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DATE: 9 December 2009

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SUBJECT:

Enclosed Response referring to Condor Military Operations Area

NUMBER OF PAGES INCLUDING COVER SHEET:   3



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NGB/CF

The Honorable John E. Baldacci  
Office of the Governor  
1 State House Station  
Augusta, Maine 04333

01 DEC 2009


Dear Governor Baldacci

Thank you for your letter regarding the modification of the Condor Military Operations Area (MOA) and your continued involvement in this critical initiative.

In a letter dated 13 November 2009, you express concern over a perceived lack of consideration towards the various potential impacts of modifying the Condor MOA. The Air National Guard considers community support as central to our ability to meet the demands of securing the homeland and defending our nation. Alleviating any and all concerns regarding the affect of our operations on the quality of life in western Maine is fundamental to this effort. As such, we have prepared a by-point information paper for your review to address concerns outlined in a letter from your office to our Director of Installations and Mission Support, Mr. Bill Albro, on 28 August 2009.

More than one-thousand men and women from the great state of Maine currently serve in the Air National Guard, and their service is second-to-none. Most of them have come to the Air National Guard from the cities and towns and villages within Maine's borders, and it is those very hometowns we seek to secure and defend. In short, their communities are our communities and your concerns are our concerns. I look forward to working with your office, and the people of Maine, to ensure that this initiative is mutually beneficial. Thank you for your support.

Sincerely

  
HARRY M. WYATT III  
Lieutenant General, USAF  
Director, Air National Guard

**1. Your request for a six to nine month postponement of the hearing:**

*Response: We have exceeded federal laws and guidelines, including NEPA protocol for conducting environmental analysis actions by extending the dates for the hearings. According to 32 CFR § 989.19, we exceeded the minimum of 45 days for public review of the draft EIS by three days. After we received Governor Baldacci's 28 August 2009 letter, requesting the public hearing be postponed six to nine months, we postponed the public hearing for two months. We also extended the comment review period for another four months totaling 147 days.*

**2. Maine Department of Transportation (DOT) Assessment:**

A. The DEIS does not respond to all CEQ regulations.

*Response: To our knowledge, the DEIS is fully compliant with CEQ regulations and only requires incorporation of the List of Preparers. Please inform us of any items that are non-compliant, and we will address them.*

B. The DEIS does not list the individual public airports in the MOA, nor does it list the number of based aircraft that cannot be seen by radar. Based on data that we have, the number is 114 based aircraft and 43,340 operations per year, in addition to through traffic. This information should be factored into the safety considerations.

*Response: The list of public airports and number of based aircraft unseen by radar can be found on p. 3-6, last paragraph. The above discussion of based civilian aircraft and number of operations is difficult to quantify without further detail. We have provided the current flying conditions and avoidance procedures on p. 3-11. Without an analysis of the 43,340 operations, a clear understanding of flying operations is difficult to assess. For instance, one projection is 8 civilian airports that collectively average 118 operations or 59 take-offs and 59 arrivals occur daily. This example provides the context to accurately evaluate safety considerations. Consequently, further investigation will be required to validate current operations to assess safety considerations.*

*Both Department of Defense (DoD) and the Federal Aviation Administration (FAA) regulations require a safety assessment to consider how the proposed action would affect the potential for accidents within the affected airspace. This assessment is made based on the mishap rate for the aircraft that would operate within the airspace. Pages 4-6 through 4-10 summarize this analysis.*

C. Maine DOT recommends the ANG hire an independent noise consultant to check the validity of our noise work.

*Response: All contractor noise work is reviewed by USAF specialists.*

**3. Resident's Assessments:**

- A. The EIS does not satisfactorily respond to the socioeconomic issues. The Fermata report, the Brookings Institution Study, and other Maine Office of Tourism evaluations that quantify the value of the Western Mountains to Maine's economy should be evaluated and responded to in the DEIS.

*Response: We have reviewed the 2005 report from Fermata Inc. entitled "The Strategic Plan for Implementing the Maine Nature Tourism Initiative," and the 2006 Brookings Institute Metropolitan Policy Program's report entitled "Charting Maine's Future - An Action Plan for Promoting Sustainable Prosperity and Quality Places." As indicated in our letter of 2 September 2009, they will be incorporated as appropriate into the final EIS. However, we were unable to ascertain specific socioeconomic data applicable to the EIS. Please validate their applicability or identify any additional reports that may impact this action.*

- B. The DEIS is requesting use of the area 24/7 but suggests it would not typically fly on weekends or holidays, especially in light of "Guard" training activity being a weekend activity; the residents would like caps placed on the number and timing of sorties.

*Response: The DEIS effectively caps the number of sorties that could occur. Table 5-2 on p. 5-7 identifies 408 sorties in the Condors MOAs and 72 sorties on the Visual Routes as the respective caps. Any increase or change in aircraft type would require another environmental analysis.*

- C. The DEIS does not adequately address the safety considerations for general aviation, nor does it address the hazards of low-altitude flying; in particular, it does not address issues associated with migratory bird and raptor strikes. There does not appear to have been any communication with the Maine IF&W or the USFWS.

*Response: The ANG proposal reduces interaction between military and general aviation aircraft, as the numbers of sorties and time spent in the airspace will decrease and military aircraft fly at higher altitudes than general aviation aircraft. Page 4-4 further amplifies this position. As with general aviation aircraft, interaction of military aircraft and migratory or resident bird species will also be lessened. Pages 4-9 and 7-1 amplify this discussion and outline measures pilots take to avoid interaction with birds on a daily basis. Also, the ANG and Maine IF&W co-developed mitigation procedures for eagles and raptors. Communication or contact with all interested and affected agencies to include Maine IF&W and the USFWS appears in Appendix A.*

- D. The DEIS does not address the impact of noise on the public, on quality of place, or on wildlife due to the change in floor altitude from 7000 ft to 500 ft.

*Response: Low-altitude flights down to 500 ft above ground level currently occur on the Military Training Routes, which cover approximately 30% of the affected airspace. Pages 4-10 through 4-14 of the DEIS directly address noise impacts on the public, indicating that the overall projected decibels will not exceed the 55 DNL metric. The analysis considers the affected area's generally quiet setting and "sense of place" by supplementing the "state of the art" Day Night Average Sound Level (DNL) metric with noise assessments using the more conservative Onset Rate-Adjusted Day-Night Average,*

*A-weighted Sound Level (Ldnmr) and Sound Exposure Level (SEL) metrics. This assessment also incorporates the more conservative 55 DNL metric, recognized by the United States EPA as appropriate for areas where the public may be more highly sensitized to noise. Identified wildlife and domestic species that may be impacted by noise will be evaluated prior to publishing the Final EIS.*

- E. The DEIS does not address impacts on land use patterns or activity, and it does not quantify how this airspace is more conducive than the Adirondack MOA, which is very similar in size to the proposed Condor MOA. A more detailed alternatives analysis is needed, as initial assessment by citizens shows that a much larger population is affected in western Maine than in the Adirondacks.

*Response: Pages 4-28 to 4-33 summarize the analysis of the effects of the proposed action on land use, which includes detailed assessments of the indirect impacts of noise on several noise-sensitive land use receptors. The Adirondack airspace MOA is specifically discussed on pages 1-9 to 1-10, defining why the Adirondack Airspace Complex is not suitable for the types of training that the proposed action is intended to support. Pages 2-9 through 2-14 contain an expanded analysis that identifies all reasonable alternatives. This alternative analysis demonstrates that the proposed action is the preferred alternative for minimizing impacts on the human and natural environment.*

- F. The DEIS does not clearly identify why the military must use this airspace for this training, nor does it prove why this particular type of training is necessary.

*Response: Pages 1-6 through 1-11 explain the ANG mission requirements and the airspace criteria needed to meet them. Page 1-9 specifically explains why other available airspace is unsuitable for supporting these needs. Pages 2-9 through 2-14 discuss why the proposed action is preferred over other alternatives.*

- G. The notification around availability of the DEIS and public hearing continues to be challenged; not everyone in the area feels that they were given adequate notice of the hearing.

*Response: We consciously exceeded DoD standards/requirements for notification for the public hearing and ensuring availability of the DEIS. Specifically, 32 CFR § 989.24 states "for all EIS notices, the public affairs office must purchase with EPF funds an advertisement in a prominent section of a local newspaper of general circulation." The ANG exceeded this requirement by not only publishing notices in the Maine Sunday Telegram, but also provided press releases to several other local newspapers, including The Sun Journal, Bangor Daily News, and Bethel Citizen. We also disseminated release information via the Associated Press (AP), and also published a notice of the hearing on the Maine DOT's website.*

- H. The DEIS suggests that fewer sorties will result but bases this opinion on potential future BRAC decisions, which may or may not occur. Also, the types of aircraft that would use the MOAs is not limited in the DEIS; as such, any and all types of military aircraft could use the MOA in the future.

*Response: The number of sorties has already decreased based on BRAC decisions made by the U.S. Congress in September 2005. The reduction in sorties is also based on the efficiencies the proposed action will bring, further discussed in page 2-5. No other aircraft will be using this airspace. A proposal to fly different aircraft types or increased numbers or hours not considered in the current EIS would require further NEPA analysis.*

- I. A prior request to expand the MOA under the McKernon (Governor in the 1980s) Administration was denied; the DEIS does not mention that analysis or denial, nor does it indicate what has changed with this request to make it more acceptable than in the past.

*Response: The ANG's former proposal to modify the Condor MOAs was based upon a different set of criteria and training requirements, neither of which are relevant to the current proposal. The ANG did not forward the previous Condor MOA proposal to the FAA as the mission requirement was negated. Specifically, the ANG decided not to base F-16 aircraft at Bradley ANGB, CT and Barnes ANGB, MA, thereby eliminating the airspace requirement. The current proposal addresses an ongoing training deficiency identified subsequent to the aforementioned EIS was conducted.*

#### **4. Attorney General's Assessments:**

- A. The DEIS does not adequately address the impact of low-altitude flights on the Appalachian Trail and its users. There is no evidence in the document of consultation with the National Park Service regarding the Appalachian Trail.

*Response: Appendix A contains a letter from Pamela Underhill, Park Manager, National Park Service, with the Appalachian National Scenic Trail. She indicated the Service's concurrence with the conclusion in the environmental assessment that the proposed action would have "no adverse impact to recreational and natural resources, and no adverse effect to the Appalachian Trail as a cultural resource or to any known cultural resources along the Trail." As part of the Interagency/Intergovernmental Coordination of Environmental Planning (IICEP) process, the DEIS was also forwarded to the National Park Service with a request for comments. Their comments will be given due consideration in the Final EIS.*

- B. The DEIS makes no reference to communications or consultations with the Penobscot Nation, which owns more than 60,000 acres in the affected area and is planning some development projects in that area.

*Response: The Penobscot Nation is addressed on page 4-39 of the DEIS. Appendix A shows certified mail receipts to the Nation on October 2006 and March 2007. A copy of the Draft EIS was also mailed to the Nation on August 2009. To date, no written response has been received.*