary surcharge proceeds does not support the establishment of new commissaries.

While this committee has been deliberating on these significant policy issues, I was informed that the Assistant Secretary of Defense for Legislative Affairs, Ms. Elizabeth King, notified Chairman Levin on July 21, 2011 of the Department's intent to carry out the construction of the Coraopolis project without the formal approval from this committee. Ms. King's letter acknowledges that the Coraopolis project was submitted as part of the FY2011 commissary surcharge program that was approved by the House Armed Services Committee in November 2010, but that the Coraopolis project along with all the remaining major construction projects for the FY11 commissary and Non-Appropriated Fund construction program remain

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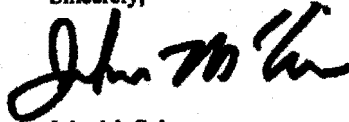


under consideration by the Senate Armed Services Committee. Indeed, at the staff level it is well known that the entire FY11 commissary funding proposal has been held by the Senate Armed Services Committee for weeks as a result of inclusion of the Coraopolis project, to which I vehemently object.

I would like to know whether you are aware of this decision to support pork barrel spending in a way that disregards the tradition of cooperation with this committee? If so, is this decision indicative of the direction you plan to take the Department as it pertains to reining in defense spending on non-essential activities as well as interacting with the congressional defense committees? Please let me know of your decision to move forward on this project in direct contradiction of the precedent of decades of awaiting the approval of the defense committees before proceeding with construction.

Thank you for your prompt attention on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John McCain", written in a cursive style.

John McCain  
Ranking Member

cc:  
The Honorable Elizabeth King  
Assistant Secretary of Defense for Legislative Affairs